

NO. 14-24-00960-CR

IN THE
COURT OF APPEALS
FOURTEENTH DISTRICT OF TEXAS
HOUSTON, TEXAS

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HOUSTON, TEXAS
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DANIEL CISNEROS LEYVA	§	APPELLANT
v.	§	
THE STATE OF TEXAS	§	APPELLEE

APPEAL FROM THE 185th JUDICIAL DISTRICT COURT

HARRIS COUNTY, TEXAS

CAUSE NO. 1760976

APPELLANT'S BRIEF

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Oral Argument Requested

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STATEMENT OF THE CASE

Nature of the case:

On August 23, 2022, Appellant was indicted for capital murder, allegedly occurring on or about February 18, 2019. CR 41.

Course of proceedings:

Appellant pleaded “not guilty” to the indictment. 3 RR 16. On December 2-6, 2024, a jury trial was held. 1 RR 4-7. The jury found Appellant guilty of capital murder, as charged in the indictment. 7 RR 68. The trial court then sentenced Appellant to life imprisonment without the possibility of parole. 7 RR 70-71; CR 427.

Disposition of the case:

Appellant timely filed a notice of appeal on December 6, 2024. CR 433.

STATEMENT REGARDING ORAL ARGUMENT

Appellant requests oral argument so that Appellant has the opportunity to answer this Court's questions regarding the point of error raised in this appeal, which turns on a comprehensive review of the factual record and a technical legal analysis of the applicable law in analyzing whether, pursuant to the accomplice-witness rule, there was enough corroborating evidence to connect Appellant to the underlying offense.

ISSUES PRESENTED

1. Whether the evidence was legally sufficient to convict Appellant of capital murder when the only evidence supporting the verdict came from the testimony of accomplice witnesses and there was no independent, corroborating evidence connecting Appellant to the crime.
2. Whether the trial court reversibly erred when it failed to instruct the jury that Michelle Robles was an accomplice as a matter of law based on her affirmative acts of setting up the drug transaction that led to the robbery/murder.

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DANIEL CISNEROS LEYVA	§	APPELLANT
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THE STATE OF TEXAS	§	APPELLEE

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HARRIS COUNTY, TEXAS

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TO THE HONORABLE COURT OF APPEALS:

COMES NOW Appellant Daniel Cisneros Leyva, by and through his undersigned counsel, and offers this Appellant's Brief. Appellant would respectfully show the Court the following:

STATEMENT OF FACTS

James Hutchinson testified that he lived at Redford Apartments when the instant offense occurred in February 2019. 3 RR 36-38. On February 18, 2019,

Hutchinson was sitting on his couch when he first heard gunshots; he then opened his blinds, went onto his balcony, and saw someone running across the street from the parking lot. 3 RR 39. Hutchinson testified that this person was holding a gun and a bag. 3 RR 40. The decedent (Edward Guerrero, Jr.) was in the parking lot shooting towards the person who was running away. 3 RR 40-41. Hutchinson further testified that the person across the street then turned around and shot back at the decedent. 3 RR 41. Hutchinson testified that he heard the decedent's girlfriend say, "Babe, get up. Are you okay?" Hutchinson recognized the girlfriend as "Michelle," who was a fellow resident of the Redford Apartments. 3 RR 42-43. Hutchinson testified that he did not know any of the other people involved, including the decedent. 3 RR 43.

Further, Hutchinson testified that he did not observe Appellant on the night of the shooting. 3 RR 47. Hutchinson also testified that he heard a total of eight shots; four shots rang out in succession, and then a second set of four shots were fired. 3 RR 48. Hutchinson clarified that two people were shooting. 3 RR 48. After rotating the decedent's body to perform CPR, a firearm was located underneath the body. 3 RR 48-49.

