IN THE COURT OF APPEALS

FOURTEENTH COURT OF APPEALS DISTRICT

No. 14-24-00101-CR

SANTOS MELENDEZ-GRANADOS

V.

THE STATE OF TEXAS

Appellant's Brief

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Santos Melendez-Granados

Appellant respectfully requests oral argument.

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Appeal from the 182 Judicial District Court, Harris County, Texas, The State of Texas vs. Santos Melendez-Granados, No. 1740874

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Statement of the Case and Jurisdiction

Appellant was indicted by a grand jury on a felony charge of murder. (C.R. V.1 at 29). Following a jury trial, Appellant was convicted of the charged offense. Id. at 178. After his Punishment Trial, the Appellant was sentenced by the Jury to confinement for life in the Correctional Institutions Division of the Texas Department of Criminal Justice. Id. at 184. Appellant filed a timely written notice of appeal. (C.R. V.1 at 193).

Statement Regarding Oral Argument

Appellant requests oral argument because the case at bar involves admission of a recorded telephone conversation constituting double hearsay and jury charge error which caused egregious harm.

Issues Presented

1) Did the Trial Court err in admitting a recorded telephone conversation that contained hearsay?

2) Did the disjunctive application paragraph deny Appellant jury unanimity causing him egregious harm?

Statement of Facts

The Appellant, Santos Melendez-Granados, was charged with Murder, which was alleged to have occurred in Harris County Texas on or about September 23, 2021. (R.R. V.4 at 36), (C.R. V.1 at 29), TEX. PENAL CODE § 19.02(b)(1)(2). The evidence at his trial included an apartment complex surveillance video depicting the death of the complainant, Carlos Pineda. (R.R. V.4 at 36, 149-50, State's Ex. 75). The video of the evening of September 23, 2021, depicts a truck waiting by an apartment complex dumpster. Id. The video then depicts the truck moving into position and subsequently open fire towards the decedent, who was on his phone. Id.

Eyewitness, Meydis Blanco, testified that the driver of the truck that night was the Appellant, Santos Melendez-Granados. Id. at 163-64. The Eyewitness was the ex-girlfriend of the Appellant. Id. at 132. She testified that in 2020 they dated for approximately a year. Id. at 134-35. She testified that although the relationship had good moments, the Appellant was sometimes possessive or overbearing. Id. at 134-140. By September of 2021, the witness testified she moved on from the Appellant and was dating the decedent, Carlos Pineda. Id. at 130.

Ms. Blanco also testified that the Appellant called her that next morning around 4 AM. Id. at 168. She testified that she recorded this conversation with her girlfriend's husband. Id. at. 170. She wanted to obtain information about the

Appellant's location. Id. at 172. The conversation and a translation from Spanish to English was entered into evidence as State Exhibits 80 and 81. Id. at 169. During the recorded telephone conversation, the Appellant allegedly claimed that he never killed before, and it was the witness Blanco's fault this death happened. Id. at 188, State's Exs. 80-81.

With this evidence the jury found Appellant guilty of Murder and sentenced him to life in the Texas Department of Corrections.

Summary of Argument

The Trial Court erroneously allowed admission of hearsay within hearsay with no exception proffered by the State. The double hearsay consisted of a telephone conversation between the Appellant and his ex-girlfriend. During the recorded telephone conversation, the Appellant claimed that he never killed before, and it was the witness Blanco's fault this death happened. Admission of the recording caused the Appellant harm necessitating reversal.

Further, the disjunctive application paragraphs in this matter constitute jury charge error. Specifically, they fail to require a unanimous verdict on separate and distinct offenses. This error caused the Appellant egregious harm by denying him his right to a unanimous verdict on all offenses.

Argument

I. The Video Recording of a Phone Call Violated the Rule Against Hearsay Within Hearsay

i. Error Preserved

Before trial, Trial Counsel for the Appellant filed a "Motion in Limine of Video of Purported Phone Call Between Meydis Blanco and Santos Melendez-Grandos." (C.R. V.1 at 154). The issue was again raised before testimony.

> *MR. MADRID:* The next one is regarding a video of a phone call. And I guess I'd just ask the State -- if the State could approach before that because I'm not really sure how they intend to offer it based on their witness list.
> *THE COURT:* Can you tell me more about this?
> *MR. MADRID:* The allegation is that the same witness Blanco called up the defendant on a -- had a phone call, and the phone call was recorded by a third party.
> *THE COURT:* Like the jail?
> *MR. MADRID:* It was on speakerphone with the phone down, and the third party is videotaping it. We just ask that we approach before that. I don't know how they intend to offer that because I don't know if they have those witnesses or not.
> *THE COURT:* State.
> *MR. FIGLIUZZI:* Yes, your Honor. We intend to offer it through Meydis, again, who can authenticate it since she was the one that was in the -- partaking in the conversation with the defendant. And, so, we believe it's admissible. It's a big part of our case.
> *THE COURT:* Just approach on it, please.
> *MR. FIGLIUZZI:* Yes, Judge.

