No. 14-24-00155-CR
No. 14-24-00156-CR

IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS
AT HOUSTON

RICKEY EARL HUBERT
Appellant

v.

THE STATE OF TEXAS
Appellee

On Appeal from Cause Numbers 1748428 & 1748429
From the 179th District Court of Harris County, Texas

APPELLANT'S BRIEF

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ORAL ARGUMENT NOT REQUESTED

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STATEMENT OF THE CASES

On December 6, 2021, under Cause No. 1748428, a Harris County grand jury returned an indictment charging Appellant with the offense of Burglary of Habitation that was alleged to have occurred "on or about" October 1, 2021. (C.R. (1748428) at 31). On December 4, 2023, this indictment was amended to correct the Complainant's initials. (C.R. (1748428) at 122). In addition, on December 1, 2021, under Cause No. 1748429, a Harris County grand jury returned an indictment charging Appellant with the felony offense of aggravated sexual assault that was alleged to have occurred "on or about" October 1, 2021. (C.R. (1748429) at 27).

On January 23, 2024, a jury found Appellant guilty of both offenses as alleged in their respective indictments. (13 R.R. at 9-11). On January 24, 2024, the jury assessed Appellant's punishment at 50 years in the Texas Department of Criminal Justice – Institutional Division for the aggravated sexual assault and 20 years in the Texas Department of Criminal Justice – Institutional Division for the burglary of a habitation. (C.R. (1748428) at 225-227; C.R. (1748429) at 509-511; 14 R.R. at 20-24). The trial court certified Appellant's right of appeal in both causes and he timely filed his

notice of appeal in both causes on February 15, 2024. (C.R. (1748428) at 232-234, 237-238; C.R. (1748429) at 516-518, 521-522).

STATEMENT REGARDING ORAL ARGUMENT

Undersigned counsel does not request oral argument. However, should the State of Texas or the Court request oral argument, Appellant requests the opportunity to participate in oral argument.

ISSUES PRESENTED

1. **Whether Appellant's conviction for burglary of a habitation must be set aside, as his convictions for both aggravated sexual assault and burglary of habitation constituted multiple punishments in violation of the Double Jeopardy Clause?**

2. **Whether the trial court reversibly erred by admitting the Complainant's statements from the body cam video of Officer Cosper in violation of the Confrontation Clause?**

3. **The trial court erred in assessing duplicative court costs in each of Appellant's convictions, as Appellant was convicted of multiple offenses arising from a single criminal transaction.**

STATEMENT OF FACTS

On October 1, 2021, Officer Braeden Cosper was dispatched to a call for service regarding an assault with injury that recently occurred. (10 R.R. at 32-33). After arriving at the apartment complex, Officer Cosper made contact with the Complainant and her husband at their residence. (10 R.R.

at 39-40).[1] Officer Cosper did not notice anything unusual or damage to the front door of the apartment. (10 R.R. at 42-43). He described the apartment as very clean and put together for the most part. (10 R.R. at 89). However, Officer Cosper observed signs of a struggle in the bedroom, as the top of the bed was wrinkled and there was an open pill bottle with pills scattered all over the bed. (10 R.R. at 89).[2] Officer Cosper spoke with the Complainant, who was sitting on the couch in the living room with her husband, another police officer, some firefighters, and some of her friends in the living room. (10 R.R. at 43, 79-80; 16 R.R. State's Ex. 50A).[3] He described her demeanor as very subdued, very withdrawn, but very sure of herself. (10 R.R. at 88). Some of these details she provided were in addition to what was in her husband's 911 call. (10 R.R. at 80). However, on cross examination, Officer Cosper agreed that the narrative from the 911 call presented a completely

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[1] At the time of trial, the Complainant and her husband had passed away. (10 R.R. at 161-163).

[2] On cross-examination, Officer Cosper acknowledged that in State's Exhibit 8 an individual was sitting on bed and another was kneeling on the top of it. (10 R.R. at 96). He agreed that this would be consistent with the wrinkles. (10 R.R. at 96). Regarding the pill bottles, Officer Cosper testified that the Complainant told him that during the assault, she reached for the pill bottle and hit her attacker with it. (10 R.R. at 106-107). This statement from the Complainant was not in Officer Cosper's offense report. (10 R.R. at 111-113).

[3] Officer Cosper agreed that not separating the Complainant when speaking with her was not the best practice. (10 R.R. at 85-86).

different narrative than the one that was relayed to him. (10 R.R. at 91). Despite the inconsistences between the 911 call and what he was told, Office Cosper determined that the Complainant's story still presented as credible. (10 R.R. at 92).

When Officer Cosper asked the Complainant what happened she told him that she had been waiting on her friends to come over as they normally came around 7 p.m. (16 R.R. State's Ex. 50 & 50A). When she opened her door, she eventually saw a young black male standing in the passage with his penis out. (16 R.R. State's Ex. 50 & 50A). Complainant asked him "who the hell are you" and "what are you doing here?" (16 R.R. State's Ex. 50 & 50A). The male pushed her and said "you called me." (16 R.R. State's Ex. 50 & 50A). Complainant said "no," "who the hell are you," and "how did you get in here?" (16 R.R. State's Ex. 50 & 50A). Complainant thought the male just walked in, pushed her onto her bed, and pulled down her skirt and underwear. (16 R.R. State's Ex. 50 & 50A). She told him she was sick with cancer. (16 R.R. State's Ex. 50 & 50A). The male tried to penetrate her ("he pushed") and the Complainant told him not to and that she was hurting all over. (16 R.R. State's Ex. 50 & 50A). Complainant did not know whether the male successfully penetrated her. (16 R.R. State's Ex. 50 & 50A).

Complainant screamed her friends' names and the male told her that if she kept screaming he would hit her. (16 R.R. State's Ex. 50 & 50A).[4] He also told her that if she reported him he would come back. (16 R.R. State's Ex. 50 & 50A). Eventually, the male just got up and left and the Complainant did not know why he stopped. (16 R.R. State's Ex. 50 & 50A). Complainant described the male as young, black, skinny, and she did not recall any tattoos or anything like that. (16 R.R. State's Ex. 50 & 50A). He was wearing long brownish or gold workout shorts. (16 R.R. State's Ex. 50 & 50A). Appellant was not developed as a suspect during this conversation. (10 R.R. at 80). At some point, Officer Cosper referred the Complainant to speak with a SANE nurse. (10 R.R. at 80-81). Officer Cosper testified that he made it very clear that this was not required and that he did not provide transportation for this. (10 R.R. at 82).