Houston Police Officer Antonio Villarreal testified that he was working the evening shift on February 18, 2019, when he was called to the Redford Apartments to respond to the shooting. 4 RR 23-25, 37. Villarreal also testified that Bayshore

Hospital records from Pasadena, Texas, show that a gunshot victim with a wound to his left neck was admitted on the same evening and was identified as Appellant. 4 RR 41-42. According to the records, Appellant was driven to the hospital by a friend, and he arrived thirty minutes after the shooting, which resulted in multiple gunshots to his left neck area. 4 RR 42.

Austin Oulton testified that he was a crime scene investigator for the Houston Forensic Science Center at the time of this offense. 4 RR 62. He observed damage to the front passenger window of one of the vehicles, including a possible bullet hole and shattered glass. 4 RR 77. Oulton also testified that the firearm recovered from underneath the decedent was a 9-millimeter caliber with a magazine capacity of 15 cartridges. 4 RR 100, 115. Oulton further testified that seven bullets were found in the magazine, while one bullet was lodged in the chamber. 4 RR 115. There were also six ejected cartridge cases recovered at the scene. 4 RR 116. However, not every cartridge case was ejected from a 9-millimeter caliber firearm, as one of the recovered cases was from a .40-caliber Smith & Wesson. 4 RR 116-18.

Stephanie Nunez testified that she dated Joel Ruiz in 2019, and they lived together at the Redford Apartments. 4 RR 177. Nunez testified that she owned a car at that time, while Ruiz did not have his own vehicle. 4 RR 178. According to Nunez, Appellant was a friend of Ruiz, and Appellant owned a blue car. 4 RR 178.

Nunez testified that Appellant came to their apartment on February 18, 2019; she was watching Netflix in her room while Appellant, Ruiz, Cristofer Perez, and Juan Castillo were together in the living area. 4 RR 180-82. Nunez testified that she heard the four guys all leave at one point. 4 RR 185.

Later in the evening, Appellant arrived back at the apartment bleeding from his leg. 4 RR 186. Nunez testified that Appellant asked her to take him to the hospital, so she drove him in her car. 4 RR 187. Along the way, they met Ruiz at a gas station so that he could accompany them to the hospital. 4 RR 188. Nunez testified that when they met up with Ruiz at the gas station, he was driving Appellant's blue car. 4 RR 188.

On cross-examination, Nunez clarified that her door was closed the entire time she was watching Netflix while Ruiz hung out with his friends in the living room, and Nunez did not actually observe Appellant in the apartment that day. 4 RR 195-96. Rather, she assumed he was there because he often hung out with Ruiz.

Cristofer Perez, one of the accomplices as a matter of law, testified that he was friends with Appellant, Ruiz, and Castillo in 2019. 4 RR 201-03. Perez admitted that he did not tell the whole truth right away when he was first interviewed by law enforcement because he was scared. 4 RR 204. Perez also revealed that he had previously pleaded guilty to a lesser charge of aggravated

robbery based on this shooting incident, although he had not yet been sentenced. 4 RR 204-05.

Perez testified that on the day of the offense, Ruiz and Castillo picked him up to take him back to Ruiz' apartment, where they smoked marijuana 4 RR 206, 209. About 1-2 hours later, Appellant showed up and began smoking with them. 4 RR 206, 209. Perez further testified that they planned a robbery that Castillo would set-up. 4 RR 210. The plan was for Castillo to contact a marijuana dealer and then get in the vehicle while Perez and Appellant approached the car with guns for intimidation purposes. 4 RR 210. Perez testified that his gun was equipped with a green laser while Appellant's had a red laser. 4 RR 211. According to Perez, Appellant agreed to assist in the planned robbery by getting out of the car to help intimidate the decedent. 4 RR 212.