(R.R. V.4 at 15-16).

Trial Counsel for the Appellant again objected to the video recording, State's Exhibit 80, a video of a recorded phone conversation and State's Exhibit 81, the

translation of Exhibit 80. (R.R. V.4 at 167-70). Trial Counsel again explained the objection was to the inadmissibility of a third party recording of a telephone conversation. Id. The video recording was allegedly a phone call with the Appellant, where he admitted that he had never killed before the prior evening. Id. at 188.

The Trial Court overruled the objection. Id. at 170.

ii. Standard of Review

A Trial Court's admission of evidence is reviewed for abuse of discretion. Lacaze v. State, 346 S.W.3d 113, 121 (Tex. App.—Houston [14th Dist.] 2011, pet ref'd.). The trial court does not abuse its discretion unless the court acts outside of the zone of reasonable disagreement. Id.

iii. Hearsay Within Hearsay

The video recording of the phone call with the Appellant in this matter contained inadmissible hearsay within hearsay. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. See TEX. R. EVID. 801, 805 (defining hearsay and hearsay within hearsay). Hearsay is not admissible except as provided by statute or rules of evidence or other rules prescribed pursuant to statutory authority. TEX. R. EVID. 802.

A statement about a statement offered for the truth of the matter asserted is considered hearsay within hearsay. Debottis v. State, 693 S.W.3d 745, 753-54 (Tex. App.—Houston [14th Dist.] 2024, pet. ref'd). When hearsay contains hearsay, the

rules of evidence require that each part of the combined statements be within an exception to the hearsay rule. TEX. R. EVID. 805; Sanchez v. State, 354 S.W.3d 476, 485-86 (Tex. Crim. App. 2011).

In Debottis, a lab report page was included in the totality of the medical records admitted into evidence. Debottis, 693 S.W.3d at 753. The Appellant, Debottis, argued that her blood alcohol concentration level should not be admitted because it was hearsay within the lab report. Because the records were accompanied by a business records affidavit consistent with the hearsay exception contained in Texas Rule of Evidence 803(6), this Court found one level of hearsay fell within an exception to the rule prohibiting hearsay. TEX. R. EVID. 803(6). Further, this Court found that the blood alcohol concentration was within the exception of statements for medical purposes, making that statement admissible. TEX. R. EVID. 803(4). This Court found that an exception as to each level of hearsay allowed admission of the document and the alcohol concentration stated within. See Cf. Lopez v. State, 200 S.W.3d 246, 254-55 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) (finding defense proffered hearsay within hearsay inadmissible).

The video recording in this matter faced three independent hearsay hurdles. The first level of hearsay was not overcome in this matter. No exception was proffered by the State that made the physical recording that contained the statements in question authenticated. (R.R. V.4 at 167-70). No further exceptions were

proffered by the State to allow admission over the bar against hearsay. Specifically, no further exceptions were proffered by the State to allow admission of the Appellant's third party recorded telephone conversation.

Consequently, the video recording of the Appellant's alleged phone call was entered into evidence in violation of the rule against hearsay within hearsay. The admission of such was an abuse of the Trial Court's discretion.

iv. Harm

Nonconstitutional error requires reversal if the error affects an appellant's substantial rights. See TEX. R. APP. P. 44.2(b). The admission of inadmissible hearsay is nonconstitutional error, and such error does not affect a substantial right if, after examining the record as a whole, the reviewing court is reasonably assured that the error did not influence the verdict or had but a slight effect. Chapman v. State, 150 S.W.3d 809, 814 (Tex .App.—Houston [14th Dist.] 2004, pet. ref'd).

The Appellant's statement in the recording influenced the verdict in this matter. The hearsay statements in the phone call recording represented one of the few pieces of evidence that linked the Appellant to the murder of Mr. Pineda. See State's Exhibits Nos. 80, 81. The State used the Statement about never killing before as a confession to murder. (R.R. V.4 at 188). Although the recording was never authenticated, the Appellant's alleged statement was used as a confession against him. Id. The State argued that the recorded video statement was the Appellant

confessing to murder. (R.R. V.5 at 44). Trial Counsel for the State admitted before testimony began that the recording was a "big" part of the State's case. (R.R. V.4 at 16). Allowing the Appellant to be convicted based on hearsay within hearsay affected his substantial rights. The harm from the erroneous admission should result in reversal and remand