Lisa Dixon is a forensic nurse for Memorial Hermann Hospital. (10 R.R. at 175). A forensic nurse is a specially trained registered nurse to take care of a sexual assault patient that might present to an emergency room or hospital. (10 R.R. at 175). On October 1, 2021, Ms. Dixon performed a

[4] Officer Cosper did not find any marks on the Complainant that would have been consistent with being bound or forcibly held. (10 R.R. at 94-95). No neighbors reported hearing the Complainant screaming. (10 R.R. at 97).

sexual assault examination on the Complainant. (10 R.R. at 200-201; 16 R.R. State's Ex. 2). Complainant indicated that the alleged assault occurred around 7:00 pm that night. (10 R.R. at 205). Ms. Dixon read to the jury the narrative the Complainant gave to her regarding the assault:

> I was at home waiting on friends. They come to sit with me about 7:00 o'clock. My door was unlocked. I knew they were coming. I went towards the door in the passage. I saw this guy standing there. I said, Who the hell are you and what are you doing here?
>
> He then -- then he started coming in the house. I started screaming and he said, Don't scream, don't scream.
>
> He was standing there with his penis out. He pushed in the room and pushed me on the bed. I was telling him, I am sick and I'm taking chemo.
>
> He pushed me down and was trying to take off my glasses. I told him, Do not touch me.
>
> I was screaming. He pushed my hands back and pushed my skirt up and pulled my underwear down. He was putting his penis in me. He was trying to push it into my vagina. It was hurting so bad. I was telling him, You're hurting me. I am sick. I have rectal cancer. I'm 70 years old, stop. Do not do this.
>
> He started saying, You called me on the Internet. You asked me to come.
>
> I kept screaming. I was screaming my friend's name. He started saying, Call me Daddy.
>
> I said, Get off me, you bastard. I'm telling him, You're hurting me, you're hurting me, stop.

> I don't know what made him stop but he stopped and got up and he was going out of the house. I told him I was going to report him and he said, If you report me, I'm going to come back.
>
> I slammed the door and locked it and called my husband. The police came, an ambulance came. My husband brought me here. The police took my skirt and underwear. I went and washed myself. I do not know who he is.

(11 R.R. at 46-47)

Complainant had her hands in her lap and repeatedly stated that she told him she was sick, that she was hurting, had rectal cancer, and to stop while relating the details. (11 R.R. at 9). Ms. Dixon described the Complainant's demeanor as angry, frustrated, and she could not believe that this had just happened to her. (11 R.R. at 10). During the examination, Ms. Dixon collected swabs from the Complainant's vagina and anus, and she obtained a buccal swab from her. (11 R.R. at 10). Ms. Dixon also collected some of the Complainant's clothing. (11 R.R. at 11). The examination concluded at about 11:35 pm. (11 R.R. at 27).

Ms. Dixon also testified regarding the physician's notes from the Complainant's medical records from Memorial Hermann:

> 71-year-old female presents to the emergency department, status post-rape. Patient states that she was in her apartment and she was -- a man in the hallway who proceeded to push her door open. She said the man forced himself on and tried to

> 'penetrate her.' Patient tried to defend herself and pushed the man off and he left her apartment. Patient called her husband and then the police. Patient filed a police report. Patient was seen and genital area examined by SANE nurse. Patient currently undergoing chemo and radiation therapy for rectal cancer and does not want post exposure prophylaxis at this time and wants to take a prescription and discuss it with her oncologist. Patient requesting HAART, prescriptions to take home.

(11 R.R. at 34-40)

Ali Mossavi is employed at the condominium complex the Complainant resided at. (10 R.R. at 115). In October of 2021, law enforcement asked for the condominium complex to turn over some surveillance video. (10 R.R. at 116). The surveillance videos were on floors 1 through 6 and none were located on floors 7 through 30. (10 R.R. at 134). In 2021, the front door of the complex was not locked at all times, but one would have needed a fob after 6:00 pm to enter. (10 R.R. at 117-118). The elevators on the first through six floors also required a fob in order to access. (10 R.R. at 118). However, the elevators on the seventh floor through the top floor did not need a fob. (10 R.R. at 119). A fob was not needed to access the stairwells from the first floor. (10 R.R. at 119). On October 1, 2021 at about 4:43 pm, a surveillance camera captured an individual entering the complex from the outside. (10 R.R. at 131-132; 16

R.R. State's Ex. 53). Another image taken a few seconds later showed this individual near the door to stairway B. (10 R.R. at 132-133; 16 R.R. State's Ex. 55). Finally, that individual was again seen near stairway B at 6:53 pm. (10 R.R. at 135; 16 R.R. State's Ex. 57). Within the different points that Mr. Mossavi gathered, this individual was the person he was targeting on the different videos. (10 R.R. at 132).

Mark Schmidt is a sergeant with the Harris County Sheriff's Office. (11 R.R. at 104). He is one of the three administrators overseeing the administration of the jail call system. (11 R.R. at 105). When an inmate wants to make a phone call, it starts off with them entering what is called a pin number. (11 R.R. at 106). A pin number is a combination of their SPN number plus five or six additional numbers. (11 R.R. at 106-107). A SPN number is a number issued to an individual who comes into contact with the system and it never changes. (11 R.R. at 107). After inputting the pin number, the inmate enters the number they wish to call. (11 R.R. at 106). It is possible for an individual to make a call from inside the jail using someone else's SPN. (11 R.R. at 107). Before a call commences, a recording is played in all but calls to legal counsel that says "This call may be recorded and/or monitored." (11 R.R. at 108). When a call gets recorded, the date,

the time, the length of the calls, and which phone was used are documented. This is in addition to the caller as well as the number called. (11 R.R. at 108-109). Sgt. Schmidt listened to and reviewed recorded phone calls placed by the Appellant and SPN during the months of January, March, and April of 2022. (11 R.R. at 112).