Perez testified that the four friends then got inside Appellant's Volkswagen Jetta, and Castillo walked towards the decedent's vehicle once he arrived at the meeting spot in the parking lot of the apartment complex. 4 RR 214. As soon as Castillo entered the decedent's vehicle, Perez and Appellant exited Appellant's car. 4 RR 217. Perez testified that they were pointing the guns with lasers at the driver, who turned out to be the decedent's girlfriend, Michelle Robles. 4 RR 219, 221. Appellant then approached the passenger side, where he aimed the gun at the decedent. 4 RR 222. After Castillo exited the decedent's vehicle, Perez testified

that he heard gunshots and then observed Castillo running down the street, while Appellant ran towards the apartments and Perez ran towards the getaway vehicle, which was driven by Ruiz. 4 RR 223-226. Perez testified that the gunshots began ringing out as they retreated from the robbery. 4 RR 225-26.

After getting back in the getaway vehicle, Perez received a call from Appellant regarding his gunshot wound, so they turned around and went back to the Redford Apartments, where they observed Appellant being loaded into Nunez' red Kia Optima. 4 RR 227. Perez testified that Ruiz rode with Appellant to the hospital in the red Kia, while Castillo and Perez drove to the hospital in Appellant's blue Volkswagen. 4 RR 228. At trial, Perez identified each of the firearms used by each of the co-defendants; according to his testimony, Ruiz used a Taurus, while the others used Glocks. 4 RR 236-37.

On cross-examination, Perez testified that the Taurus firearm is .40 caliber. 4 RR 239. Further, he admitted that he does not want to go to prison and is hoping to obtain probation in exchange for his testimony against Appellant. 4 RR 240-42. Perez also admitted that he was not truthful about the incident on the following occasions: (1) when he spoke to the police on March 3, 2019, (2) when he met with a prosecutor on June 13, 2020, (3) when he told a prosecutor in 2022 that Castillo supplied all of the firearms, (4) when he testified before the grand jury on August, 23, 2022, (5) when he told a prosecutor in 2024 that the robbery was not planned,

and (6) during a PSI interview in 2024 when he denied smoking marijuana and claimed that Castillo gave Perez the guns. 4 RR 243-62.

Adrian Lopez testified that he was the assigned detective on this case. 4 RR 285. According to Lopez, he began his investigation of Appellant on the night of the incident due to Appellant being a gunshot wound victim in the area in which the shooting had occurred. 4 RR 290. Appellant agreed to be interviewed on February 25, 2019, at the homicide division while he was not in custody. 4 RR 296, 298. During this interview, Appellant told Detective Lopez that he arrived at Redford Apartments after being dropped off by a friend named Valentine Loya. 4 RR 300. Appellant stated that he was walking along the passenger side of the decedent's vehicle when he got shot. 4 RR 301. According to Appellant, there were three people located inside the vehicle when the shooting occurred. 4 RR 302.

Detective Lopez testified that after interviewing Perez and Castillo, he charged them with capital murder on March 5, 2019. 4 RR 308-09. Lopez then interviewed Appellant a second time on June 2, 2019. 4 RR 309-10. During this second interview, Appellant initially stated that he walked in a path that took him between the two vehicles in the parking lot after being dropped off. 5 RR 20-21. Detective Lopez testified that Appellant could have taken a shorter path from his drop-off point to the apartment complex instead of going between the two involved vehicles. 5 RR 27. Detective Lopez also testified that the gunshot injuries to

Appellant's right side were inconsistent with the path that Appellant stated he took between the vehicles; however, Lopez also admitted that he did not ask Appellant whether he twisted or turned prior to being shot. 5 RR 59-61.

Dr. Rafael Garcia testified that he conducted the autopsy of the decedent in this case. 5 RR 68. Dr. Garcia testified that he observed stippling injuries to the decedent, indicating that the estimated distance of the firearm discharge was between six inches and 3.5 feet. 5 RR 80-81. The trajectory of the fatal gunshot wound was left to right, front to back, and downward. 5 RR 96. On cross-examination, Dr. Garcia testified that if the decedent had been shot through a window where glass hit his skin, there would have been pseudo-stippling from that injury. 5 RR 101. However, no pseudo-stippling was detected, suggesting that the decedent was not shot through a window or windshield. 5 RR 101.