II.
Jury Charge Error in the Application Paragraph Allowed for a Non-Unanimous Verdict Violating the Texas Constitution

i. Standard of Review for Error in the Jury Charge

Jury charge error is reviewed by considering two questions: (1) whether error existed in the charge; and (2) whether sufficient harm resulted from the error to compel reversal. Ngo v. State, 175 S.W.3d 738, 744 (Tex. Crim. App. 2005).

ii. The Texas Constitution Mandates Jury Unanimity in Felony Cases

The Texas Constitution requires jury unanimity in felony cases, and the Texas Code of Criminal Procedure requires unanimity in all criminal cases. TEX. CONST. art. V, §13; TEX. CODE CRIM. PROC. arts. 36.29(a), 37.02, 37.03, 45.034 - 45.036. "Unanimity in this context means that each and every juror agrees that the defendant committed the same, single, specific criminal act." Ngo, 175 S.W.3d at 745.

iii. The Disjunctive Application Paragraph in this Case Allowed for a Less Than Unanimous Verdict

The Appellant was charged with murder under Texas Penal Code subsection 19.02(b)(1), which makes it an offense to "intentionally or knowingly [cause] the

death of an individual"; and subsection (b)(2), which makes it an offense to "[intend] to cause serious bodily injury" while "commit[ting] an act clearly dangerous to human life that causes the death of an individual." TEX. PENAL CODE § 19.02(b)(1)(2). The State alleged that Santos Melendez-Granados committed murder by shooting Mr. Pineda with a firearm.

The application paragraph read in the case at bar read:

Now, if you find from the evidence beyond a reasonable doubt that on or about the 23rd day of September, 2021, in Harris County, Texas, the defendant, Santos Perfecto Melendez-Granados, did then and there unlawfully, intentionally or knowingly cause the death of Carlos Pineda, by shooting Carlos Pineda with a firearm; or

If you find from the evidence beyond a reasonable doubt that on or about the 23rd day of September, 2021, in Harris County, Texas, the defendant, Santos Perfecto Melendez-Granados, did then and there unlawfully intend to cause serious bodily injury to Carlos Pineda, and did cause the death of Carlos Pineda by intentionally or knowingly committing an act clearly dangerous to human life, namely, by shooting Carlos Pineda with a firearm, then you will find the defendant guilty of murder, as charged in the indictment.

(C.R. V.1 at 172).

iv. A Unanimous Verdict on Separate and Distinct Acts is Required

Despite the ruling in Lazerine v. State, 01-19-00982-CR, 2021 WL 5712182, at *4 (Tex. App.—Houston [1st Dist.] 2021, pet. ref'd), Appellant maintains the trial court erred by submitting a jury charge that alleged two separate statutory offenses of murder under Penal Code Section 19.02(b)(1) and (2). Appellant argues the jury charge, as submitted, allowed the jury to return a non-unanimous verdict of guilty

because it did not require the jury to agree on the statutory definition of murder it believed he committed. Cf. Gilbert v. State, 575 S.W.3d 848 (Tex. App.–Texarkana 2019, pet ref'd).

The Francis Court found the application paragraph erroneous because the jury in that case was not required to agree between two separate and discrete theories of indecency. Francis v. State, 36 S.W.3d 121, 124-25 (Tex. Crim. App. 2000). Specifically, the jury was not required to unanimously agree whether the offense was committed by touching the breast versus touching the genitals of the victim. Id. at 125. The Court of Criminal Appeals pointed out that this was problematic because the evidence at trial showed that the acts occurred on different dates. See id. at 124-25.

The credit card abuse prosecution in Ngo also involved application paragraph error. Ngo, 175 S.W.3d at 745-46. The Court of Criminal Appeals found error because the jury was not required to agree among three theories of the offense that occurred on separate and discrete occasions. Id. at 746. Specifically, the jury was not required to agree if the appellant was guilty of stealing a credit card, or receiving a stolen credit card, or presenting the card with the intent to obtain a benefit fraudulently. Id. at 745.

The rationale linking the above cases is that each of the separate and distinct theories of the commission of offense could occur at "separate and discrete times

from the others." Stuhler v. State, 218 S.W. 3d 706, 717 (Tex. Crim. App. 2007). In both cases the Court of Criminal Appeals held that unanimity required the jury to agree on a separate and discrete event that would constitute the commission of the offense. Id., Francis, 36 S.W.3d at 125, Ngo, 175 S.W.3d at 746.

v. The Jury in this Case Delivered a Non-unanimous Verdict

This Court should apply the same analysis used in Francis and Ngo when reviewing the application paragraph in this case. The murder statute in this case is analogous to the indecency and credit card abuse statutes reviewed in Francis and Ngo, because each separate act of the accused is a substantive element of the offense. Consequently, the murder statute requires unanimity as to each separate and discrete act that constitutes the commission of the offense. Stuhler, 218 S.W. 3d at 717.