The first call Sgt. Schmidt testified about occurred on January 5, 2022. (11 R.R. at 131, 136-137). This call involved Appellant talking about the details of his case. (11 R.R. at 132-133). During this call, Appellant stated that the Complainant met him. (16 R.R. State's Ex. 81). Appellant was going up the elevator and the Complainant made him. (16 R.R. State's Ex. 81). Appellant indicated that the Complainant was acting nice and then she pulled him into her room. (16 R.R. State's Ex. 81). Once in the room, Appellant stated that the Complainant started drugging him. (16 R.R. State's Ex. 81). Appellant stated he was drunk and had just left a party at a nearby men's club, and that was the only reason he was at the apartment complex. (16 R.R. State's Ex. 81). Appellant stated that he was fighting the case to say that the Complainant drugged him to have sex, and that he would have a better chance of winning because of that. (16 R.R. State's Ex. 81). The other recorded phone call Sgt. Schmidt testified regarding

occurred on April 21, 2022. (11 R.R. at 137). In this call, Appellant indicated that he met the Complainant through a party line. (16 R.R. State's Ex. 83). Appellant said that the Complainant called him and implied that was why he was at the residence. (16 R.R. State's Ex. 83). He indicated that he and the Complainant had consensual sex and that she invited him in into her residence. (16 R.R. State's Ex. 83).

Alicia Cadenas is a forensic DNA Analysist with Signature Science. (12 R.R. at 33-34). Ms. Cadenas was asked to testify regarding some DNA analysis she performed in 2021 and 2022. (12 R.R. at 44). In the second report dated February 8, 2022, Ms. Cadenas was able to compare known sample of the Appellant's DNA to the DNA found present in the vaginal swabs from the Complainant. (12 R.R. at 57). Ms. Cadenas was not able to exclude Appellant as a possible contributor:

> So for the vaginal swabs, sperm cell fraction, the DNA profile previously obtained from this item was interpreted as a mixture of two individuals with one male contributor and with V. L. as an assumed contributor. So we're dealing with a mixture of DNA from more than one person.
>
> When I did the comparison in order to evaluate the different scenarios explaining that DNA evidence, obtained in this mixture profile is approximately 85.7 septillion times more likely if the DNA originated from V. L. and Rickey Hubert than if the DNA originated from V. L. and one unknown, unrelated individual.

> So again we're looking at two scenarios to explain the DNA profile, if it originated from V. L. and Rickey Hubert versus whether it originated from V. L. and one unknown, unrelated individual. And in this case there is more support for that originating from V. L. and Rickey Hubert and that number is 85.7 septillion times more likely.

(12 R.R. at 58-59)

Ms. Cadenas had no way of knowing if that DNA got there consensually or not. (12 R.R. at 59).

SUMMARY OF THE ARGUMENT

Initially, Appellant contends that his convictions for both aggravated sexual assault and burglary of habitation constitute multiple punishments in violation of the Double Jeopardy Clause. Under binding precedent from the Court of Criminal Appeals, a defendant may not be punished for both the underlying felony and burglary if the burglary allegation is that the defendant entered a home without the consent of the owner and then committed the underlying felony within the home as defined in Section 30.02(a)(3) of the Penal Code. That is what occurred in this case, as the State obtained a conviction against the Appellant for the offense burglary of habitation that alleged Appellant entered a home without the consent of the owner and committed and attempted to commit the felony offense of

aggravated sexual assault, and also obtained a separate conviction for the same aggravated sexual assault allegation. As Appellant's convictions for both offenses run afoul of the Double Jeopardy Clause, Appellant's conviction for burglary of habitation should be vacated.

In addition, Appellant contends that the trial court reversibly erred by admitting the Complainant's statements from the body cam video of Officer Cosper in violation of the Confrontation Clause. Officer Cosper's testimony during trial counsel's voir dire and his body camera footage demonstrated that the Complainant's statements were testimonial, as the circumstances objectively indicated that there was no such ongoing emergency and that the primary purpose of the interrogation was to establish or prove past events potentially relevant to later criminal prosecution. Given that there was no dispute that the Complainant was unavailable to testify due to her death and Appellant had no prior opportunity to cross-examine her, the trial court's admission of the Complainant's testimonial statements to Officer Cosper violated the Confrontation Clause and he suffered harm as a result in both of his cases.

Finally, in the event that this Court overrules Appellant's Double Jeopardy challenge, Appellant contends that the trial court erred in

assessing duplicative court costs in each of Appellant's convictions, as Appellant was convicted of multiple offenses arising from a single criminal transaction.

ARGUMENT

1. Whether Appellant's conviction for burglary of a habitation must be set aside, as convictions for both aggravated sexual assault and burglary of habitation constituted multiple punishments in violation of the Double Jeopardy Clause?

A. Applicable Law

"The Double Jeopardy Clause of the Fifth Amendment, which the United States Supreme Court has held applicable to the states through the Fourteenth Amendment, is understood to incorporate three protections: (1) protection against a second prosecution for the 'same' offense following an acquittal; (2) protection against a second prosecution for the 'same' offense following a conviction, and (3) protection against multiple punishments for the 'same' offense. *Ramos v. State*, 636 S.W.3d 646, 651 (Tex. Crim. App. 2021), citing *Kuykendall v. State*, 611 S.W.3d 625, 627 (Tex. Crim. App. 2020) and *Speights v. State*, 464 S.W.3d 719, 722 (Tex. Crim. App. 2015). "A multiple punishments claim can arise in two contexts: (1) the lesser-included offense context, in which the same conduct is punished twice; once for the basic conduct, and a second time for that same conduct plus more

(for example, attempted assault of Y and assault of Y; assault of X and aggravated assault of X); and (2) punishing the same criminal act twice under two distinct statutes when the legislature intended the conduct to be punished only once (for example, causing a single death by committing both intoxication manslaughter and involuntary manslaughter)." *Langs v. State*, 183 S.W.3d 680, 685 (Tex. Crim. App. 2006) (citations omitted).