Kaitlyn Boydstun testified that she works in the firearms section of the Houston Forensic Science Center. 5 RR 119. She examined the fired cartridge cases that were collected as evidence. 5 RR 131-32. Boydstun testified that five of the cases were fired from the decedent's Glock pistol, while two other cases were fired from a different firearm that was in the .40 caliber family. 5 RR 145-46, 151, 162.

Michelle Robles testified that she was 18-years-old when this incident occurred. 5 RR 166. On February 18, 2019, a friend from high school, Juan

Castillo, messaged Robles regarding whether she had any marijuana for sale. 5 RR 168-70. Robles agreed to sell Castillo a quarter pound of marijuana for \$400. 5 RR 171. Castillo then sent her the location for where to meet up and park to complete the narcotics transaction. 5 RR 171. Robles testified that the decedent (her boyfriend) was nervous when they arrived at the meet-up spot in the parking lot of the Redford Apartments. 5 RR 174.

Robles testified that after Castillo's vehicle arrived, Castillo entered Robles and decedent's vehicle on the rear passenger side. 5 RR 175. Castillo then pulled out a gun and put it in Robles' face as he demanded, "Where is the work at?" 5 RR 175. The decedent responded, "Bro, what are you talking about?" 5 RR 175. The decedent then pushed Robles' head down. 5 RR 175-76.

Robles next testified that two people exited the other vehicle with guns and one of them came to her window on the front passenger side. 5 RR 178. Robles recalled green lasers. 5 RR 179. Robles further testified that she recognized Cristofer Perez from school, but she did not recognize the other person who exited the suspect vehicle. 5 RR 181. According to Robles, this other, unrecognized person was wearing a red sweater and gray shorts or pants. 5 RR 181.

Robles testified that after the decedent pushed her head down, she heard gunshots, and then she observed the decedent fall down. 5 RR 182. Robles further

testified that Perez stood around looking lost, while the unidentified perpetrator ran towards the pool area of the apartment complex. 5 R 182.

According to Robles, she did not initially tell the truth to the police because she was scared. 5 RR 184. Also, she deleted her messages about setting up the marijuana transaction. 5 RR 184. Furthermore, Robles admitted that when a detective showed her a photographic array on two different occasions in an attempt to have her identify the person who shot the decedent, Robles could not identify anyone the first time. 5 RR 189-90. Although she made an identification the second time she was shown a photographic array, she did not identify Appellant. 5 RR 190, 205.

On cross-examination, Robles revealed that she had entered into an immunity agreement in exchange for her trial testimony, and the agreement contained a provision whereby she could not be charged with a crime even if she admitted to one in her testimony. 5 RR 194. Robles also clarified that after the decedent pushed her head down prior to the shooting, she did not see anything else. 5 RR 195-96. Robles further clarified that she has never identified Appellant as one of the perpetrators. 5 RR 205.

Stephen Clappart testified that he is a digital forensics examiner for the Harris County District Attorney's Office. 5 RR 208. Clappart completed his extraction of Juan Castillo's phone, and the extraction report was admitted into

evidence as State's Exhibit #118. 5 RR 214. Also, Perez' cell phone was admitted into evidence as State's Exhibit #91. 5 RR 222. Clappart testified that there was no evidence that Appellant signed into either Castillo's or Perez' phones. 5 RR 224.

Detective Michael Burrow testified that he investigated this case. 6 RR 10-11. Burrow testified that he reviewed the interviews of Appellant and Perez; the only person who said they were near the front passenger door of decedent's vehicle at the time of the shooting was Appellant. 6 RR 18. Burrow testified that the projectiles fired by the decedent were in the .40 caliber family. 6. RR 21.

When Burrow searched Juan Castillo's cell phone extraction, he located a phone number that was identical to Appellant's phone number, and the contact name was listed as "Dani." 6 RR 24. Burrow testified that his review of Castillo's cell phone extraction revealed information that was not consistent with Appellant's claim that he was not in communication with Castillo. 6 RR 29-30. However, Burrow did not find any calls coming or going between Appellant's and Castillo's phones on the day of the incident. 6 RR 34.