Like the application paragraphs in Francis and Ngo, the disjunctive application paragraph in this case does not allow the jury to agree on a separate act that constitutes the commission of the offense unanimously. The evidence at trial showed that the act of murder could be committed two separate and independent ways requiring unanimity as to each offense.

Stuhler dealt with an injury to child prosecution. Stuhler, 218 S.W. 3d at 708. The application paragraph in that case allowed conviction if the jury found either that the appellant in that case, " . . . caused serious bodily injury, . . . caused . . . serious mental deficiency, or impairment or injury." Id. at 717. Because the Stuhler

court categorized injury to a child as a result oriented offense it found the jury had to agree unanimously to all the elements constituting the offense, including the result. Id. at 718-19. Consequently, it found the disjunctive charge in that particular case authorized a non-unanimous verdict. Id.

As stated above, each separate act under 19.02 of the Penal Code, specifically, the two separate acts of (1) intentionally shooting the complainant and or (2) the act of committing an act clearly dangerous to human life, are elemental. Like the injury to child statute, the murder statute is a result oriented offense. Consequently, this Court can follow the reasoning in Stuhler and find that the elements of independent offenses require a unanimous verdict and that the disjunctive application paragraph in the case at bar allowed for a non-unanimous verdict on a substantive element.

vi. Appellant Suffered Egregious Harm Requiring Reversal

a. The egregious harm analysis

"If error exists, we then analyze the harm resulting from the error" to determine whether reversal is required." Id. In determining harm, we apply "separate standards of review depending on whether the defendant timely objected to the jury instructions." Marshall v. State, 479 S.W.3d 840, 843 (Tex. Crim. App. 2016) (applying Almanza v. State, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985) (op. on reh'g)). Because the Appellant did not object at trial to this specific jury charge error, this Court will reverse if the error was "so egregious and created such

harm that the defendant 'has not had a fair and impartial trial.'" Barrios v. State, 283 S.W.3d 348, 350 (Tex. Crim. App. 2009) (quoting Almanza, 686 S.W.2d at 171).

Although "[e]gregious harm is a difficult standard to prove . . . such a determination must be done on a case-by-case basis." Taylor v. State, 332 S.W.3d 483, 489 (Tex. Crim. App. 2011) (internal quotation and citation omitted). "Errors which result in egregious harm are those that affect the very basis of the case, deprive the defendant of a valuable right, vitally affect the defensive theory, or make a case for conviction clearly and significantly more persuasive." Id. at 490. "An egregious harm determination must be based on a finding of actual rather than theoretical harm." Cosio v. State, 353 S.W.3d 766, 777 (Tex. Crim. App. 2011). In examining the record for egregious harm, we consider the entire jury charge, the state of the evidence, the arguments of the parties, and any other relevant information in the record. Villarreal v. State, 453 S.W.3d 429, 433 (Tex. Crim. App. 2015).

b. The disjunctive application paragraph caused egregious harm

This Court should find that the disputed charge deprived the Appellant of his right to a unanimous jury verdict causing egregious harm. The risk of a non-unanimous jury verdict was substantial in the case at bar because the Jury did not have to agree on the way the Appellant caused the death of Mr. Pineda. Id.

Since the jury charge itself did not require the jury to agree on one result or the other, the jury could readily have convicted the Appellant without even substantively debating which of the two ways he might have caused the death of the complainant. In no other part of the jury charge or the arguments of counsel was the jury ever informed that it must unanimously agree on one result or the other, or both.

The major point of contention between the parties during final argument was whether the Appellant could be linked to the murder. This focus of the jury argument could only have increased the already substantial risk that the jury would not find it necessary to agree as to which act caused the death of Pineda. The failure to instruct the jury that it must unanimously determine that the Appellant caused the death of Mr. Pineda deprived him of a fair and impartial trial.

c. Proposed application paragraph

Appellant proposes the application paragraph could have allowed for unanimity by simply changing the disjunctive nature to conjunctive, by replacing "or" with "and". See (C.R. V.1 at 172). Alternatively, the word "unanimously" could be added to each application paragraph, making each read ". . . if you [unanimously] find …." See Id.

III.
Prayer

Appellant prays for reversal and retrial of his guilt or innocence.

Respectfully Submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Appellant's Brief has been served to the Harris County District Attorney on September 10, 2024.

/S/ James F. Pons
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I hereby certify that the preceding document is in compliance with Texas Rules of Appellate Procedure 9 and contains 3, 240 words.

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