"The traditional starting point for determining 'sameness' for multiple-punishments double-jeopardy analysis is the *Blockburger* test." *Ramos*, 636 S.W.3d at 651, citing *Blockburger v. United States*, 284 U.S. 299, 304 (1932). "The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions the test to be applied whether there are two offenses or only one, is whether each provision requires proof a fact which the other does not." *Id*, quoting *Blockburger*, 284 U.S. at 304. "But in Texas, when resolving whether resolving whether two crimes are the same for double-jeopardy purposes, we focus on the elements alleged in the charging instrument." *Bigon v. State*, 252 S.W.3d 360, 370 (Tex. Crim. App. 2008), citing *Parrish v. State*, 869 S.W.2d 352, 354 (Tex. Crim. App. 1994). "Under the cognate-pleadings approach adopted by this Court, double-jeopardy challenges should be

made even to offenses that have differing elements under *Blockburger*, if the same 'facts required' are alleged in the indictment." *Id.*, citing *Hall v. State*, 225 S.W.3d 524 (Tex. Crim. App. 2007). "In the multiple punishments context, [T]he *Blockburger* test is no more than a rule of statutory construction where the intent is not otherwise manifested. The *Blockburger* test does not operate, however, to trump 'clearly expressed legislative intent.'" *Ex parte Denton*, 399 S.W.3d 540, 546 (Tex. Crim. App. 2013), quoting *Garza v. State*, 213 S.W.3d 338, 351-352 (Tex. Crim. App. 2007).

"When a defendant is convicted of both burglary and a separate felony committed during that burglary, a *Blockburger* multiple-punishment analysis depends on the type of burglary charged." *Langs*, 183 S.W.3d at 686. Under Texas Penal Code Section 30.02(a)(3), a person commits the offense of burglary "if, without the effective consent of the owner…enters a building or habitation and commits or attempts to commit a felony, theft, or an assault." Regarding Texas Penal Code Section 30.02(a)(3), the Texas Court of Criminal Appeals in *Lang* explained the applicable double jeopardy analysis:

> It is well-settled that a defendant may not be punished for both the underlying felony and burglary if the burglary allegation is that the defendant entered a home without the consent of the owner and then committed the underlying felony within the

> home as defined in § 30.02(a)(3). Thus, the State may obtain either a burglary or the underlying felony (or theft or assault) conviction if it alleges a burglary under Section 30.02(a)(3) of the Penal Code, but not both. Under *Blockburger*, burglary under Section 30.02(a)(3) requires proof of a fact that the felony charge does not, namely, entry without consent. However, to prove the burglary charge, the State must prove all of the elements of the underlying felony. Thus, the felony offense would not require proof of an additional element that the burglary offense does not also require.

Id. (citations omitted)

Under Texas Penal Code Section 30.02(a)(1), a person commits the offense of burglary "if, without the effective consent of the owner… enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault." Regarding Texas Penal Code Section 30.02(a)(1), the Texas Court of Criminal Appeals in *Lang* explained the applicable double jeopardy analysis:

> it is equally well settled that a substantive felony and a burglary by entering a home without the consent of the owner and with the intent to commit that felony are two distinct offenses. The entry of the home with felonious intent and the felony committed within are two distinct criminal acts, and each requires the State to prove an element that the other does not. A person charged with burglary under Section 30.02(a)(1) is guilty of that offense the moment that he crosses the threshold of a habitation without consent and with the intent to commit the underlying felony. It matters not whether he actually does commit that felony or even if he attempts to commit it.

Id. (citations omitted)

B. Analysis

At trial, Appellant raised no objection contention that his convictions for both aggravated sexual assault and burglary of habitation constituted multiple punishments in violation of the Double Jeopardy Clause. However, "[b]ecause of the fundamental nature of the double-jeopardy protections, a double-jeopardy claim may be raised for the first time on appeal or on collateral attack if two conditions are met: 1) the undisputed facts show that the double-jeopardy violations is clearly apparent on the face of the record; and (2) when enforcements of the usual rules of procedural default serves no legitimate state interest." *Denton*, 399 S.W.3d at 545, citing *Langs*, 183 S.W.3d at 687 and *Gonzalez v. State*, 8 S.W.3d 640, 643 (Tex. Crim. App. 2000). "A double-jeopardy claim is apparent on the face of the trial record if resolution of the claim does not require further proceedings for the purpose of introducing additional evidence in support of the double-jeopardy claim." *Id*., citing *Ex parte Knipp*, 236 S.W.3d 214, 216 n. 3 (Tex. Crim. App. 2007) and *Gonzalez*, 8 S.W.3d at 643. Appellant contends that he satisfies both requirements.

Initially, Appellant notes that although the title of the indictment under cause number 1748428 indicates that the charged offense was

burglary of habitation with intent to commit another felony, presumably invoking Texas Penal Code § 30.02(a)(1), the body of the indictment invokes an offense pursuant to Texas Penal Code § 30.02(a)(3). Specifically, the amended indictment in cause number 1748248 alleged:

> that in Harris County, Texas, **RICKEY EARL HUBERT,** hereafter styled the Defendant, heretofore on or about **October 1, 2021,** did then and there unlawfully, without the effective consent of the owner, namely, without any consent of any kind, intentionally and knowingly enter a habitation owned by V.L., a person having a greater right to possession of the habitation than the Defendant, *and commit and attempt to commit the felony of aggravated sexual assault*.

(C.R. (1748428) at 122) (emphasis added)

The body of the indictment controls over the caption. See *Villarreal v. State*, 504 S.W.3d 494, 507 n. 6 (Tex. App.—Corpus Christi - Edinburg 2016, pet. ref'd), *cert. denied*, 138 S.Ct. 398 (2017) ("the caption of an indictment is not part of the charging instrument; when the caption lists a different offense from the one alleged in the body of the indictment, as in this case, the body of the indictment controls.") (citations omitted). Thus, the State's indictment under cause number 1748428 charged Appellant with an offense under Texas Penal Code Section 30.02(a)(3).