Regarding Appellant's cell phone records, Burrow testified that he obtained the subscriber information and call logs, but there was no location data available. 6 RR 51. Burrow testified that the only cell phone communication between Perez and Appellant on the day of the offense consisted of an outgoing call from Perez to Appellant at 7:54 p.m. 6 RR 59.

On cross-examination, Burrow testified that Michelle Robles could have been charged with felony murder, and she initially gave inconsistent statements about her involvement in the drug transaction. 6 RR 81-82.

On redirect examination, Burrow testified that Appellant wearing a red shirt at the hospital was consistent with prior testimony that the shooter wore a red shirt. 6 RR 109. Burrow also testified that the decedent's fatal gunshot wound was to the left side of his head, and Appellant admitted to standing in that position. 6 RR 112.

On re-cross examination, Burrow testified that the only eyewitness was James Hutchinson, who observed only two shooters and identified them as the decedent and Juan Castillo. 6 RR 127.

Jude Vigil testified that he works as a digital forensics investigator for the Harris County District Attorney's Office. 6 RR 129. Vigil analyzed the location data for the cell phone records of Appellant, Perez, Castillo, Ruiz, and Nunez for 6:03 p.m. through 8:21 p.m. on the evening of the shooting. 6 RR 133-36. Vigil testified that there was no location data available for this time period in either Appellant's or Nunez' records. 6 RR 145.

Vigil testified that according to his analysis, Castillo, Ruiz, and Perez were using their cell phones on a cell phone tower that had coverage in the Redford Apartments area. 6 RR 148-49. Vigil further testified that there were two phone calls from Perez to Appellant at 7:54 and 7:55 p.m. 6 RR 152. Also, Ruiz

attempted to call Appellant at 8:02 p.m., but the call failed. 6 RR 153. According to Vigil, the shooting incident occurred at approximated 7:55 or 7:56 p.m. 6 RR 153-54. Finally, Vigil testified that Ruiz and Perez called each other at 8:07 p.m., and their location records indicated that their phones travelled east of the crime scene to an area hospital in Pasadena. 6 RR 155-56.

On cross-examination, Vigil testified that he can only state that Appellant was in communication with the other co-defendants at some point on the day of the incident. 6 RR 159. Further, he only found evidence of a small amount of communication by Appellant, compared with the other co-defendants (Ruiz, Castillo, and Perez). 6 RR 160.

SUMMARY OF THE ARGUMENTS

First, the evidence was legally insufficient to support the jury's verdict because there was not enough corroborating evidence to connect Appellant to the murder under the accomplice-witness rule. When excluding accomplice Cristofer Perez' testimony from the analysis, the evidence established that Appellant suffered a gunshot wound during the shooting, but there was no evidence connecting him to planning or participating in the robbery/murder. While co-defendant Joel Ruiz' girlfriend Stephanie Nunez testified that Appellant was in the living area of her apartment with the other three co-defendants prior to the

shooting, Nunez admitted that she never actually observed Appellant, as she was in her bedroom that entire time. Further, eyewitness Michelle Robles could not identify the Appellant as the shooter despite having opportunities to do so in a photographic lineup and the courtroom. Finally, there was no location data on Appellant's phone putting him in the area of the shooting during the planning phase, and there was only minimal communication between him and the other co-defendants in the hours leading up to the robbery/murder.

Second, the trial court erred in failing to instruct the jury that Michelle Robles was an accomplice as a matter of law. Robles organized the illegal marijuana transaction with Juan Castillo, and the crime could not have been committed without Robles' assistance. Also, Detective Burrow admitted that Robles could have been charged with felony murder based on her role in the offense. Finally, Robles entered into an immunity agreement in exchange for her testimony. In light of these factors, the trial court should have instructed the jury that Robles was an accomplice as a matter of law. Turning to harm, there would not have been enough evidence to connect Appellant to the robbery/murder under the accomplice-witness rule after excluding Robles' and Perez' testimony. Although Robles could not identify Appellant as the shooter, she did identify the shooter as wearing a red sweater, and Detective Burrow testified that Appellant

was admitted to the hospital in a red shirt after the shooting. Without this evidence, there are insufficient facts in the record to connect Appellant to the instant offense.