Under cause number 1748429, Appellant was separately charged with the offense of aggravated sexual assault, the same underlying felony as alleged in the burglary of a habitation indictment:

> that in Harris County, Texas, **RICKEY EARL HUBERT,** hereafter styled the Defendant, heretofore on or about **October 1, 2021,** did then and there unlawfully, intentionally and knowingly cause the sexual organ of V.L., hereafter called the Complainant, a person at least sixty-five years of age, to contact the sexual organ of the Defendant, without the consent of the Complainant, namely the Defendant compelled the Complainant to submit and participate by the use of physical force, violence, and coercion. [5]

(C.R. (1748429) at 27)

As the indictment under cause number 17484248 alleged an offense under Texas Penal Code § 30.02(a)(3), the State could only obtain a conviction for the burglary or the underlying felony alleged, aggravated sexual assault, that was concurrently prosecuted under cause number 1748429, but not both. See *Langs*, 183 S.W.3d at 686. Both offenses involved the same Complainant and allegedly occurred on the same date. The application paragraph of the jury charge for the offense of burglary of a

[5] The indictment included a second allegation of aggravated sexual assault; however, the State abandoned that allegation prior to the start of trial without objection. (8 R.R. at 5).

habitation under cause number 1748428 conformed to the allegations in the indictment and provided:

> Now, if you find from the evidence beyond a reasonable doubt that on or about the 1st day of October, 2021, in Harris County, Texas, the defendant, Rickey Earl Hubert, did then and there unlawfully, without the effective consent of the owner, namely without any consent of any kind, intentionally or knowingly enter a habitation owned by V.L., a person having greater right to possession of the habitation than the defendant, and commit or attempt to commit the felony of aggravated sexual assault, then you will find the defendant guilty of burglary of a habitation, as charged in the indictment.

(C.R. (1748428) at 200)

The same was true regarding the application paragraph of the jury charge for the offense of aggravated sexual assault under cause number 1748429 as it provided:

> Now, if you find from the evidence beyond a reasonable doubt that on or about the 1st day of October, 2021, in Harris County, Texas, the defendant, Rickey Earl Hubert, did then and there unlawfully, intentionally or knowingly cause the sexual organ of V.L., a person at least sixty-five years of age, to contact the sexual organ of the defendant, without the consent of V.L., namely the defendant compelled V.L. to submit or participate by the use of physical force, violence or coercion, then you will find the defendant guilty of aggravated sexual assault, as charged in the indictment.

(C.R. (1748429) at 484)

As charged, the burglary under Section 30.02(a)(3) required proof that the aggravated sexual assault charge does not, namely, entry without consent. (C.R. (1748428) at 122; C.R. (1748429) at 27). However, in proving the burglary, the State had to prove all of the elements of the aggravated sexual assault and the aggravated sexual assault did not require proof of an additional element that the burglary of habitation did not also require. (C.R. (1748428) at 122; C.R. (1748429) at 27).[6] Appellant was inappropriately punished for both the burglary and the commission of the underlying offense on which the burglary was dependent. As a result, the double jeopardy violation is apparent on the face of the record, as the resolution of the claim does not require further proceedings for the purpose of introducing additional evidence in support of the double-jeopardy claim. Enforcing the usual rules of procedural default serves no interest, as there is "no legitimate interest in maintaining a conviction when it is clear on the face of the record that the conviction was obtained in contravention of constitutional double-jeopardy projections." *Denton*, 399 S.W.3d at 545.

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[6] The jury charge related to the burglary offense included a paragraph defining the offense of aggravated sexual assault identically to the State's separate aggravated sexual assault allegations. (C.R. (1748428) at 199; C.R. at (1748429) at 27).

"When a defendant is convicted of two offense and those convictions violate double-jeopardy, the conviction for the most serious offense is retained, and the other conviction is set aside." *Denton*, 399 S.W.3d at 547, citing *Ex parte Cavazos*, 203 S.W.3d 333, 337 (Tex. Crim. App. 2006). "The most serious offense is the offense of conviction for which the greater sentence was assessed." *Id*. The jury assessed Appellant's punishment at 50 years in the Texas Department of Criminal Justice – Institutional Division for the aggravated sexual assault and 20 years in the Texas Department of Criminal Justice – Institutional Division for the burglary of a habitation. (C.R. (1748428) at 225-227; C.R. (1748429) at 509-511; 14 R.R. at 20-24). As a result, Appellant's conviction for aggravated sexual assault has to be retained and his conviction for burglary of habitation must be set aside. Based on the foregoing, Appellant requests that this Court vacate his conviction for Burglary of a Habitation under cause number 1748428.

2. Whether the trial court reversibly erred by admitting the Complainant's statements from the body cam video of Officer Cosper in violation of the Confrontation Clause?

A. Applicable Law

"In all criminal prosecutions, the accused shall enjoy the right…to be confronted with the witnesses against him." U.S. CONST. AMEND. VI. See also TEX. CONST. ART. I, § 10. The Confrontation Clause "provides a simple yet unforgiving rule: the State may not introduce a testimonial hearsay statement unless (1) the declarant is unavailable to testify and (2) the defendant had a prior opportunity to cross-examine the declarant." *Trigo v. State*, 485 S.W.3d 603, 609-610 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd), quoting *Lee v. State*, 418 S.W.3d 892, (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd). "The main purpose behind the Confrontation Clause is to secure for the opposing party the opportunity of cross-examination because that is 'the principal means by which the believability of a witness and the truth of his testimony are tested.'" *Johnson v. State*, 490 S.W.3d 895, 909 (Tex. Crim. App. 2016), quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974). "The Confrontation Clause does not prohibit *any* use of testimonial hearsay; it only prohibits the use of testimonial hearsay to prove the truth of the matter asserted." *Wood v. State*, 299 S.W.3d 200, 213 (Tex.

App.—Austin 2009, pet. ref'd), citing *Crawford v. Washington*, 541 U.S. 36, 59, n. 9 (2004). "'Testimonial' statements include those statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Williams v. State*, 513 S.W.3d 619, 637 (Tex. App.—Fort Worth 2016, pet. ref'd), citing *Crawford*, 541 U.S. at 52 and *Paredes v. State*, 462 S.W.3d 510, 514 (Tex. Crim. App. 2015). "The Court of Criminal Appeals has summarized three kinds of testimonial statements: (1) ex parte in-court testimony or its functional equivalent, i.e., pretrial statements that declarants would expect to be used prosecutorially; (2) extrajudicial statements contained in formalized testimonial materials, such as affidavits, depositions, or prior testimony; and (3) statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Trigo*, 485 S.W.3d at 610 (internal quotations omitted), quoting *Langham v. State*, 305 S.W.3d 568, 576 (Tex. Crim. App. 2010). In regards to nontestimonial versus testimonial statements, the U.S. Supreme Court has observed:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial

> when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Davis v. Washington, 547 U.S. 813, 822 (2006)

"The Court in *Davis* articulated a non-exhaustive list of factors to consider when determining whether statements were made during an ongoing emergency, including: (1) whether the situation was still in progress; (2) whether the questions sought to determine what is presently happening as opposed to what has happened in the past; (3) whether the primary purpose of the interrogation was to render aid rather than to memorialize a possible crime; and (4) whether the events were deliberately recounted in a step-by-step fashion." *Kinnett v. State*, 623 S.W.3d 876, 909 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd), citing *Davis*, 547 U.S. at 830-832 and *Vinson v. State*, 252 S.W.3d 336, 339 (Tex. Crim. App. 2008). It is "the declarant's statement, not the interrogator's questions, that the Confrontation Clause requires us to evaluate." *Davis*, 547 U.S. at 822 n. 1.