POINT OF ERROR NUMBER ONE

PURSUANT TO THE ACCOMPLICE-WITNESS RULE, THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT THE JURY'S VERDICT BECAUSE WHEN DISREGARDING THE ACCOMPLICE-WITNESS TESTIMONY, THERE WAS NOT SUFFICIENT EVIDENCE CONNECTING APPELLANT TO THE MURDER.

Argument and Authorities

According to the accomplice-witness rule, a conviction obtained based on accomplice testimony must be supported by sufficient corroborating evidence tending to connect the defendant to the offense committed. *See* TEX. CODE CRIM. PROC. ART. 38.14; *Druery v. State*, 225 S.W.3d 491, 498 (Tex. Crim. App. 2007). The corroborating evidence need not, standing alone, rise to the level of proof beyond a reasonable doubt. *Malone v. State*, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008). Although the corroborating evidence need not be legally sufficient in itself to establish a defendant's guilt, the evidence must link the defendant to the commission of the offense and show that rational jurors could conclude that the evidence sufficiently "tended to connect" the defendant to the offense. *Simmons v. State*, 282 S.W.3d 504, 508 (Tex. Crim. App. 2009); *Casanova v. State*, 383 S.W.3d 530, 538 (Tex. Crim. App. 2012). Evidence that the offense was

committed is insufficient to corroborate the accomplice's testimony. *Smith v. State*, 332 S.W.3d 425, 439 (Tex.Crim.App.2011).

Here, upon disregarding accomplice Cristofer Perez' testimony, there is insufficient evidence connecting Appellant to the shooting. The rest of the evidence merely established that Appellant was shot during the robbery incident, but it did not connect Appellant to planning or participating in the underlying crime.

Although Stephanie Nunez (Joel Ruiz' live-in girlfriend) testified that she believed Appellant was in the living-room area of their apartment with Ruiz, Castillo, and Perez prior to the robbery, she testified that she never actually observed Appellant because she was in her bedroom with the door closed watching Netflix during the entire time that Ruiz hung out with his friends. 4 RR 195-96.

Further, Michelle Robles testified that although she saw two perpetrators exit the suspects' vehicle, she only recognized Perez. 5 RR 181. Despite participating in two photographic lineups and having the opportunity to identify Appellant in the courtroom, Robles never positively identified Appellant as one of the shooters on the night in question. 5 RR 189-90.

Regarding the cell phone testimony, there was no location data associated with Appellant's cell phone. 6 RR 159. The State's expert, Jude Vigil, attempted to connect Appellant to the other co-defendants by testifying that Cristofer Perez tried

to call Appellant twice around 7:55 p.m. on February 18th, but Vigil's Powerpoint exhibit shows that these calls failed to connect. *Compare* 6 RR 152 *with* St.Ex.181, at 27. Also, Joel Ruiz attempted to call Appellant's phone at 8:02 p.m., but the call failed to connect. 6 RR 153; *see also* St.Ex.181, at 29.

While the evidence established that Perez, Castillo, and Ruiz were all at the scene of the shooting, there was not similar evidence connecting Appellant to the crime scene. Rather, the State's case hinged on an assumption that Appellant participated in the murder/robbery based on the fact that he was shot at the scene. However, the non-accomplice evidence merely proves that Appellant was shot in the parking lot and then the co-defendants accompanied him to a hospital in Pasadena. For the evidence to be sufficient to convict Appellant, there needed to be some non-accomplice evidence that connected him to either planning or participating in the murder/robbery. Instead, the evidence only connects Appellant to being a person who was shot at the scene and then taken to the hospital. While the State may respond that Michelle Robles identified a subject in a red sweater and Appellant was in a red shirt at the hospital, this evidence is not specific enough, standing alone, to connect Appellant to the crime due to the prevalence/popularity of red clothing. *See* 6 RR 109-10.

This Court should sustain Appellant's first point of error, reverse the judgment of conviction, and render a judgment of acquittal.

POINT OF ERROR NUMBER TWO

BECAUSE MICHELLE ROBLES PLAYED AN INTEGRAL ROLE IN PLANNING THE UNDERLYING DRUG TRANSACTION AND RECEIVED AN IMMUNITY AGREEMENT IN EXCHANGE FOR HER TESTIMONY, THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO INSTRUCT THE JURY THAT ROBLES WAS AN ACCOMPLICE AS A MATTER OF LAW.

Standard of Review

When analyzing a jury charge issue on appeal, this court first determines if there was an error, and if so, whether the error caused sufficient harm to warrant a reversal. *Ngo v. State*, 175 S.W.3d 743 (Tex.Crim.App.2005); *Ochoa v. State*, 119 S.W.3d 825, 828 (Tex. App.—San Antonio 2003, no pet). The amount of harm necessary to warrant a reversal depends on whether the appellant objected to the jury charge. *Reeves v. State*, 420 S.W.3d 812, 816 (Tex.Crim.App.2013) (citing *Almanza v. State*, 686 S.W.2d 157, 171 (Tex.Crim.App.1985) (op. on reh'g); *Ngo*, 175 S.W.3d at 743; *Ochoa*, 119 S.W.3d at 828. If the appellant objected to the complained-of portion of the jury charge, then the record need only show he suffered some harm as a result of the error to obtain a reversal. *Reeves*, 420 S.W.3d at 816; *Ngo*, 175 S.W.3d at 743; *Ochoa*, 119 S.W.3d at 828.

Here, Appellant objected to the trial court's jury instructions, arguing that the jury should have been instructed that Michelle Robles was an accomplice as a matter of law. 7 RR 6-7. As a result, the record need only show that Appellant suffered some harm to obtain a reversal of his conviction. *See Reeves*, 420 S.W.3d

at 816; *Ngo*, 175 S.W.3d at 743; *Ochoa*, 119 S.W.3d at 828.

Argument and Authorities

The law clearly defines who is subject to the accomplice-witness rule. “A person who is merely present at the scene of the offense is not an accomplice; an affirmative act of omission is required. An accomplice participates before, during, or after the commission of the crime – presence at the scene of the offense is not required...” *Blake v. State*, 971 S.W.2d 451, 454 (Tex.Crim.App.1998). “[A] person is an accomplice if there is sufficient evidence connecting them to the criminal offense as a blameworthy participant.” *Id.*, at 455 (citing *Singletary v. State*, 509 S.W.2d 572, 575 (Tex.Crim.App.1974)). “[A]n accomplice must have engaged in an affirmative act that promotes the commission of the offense that the accused committed.” *Smith v. State*, 332 S.W.3d 425, 439 (Tex.Crim.App.2011). Also, even when the State elects not to prosecute an accomplice, they are still considered an accomplice as a matter of law if they agree to testify against the accused in exchange for this non-prosecution. *Id.* When the evidence shows that a witness is an accomplice as a matter of law, the trial court must instruct the jury accordingly. *Id.*

Here, Michelle Robles admitted that she set-up the illegal drug transaction with Juan Castillo. 5 RR 168-71. Without Robles assistance in setting up the illegal drug transaction, the robbery never could have occurred, and the decedent never

would have been murdered. Due to Robles' essential role in planning the illegal drug transaction that led to the rest of the events, she was an accomplice as a matter of law, and the trial court erred in failing to instruct the jury in this regard.

Furthermore, Detective Burrow testified that Michelle Robles could have been charged with felony murder, and she initially gave inconsistent statements about her involvement in the drug transaction. 6 RR 81-82. At trial, Robles revealed that she had entered into an immunity agreement in exchange for her trial testimony, and the agreement contained a provision whereby she could not be charged with a crime even if she admitted to one in her testimony. 5 RR 194.