B. Standard of Review

A trial court's evidentiary rulings are reviewed for an abuse of discretion. *Pittman v. State*, 321 S.W.3d 565 (Tex. App.—Houston [14th Dist.] 2010, no pet). "The test for whether the trial court abused its

discretion is whether the action was arbitrary or unreasonable." *State v. Mechler*, 153 S.W.3d 435, 439 (Tex. Crim. App. 2005). "An appellate court should not reverse a trial judge whose ruling is within the zone of reasonable disagreement." *Id*. However, whether a statement is testimonial or non-testimonial is reviewed de novo. *Wall v. State*, 184 S.W.3d 730, 742 (Tex. Crim. App. 2006).

C. Analysis

Appellant objected to the admission of State's Exhibit 50, the body camera footage of Officer Cosper's interview of the Complainant with one of his objections being that he would not be able to cross-examine the Complainant in violation of his Sixth Amendment right to confrontation. (10 R.R. at 167-170). After noting its belief that Appellant's trial counsel opened the door to admittance of the body camera footage through his cross-examination of Officer Cosper, the trial court overruled Appellant's objections and again overruled Appellant's objection after Appellant asked questions to Officer Cosper on voir dire. (10 R.R. at 169, 174).[7]

[7] After the body camera video was admitted as State's Exhibit 50, Appellant's trial counsel lodged further objections to the body camera video. (11 R.R. at 97-99, 143-146, 12 R.R. at 106). Ultimately, a redacted version of State's Exhibit 50, admitted as State's Exhibit 50A was admitted containing the Complainant's statements in response to Officer Cosper's questions. (16 R.R. State's Ex. 50A).

(1) Appellant's Trial Counsel did not open the door to the admission of Officer Cosper's body camera video

Texas Rules of Evidence 107 provides:

> If a party introduces part of an act, declaration, conversation, writing, or recorded statement, an adverse party may inquire into any other part on the same subject. An adverse party may also introduce any other act, declaration, conversation, writing, or recorded statement that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent. "Writing or recorded statement" includes a deposition.

"TEX. R. EVID. 107 is properly invoked when an opposing party reads part, but not all, of a statement into evidence." *Goldberg v. State*, 95 S.W.3d 345, 387 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd), citing *Livingston v. State*, 739 S.W.2d 311, 331-332 (Tex. Crim. App. 1987) and *Araiza v. State*, 929 S.W.2d 552, 555-556 (Tex. App.—San Antonio 1996, pet. ref'd). "The purpose of this provision is to reduce the possibility of the fact finder receiving a false impression from hearing the evidence of only a part of the conversation, writing, act or declaration." *Roman v. State*, 503 S.W.2d 252, 253 (Tex. Crim. App. 1974). "The theory behind the rule is that by allowing the jury to hear the rest of the conversation on the same subject the whole picture will be filled out, removing any misleading effect which may have occurred from introduction of only a portion of the conversation." *Goldberg*, 95 S.W.3d at 387. "However, merely referring to a statement or a quotation

from it does not invoke the rule." *Id*., citing *Jernigan v. State,* 589 S.W.2d 681, 694-95 (Tex. Crim. App. 1989), *Pinkey v. State*, 848 S.W.2d 363, 367 (Tex. App.—Houston [1st Dist.] 1993, no pet.); and *Araiza,* 929 S.W.2d at 556.

The State sought to admit Officer Cosper's body cam that contained the entirety of his conversation with the Complainant. (10 R.R. at 166-168). However, the State did not articulate any particular reason as to why the body cam video was admissible. (10 R.R. at 166-170). Instead, it was the trial court that raised the concern of whether Appellant opened the door. (10 R.R. at 169). While Appellant's trial counsel cross-examined Officer Cosper regarding some discrepancies between the 911 call and what he was told by the Complainant, trial counsel only merely referred to the Complainant's statement during his cross-examination. For example, Appellant's trial counsel asked Officer Cosper if it was fair to say that the events relayed in the 911 call were different from what was relayed to him and the 911 call and the narrative relayed to him were completely different. (10 R.R. at 91). Trial counsel also questioned Officer Cosper regarding specific statements made by the Complainant's husband during the 911 call and then inquiring whether this was relayed to him at the scene. (10 R.R. at

92-93, 101-102). Appellant's trial counsel did not mention any specific quotations from the Complainant's statement and when he inquired into what Officer Cosper was told, he only asked generally whether the statements in the 911 call were relayed to him. Appellant's trial counsel's questions only referred the Complainant's statements or a specific quotation to Officer Cosper. As a result, this did not authorize the trial court to determine that Appellant opened the door the admittance of the entirety of the Complainant's statements in the body camera video presumably under Texas Rule of Evidence 107. See *Goldberg*, 95 S.W.3d at 387 ("merely referring to a statement or a quotation from it does not invoke the rule.")