Because Robles played an integral role in planning the illegal drug transaction that led to the robbery/murder, she could have been charged for her role in the offense. Because she entered into an immunity and non-prosecution agreement in exchange for her testimony, Robles was an accomplice as a matter of law, and the trial court erred in failing to instruct the jury accordingly. *See Smith*, 332 S.W.3d at 439.

Turning to harm, Appellant suffered at least some harm due to the trial court's error, as the jury likely used Robles' testimony in their deliberations when deciding whether there was sufficient non-accomplice evidence connecting Appellant to the offense. In fact, the jury sent a note requesting readbacks of the parts of Robles' testimony in which she described the two suspects exiting their

vehicle and approaching the vehicle occupied by her and the decedent. CR 404-05. Significantly, Robles was the only person who identified a suspect wearing a red shirt, and Detective Burrow testified that her description of the suspect's red shirt matched the color of Appellant's shirt when he was treated at the hospital. 6 RR 109-10.

If the jury had been properly instructed that Robles was an accomplice as a matter of law, then they would not have been able to use her testimony in deciding whether the non-accomplice evidence sufficiently connected Appellant to the offense. When excluding the testimony of both Robles and accomplice Cristofer Perez, the rest of the evidence was insufficient to connect Appellant to the offense, as explained below.

Although Stephanie Nunez (Joel Ruiz' live-in girlfriend) testified that she believed Appellant was in the living room area of their apartment with Ruiz, Castillo, and Perez prior to the robbery, Nunez testified that she never actually observed Appellant because she was in her bedroom with the door closed watching Netflix during the entire time that Ruiz hung out with his friends. 4 RR 195-96.

Regarding the cell phone testimony, there was no location data associated with Appellant's cell phone. 6 RR 159. The State's expert, Jude Vigil, attempted to connect Appellant to the other co-defendants by testifying that Cristofer Perez tried to call Appellant twice around 7:55 p.m. on February 18th, but Vigil's Powerpoint

exhibit shows that these calls failed to connect. *Compare* 6 RR 152 *with* St.Ex.181, at 27. Also, Joel Ruiz attempted to call Appellant's phone at 8:02 p.m., but the call failed to connect. 6 RR 153; *see also* St.Ex.181, at 29.

While the evidence established that Perez, Castillo, and Ruiz were all at the scene of the shooting, there was not similar evidence connecting Appellant to the crime scene. Rather, the State's case hinged on an assumption that Appellant participated in the murder/robbery based on the fact that he was shot at the scene. However, the non-accomplice evidence only shows that Appellant was shot in the parking lot and then the co-defendants accompanied him to a hospital in Pasadena. For the evidence to be sufficient to convict Appellant, there needed to be some non-accomplice evidence that connected him to either planning or participating in the murder/robbery. Instead, the evidence only connects Appellant to being a person who was shot at the scene and then taken to the hospital.

This Court should sustain Appellant's second point of error, reverse the judgment of conviction, and remand the case to the trial court for a new trial on guilt-innocence.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant prays that this Court sustain his point of error, reverse the trial court's judgment of conviction, and render a judgment of acquittal. In the alternative, Appellant prays that this Court

remand the case to the trial court for a new trial on guilt-innocence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the above Appellant's brief has been served on the State's attorney by electronically transmitting a copy to Sean Teare and Jessica Alane Caird, Assistant Harris County District Attorneys, at DAOeservice@dao.hctx.net, on the 21st day of May, 2025.

/s/ Christopher M. Perri
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CERTIFICATE OF COMPLIANCE

This is to certify that the above Appellant's Brief complies with the length requirements of TEX. R. APP. PROC. 9.4(i)(2)(B) because it contains 6,074 words, including footnotes.

/s/ Christopher M. Perri
Christopher M. Perri

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