(2) The admission of the Complainant's testimonial statements via Officer Cosper's body camera video violated Appellant's right of confrontation

From the audio of Officer's Cosper's body camera, the Complainant made several statements to him regarding the details of the alleged sexual assault that had previously occured. (16 R.R. at State's Ex. 50 & 50A). Complainant told the officer that when she opened her door, she saw a young black male standing in the passage with his penis out. (16 R.R. State's Ex. 50 & 50A). Complainant asked him "who the hell are you" and "what are you doing here?" (16 R.R. State's Ex. 50 & 50A). The male

pushed her and said “you called me.” (16 R.R. State’s Ex. 50 & 50A). Complainant said “no,” “who the hell are you,” and “how did you get in here?” (16 R.R. State’s Ex. 50 & 50A). Complainant thought the male just walked in and he then pushed her onto her bed and pulled down her skirt and underwear. (16 R.R. State’s Ex. 50 & 50A). She told him she was sick with cancer. (16 R.R. State’s Ex. 50 & 50A). The male tried to penetrate her (“he pushed”) and the Complainant told him not to and that she was hurting all over. (16 R.R. State’s Ex. 50 & 50A). Complainant did not know whether the male successfully penetrated her. (16 R.R. State’s Ex. 50 & 50A). The male told the Complainant that “she called him.” (16 R.R. State’s Ex. 50 & 50A). She screamed her friends’ names and the male told her that if she kept screaming, he would hit her. (16 R.R. State’s Ex. 50 & 50A). He also told her that if she reported him, he would come back. (16 R.R. State’s Ex. 50 & 50A). Eventually, the male just got up and left and the Complainant did not why the male stopped. (16 R.R. State’s Ex. 50 & 50A). She described the male as young, black, and skinny, and did not recall any tattoos or anything like that. (16 R.R. State’s Ex. 50 & 50A). He was wearing long brownish or gold workout shorts. (16 R.R. State’s Ex. 50 & 50A).

During trial counsel's voir dire of Officer Cosper regarding the admissibility of the body camera video, his testimony indicated that:

- Complainant was not in any apparent danger at the time she spoke with him. (10 R.R. at 172).
- The purported assailant was not there and nothing suggested he was on his way back. (10 R.R. at 172).
- The purpose of getting the Complainant's statement was for potential criminal investigation and purportedly for possible future criminal prosecution. (10 R.R. at 172-173).
- Complainant was not frantic nor was she excited at the point, and Officer Cosper described the Complainant as subdued. (10 R.R. at 173).

Officer Cosper's testimony during trial counsel's voir dire demonstrated that the Complainant's statements were testimonial, as "the circumstances objectively indicate that there [was] no such ongoing emergency, and that the primary purpose of the interrogation [was] to establish or prove past events potentially relevant to later criminal prosecution." *Davis*, 547 U.S. at 822. Given that there was no dispute that the Complainant was unavailable to testify due to her death, and Appellant had no prior opportunity to cross-examine her, the trial court's admission of the Complainant's testimonial statements to Officer Cosper violated the Confrontation Clause. See *Trigo*, 485 S.W.3d at 609-610.

D. Harm

"A Confrontation Clause violation is constitutional error that requires reversal unless we conclude beyond a reasonable doubt that the error was harmless." *Lee*, 418 S.W.3d at 899. See also TEX. R. APP. P. 44.2(a). "The State has the burden, as beneficiary of the error, to prove that the error is harmless beyond a reasonable doubt." *Haggard v. State*, 612 S.W.3d 318, 328 (Tex. Crim. App. 2020), citing *Deck v. Missouri*, 544 U.S. 622, 635 (2005) and *Wall*, 184 S.W.3d at 746 n. 53.

"In applying the 'harmless error' test, we ask whether there is a 'reasonable probability' that the error might have contributed to the conviction." *Love v. State*, 543 S.W.3d 835, 846 (Tex. Crim. App. 2006), citing *Mosley v. State*, 983 S.W.2d 249, 259 (Tex. Crim. App. 1998) (op. on reh'g). The analysis "should not focus on the propriety of the trial's outcome; instead, we should calculate as much as possible the probable impact on the jury in the light of the existence of other evidence." *Id.*, citing *Wesbrook v. State*, 29 S.W.3d 103, 119 (Tex. Crim. App. 2000). "[T]he reviewing court must ask itself whether there is a reasonable probability that the *Crawford* error moved the jury from a state of non-persuasion to one of persuasion on a particular issue." *Scott v. State*, 227 S.W.3d 670, 690

(Tex. Crim. App. 2007). Relevant factors for a Confrontation violation include:

> (1) the importance of the out-of-court statement to the State's case; (2) whether the statement was cumulative of other evidence; (3) the presence or absence of evidence corroborating or contradicting the statement on material points; and (4) the overall strength of the State's case.

Render v. State, 347 S.W.3d 905, 918-919 (Tex. App.—Eastland 2011, pet. ref'd) (citations omitted)

"In performing a harm analysis, a reviewing court may also consider the source and nature of the error, the amount of emphasis by the State on the erroneously admitted evidence, and the weight the jury may have given the erroneously admitted evidence compared to the balance of the evidence with respect to the element or defensive issue to which it is relevant." *Id*., citing *Scott*, 227 S.W.3d at 690. "[T]he entire record is to be evaluated in a neutral manner and not in the light most favorable to the prosecution." *Kapperman v. State*, No. 01-20-00127-CR, 2022 Tex. App. LEXIS 6739 at *78 (Tex. App.—Houston [1st Dist.] Sept. 1, 2022, no pet.) (mem. op., not designated for publication).

While other statements were admitted from the Complainant regarding the details of the alleged sexual assault (the medical records and SANE exam records for instance), Officer Cosper's body camera was an

essential piece of evidence to the State's case, given that the Complainant was deceased at the time of trial, and the defensive theory involved attacking her credibility across the various statements given during the 911 call and the body camera, the medical and SANE examination records. (12 R.R. 78-80). In response, the State argued that the Complainant never gave contradictory statements:

> The body cam, you will be able to listen to portions of because these are the portions where [V.L.'s] speaking. That is the audio you will be able to hear. And what you're going to notice is she's in a room with her friends by her side and her husband right there and, guys, you remember Braeden Cosper, right? He looks like he's 15 years old and this young man, doing his best, is trying to talk to a woman who just got raped and he's not equipped for that conversation. So when he's asking her, Did you get penetrated, that's not the way to ask that question. That's not the way to address that. And so you can understand why it makes sense why she's not giving the full story moments after being raped. You can understand why she's going to have a little trouble opening up in front of her friends, her husband, and to this young kid who's never grown a beard in his life. You can understand that. And you can understand why that story is not inconsistent but it expands by the time she gets to the hospital and she's finally talking to a medical professional….
>
> [V.L.] was consistent in her words and she was consistent in her actions and this is the proof that you have that this was forcible rape, that this was not a consensual liaison, this was not some last dalliance before she died of cancer. This was rape. The consistency is from the very beginning Rickey Hubert is a stranger. She never knows his name. She never says, Guys, if you want to find this rapist, here's the party line I called. Never says that.

> A stranger entered my home, pushes me in the bed, and he attacks me. That is consistent from the beginning until the very end. She's consistent in her actions. She doesn't delay this report for six months. She doesn't wait for her husband to come home and discover her crying. She reports it immediately. We see that she's calmed down by the time Cosper arrives about 30 minutes later, after her support system can finally be there to support her. No, she never gave contradictory statements. She never gave statements where she said, well, I think it was consensual and then it wasn't.

(12 R.R. at 95-96, 103-104).

In other words, the admission of Officer Cosper's body camera enabled the State to contend that the Complainant's statements, although somewhat different, were consistent regarding the essential allegation, that she was forcibly raped. In addition, through jail calls from the Appellant's phone conversations, he indicated that he had consensual sex with the Complainant. (16 R.R. State's Ex. 83). As Appellant's trial counsel contended the question was whether there was proof that Appellant forced himself on the Complainant, as the surveillance video demonstrating Appellant's presence at the apartment complex and his DNA did not necessarily substantiate the allegations of aggravated sexual assault given that Appellant admitted to having sex with the Complainant. (12 R.R. at 80-81). Furthermore, Officer Cosper did not find any marks on the Complainant that would have been consistent with being bound or forcibly

held and no neighbors reported hearing the Complainant screaming. (10 R.R. at 94-95, 97). Given this dynamic, the Complainant's statements from the body cam that she was sexually assaulted greatly boosted the State's case. As a result, the trial court's erroneous admission of Officer Cosper's body camera was not harmless beyond a reasonable doubt as to both of Appellant's convictions.

3. The trial court erred in assessing duplicative court costs in each of Appellant's convictions, as Appellant was convicted of multiple offenses arising from a single criminal transaction.

A. Applicable Law

Article 102.073 of the Texas Code of Criminal Procedure provides in relevant part:

> (a) In a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the court may assess each court cost or fee only once against the defendant.
>
> (b) In a criminal action described by Subsection (a), each court cost or fee the amount of which is determined according to the category of offense must be assessed using the highest category of offense that is possible based on the defendant's convictions.

TEX. CODE OF CRIM. PROC. ART. 102.073

"Consistent with article 102.073, where a defendant is convicted of two or more offenses or of multiple counts of the same offense in a single

criminal action, and the convictions are the same category of offense and the costs are all the same, we hold that the court costs should be based on the lowest cause number." *Williams v. State*, 495 S.W.3d 583 (Tex. App.—Houston [1st Dist.] 2016, pet. dism'd) (op. on reh'g). "[A]ppellate courts generally retain the identical costs in the case number that includes the higher/highest amount of additional, nonduplicative fees." *Baughman v. State*, Nos. 14-18-00009-CR, 14-18-00010-CR, & 14-18-00021-CR, 2019 Tex. App. LEXIS 5265 at *26 n. 11 (Tex. App.—Houston [14th Dist.] June 25, 2019, pet. ref') (mem. op., not designated for publication) (citations omitted).

B. Preservation of Error

The Court of Criminal Appeals has explained that challenges to court costs can be raised for the first time on appeal and "[c]onvicted defendants have constructive notice of mandatory court costs set by statute and the opportunity to object to the assessment of court costs against them for the first time on appeal or in a proceeding under Article 103.008 of the Texas Code of Criminal Procedure." *Cardenas v. State*, 423 S.W.3d 396, 399 (Tex. Crim. App. 2014). In a companion case decided the same day, the Court further explained that because the cost bill is most likely unavailable at the

time of the judgment, an "Appellant need not have objected at trial to raise a claim challenging the bases of assessed costs on appeal." *Johnson v. State*, 423 S.W.3d 385, 390-391 (Tex. Crim. App. 2014).

C. Analysis

In the event that this Court overrules Appellant's Double Jeopardy challenge, Appellant contends that the trial court erred in its assessment of costs. Appellant was convicted of two offenses arising from the same criminal transaction:

- Cause No. 1748428 (Burglary of a Habitation)
- Cause No. 1748429 (Aggravated Sexual Assault)

(1 R.R.)

The bill of costs in each case reflects that the following fees were assessed for both cases:

- Consolidated Court Cost - State ($185)
- Consolidated Court Cost – Local ($105)
- LEA – Capias Execution ($5)[8]
- LEA – Commitment Fee ($5)
- LEA - Release Fee ($5)
- LEA – Summon Jury ($5)

(C.R. (1748428) at 229; C.R. (1748429) at 513)

[8] The capias execution cost was $50 under Cause No. 1748428; therefore Appellant only refers to the identical $5 cost that both cases assessed.

The identical fees total $310.00.

Both of Appellant offenses are from the same category of offenses, as both are first-degree felonies. See TEX. PEN. CODE §§ 22.021(e) and 30.02(d)(2). While Appellant's conviction for burglary of habitation is under the lowest cause number, his conviction for aggravated sexual assault assessed a higher amount of nonduplicative fees.[9] As a result, the $310 in duplicative fees assessed under Cause No. 1748428 should be deleted. See *Baughman*, 2019 Tex. App. LEXIS 5265 at *26 n. 11.

PRAYER

Appellant, Ricky Earl Hubert, prays that this Court vacate his conviction for burglary of habitation under cause number 1748428. Additionally, Appellant prays that this Court reverse the trial court's judgment in cause number 1748429 and remand that case back to the trial court for a new trial.

Furthermore, should this Court overrule Appellant's Double Jeopardy Challenge, Appellant prays that this Court reverse the trial court's judgment in cause number 1748428 and remand the case back to the trial court for a

[9] The cost bill under Cause No. 1748429 totaled $585 while the cost bill under Cause No. 1748428 assessed a total of $360 in costs. (C.R. (1748428) at 229; C.R. (1748429) at 513).

new trial, or alternatively, delete $310.00 in duplicative court costs from the judgment in cause number 1748428. Appellant also prays for such other relief that this Court may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this brief was e-served on Jessica Caird of the Harris County District Attorney's Office on October 28, 2024 to the email address on file with the Texas E-filing system.

/s/ Nicholas Mensch
Nicholas Mensch
Assistant Public Defender

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/s/ Nicholas Mensch
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