Cause No. 01-24-00747-CR
IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS

DAKARI JAHI LENEAR
Appellant

v.

THE STATE OF TEXAS
Appellee

On Appeal from Cause No. 1723781
From the 179th District Court of Harris County, Texas

APPELLANT'S BRIEF

Oral Argument Requested

NICOLAS HUGHES
Attorney at Law
SBN: 24059981
Address: 3515 Fannin Street
Houston, Texas 77004
Phone: 713-281-2684
Fax: 713-808-9444
Email: nicolas.hughes.law@gmail.com

ATTORNEY FOR APPELLANT

IDENTITY OF PARTIES AND ATTORNEYS

APPELLANT	DAKARI JAHI LENEAR
PRESIDING JUDGE AT TRIAL:	HON. ANA MARTINEZ 179th District Court 1201 Frankin Street, 18th floor Harris County, Texas Houston, Texas 77002
ATTORNEYS AT TRIAL:	BRYAN SAVOY Attorney at Law 1200 Rothwell St Houston, Texas 77002 MANDY MILLER Attorney at Law 9722 Gaston Rd, Ste 150-257 Katy, TX 77494
PROSECUTORS AT TRIAL:	KELLY MARSHALL SHAWNTEL DINH Assistant District Attorneys Harris County, Texas 1201 Franklin St., 6th Floor Houston, Texas 77002
ATTORNEY ON APPEAL:	NICOLAS HUGHES Attorney at Law 3515 Fannin St. Houston, Texas 77004

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STATEMENT OF THE CASE

On May 19, 2021, Dakari "Jahi" Lenear[1] was charged with the murder of Rhonda Lenear. (C.R. at 9). On July 22, 2021, Jahi Lenear was formally indicted. (C.R. at 45). On September 19, 2024, jury selection began for Jahi Lenear's trial. (C.R. at 540). On September 23, 2024, the Trial Court held a hearing on two motions to suppress, denying both motions outside the presence of the jury. (C.R. at 287, 301, 541). That same day, the jury was empaneled and sworn, and Jahi Lenear entered a plea of guilty without an agreed recommendation on punishment. (C.R. at 335-336). On September 24, 2024, Jahi Lenear was convicted and sentenced by the Court to 65 years in prison. (C.R. at 355). Jahi Lenear was granted permission to appeal the Trial Court's ruling on the motions to suppress and filed timely notice of appeal on September 24, 2024. (C.R. at 333-334). Jahi Lenear filed a motion for new trial on October 23, 2024 and after a hearing, the Trial Court issued written findings of fact and conclusions of law denying the motion on November 25, 2024. (C.R. at 509-530).

[1] Dakari "Jahi" Lenear is the appellant in this case and Dakari "Kari" Lenear is Jahi Lenear's daughter. This brief uses Jahi Lenear's and Kari Lenear's preferred nicknames to disambiguate between the two.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested in this case. As best as counsel for Jahi Lenear is aware, the issue of the standing of a person to object to the search of a spouse's cell phone is an important issue of first impression in Texas.

ISSUES PRESENTED

Argument

Preliminary Issue: Jahi Lenear has standing to object to the search of the Samsung SM-G781U with a pink case, as Jahi Lenear's ownership rights in the residence search, ownership rights in the phone, and reasonable expectation of privacy in a phone used by a spouse all impart standing

Issue One, Part 1: The four corners of the search warrant affidavit are insufficient to connect the Samsung SM-G781U with a pink case with Rhonda Lenear's death investigation

Issue One, Part 2: The warrantless search of the Samsung SM-G781U with a pink case violated the Fourth Amendment and Article 18.0215

SUMMARY OF THE ARGUMENT

The search warrant fails to articulate a basis for the seizure of the Samsung SM-G781U with a pink case within Jahi Lenear's residence

The two issues raised in this case are relatively straightforward. Jahi Lenear's residence and Samsung SM-G781U with a pink case were searched without Jahi Lenear's consent. Law enforcement obtained a warrant to search the house, however the four corners of the search warrant affidavit articulated no factual basis establishing probable cause that the Samsung SM-G781U with a pink case inside the residence was believed to contain evidence important to the investigation into Rhonda Lenear's death. Both the Fourth Amendment and Article 18.01(c) require a warrant to furnish specific facts furnishing probable cause of why a cell phone is believed to contain evidence relevant to an investigation. On its face, the search warrant authorizing the seizure of cell phones, including the Samsung SM-G781U with a pink case, is invalid.

The State failed to prove up facts to support its authority of "implicit consent" to search the Samsung SM-G781U with a pink case. Even if the State could prove "implicit consent," this consent is invalid in light of Jahi Lenear's objection to the search of the phone.

Law enforcement never obtained a search warrant to search the content of Samsung SM-G781U with a pink case. After Jahi Lenear refused consent to a search of the house or the phone, law enforcement attempted to

bypass Jahi Lenear by obtaining the password to the phone from Rhonda Lenear's unnamed mother. Without proving up any information or basis to support the claim that Rhonda Lenear's unnamed mother had actual authority to authorize a search of the Samsung SM-G781U with a pink case, the State claimed "implicit consent" justified the search. There is an insufficient record to support this theory. Moreover, third-party consent is never effective to overcome the objection of the phone's owner. The Fourth Amendment and Article 18.0215 both required the prosecution to obtain a warrant in order to search the Samsung SM-G781U with a pink case, and the warrantless search of the phone is unlawful.

Standing flows from Jahi Lenear's ownership of the residence where the Samsung SM-G781U with a pink case was found, from Jahi Lenear's ownership of the phone, and from Jahi Lenear's societally and legally recognized privacy interests in the sensitive data stored on the phone

This case presents a threshold question of standing. The Trial Court found that Jahi Lenear's ownership of the residence search and Jahi Lenear's ownership of the Samsung SM-G781U with a pink case was insufficient to confer standing in this case, instead finding that management of the phone was determinative of standing. As a general principle, ownership of the property being searched is the traditional marker of whether a person has standing to object to a search. Jahi Lenear was an owner of both the residence

being searched and the phone seized from that residence. Texas Courts of Appeals have found that Texas community property laws are sufficient to impart ownership rights to marital property, even when that property is primarily or entirely used by one's spouse. Under both traditional concepts of Fourth Amendment standing and Texas jurisprudence, Jahi Lenear has standing to object to the search of the Samsung SM-G781U with a pink case.

Even were ownership rights insufficient to confer standing, the special and unique relationship between spouses creates special legal and societal expectations of privacy in spousal communications. As the spousal relationship and spousal communications receive legal and societal recognition, data in the possession of a person's spouse is at least as deserving of protection from government intrusion when the person's data is in the hands of third-party telecommunications or cloud service providers. A repository of potentially decades' worth of data reflecting both spouses' shared lives, law enforcement can reconstruct the accused's financial status, sexual life, medical issues, personal struggles, interpersonal conflicts, and family life, from a spouse's phone. Given the sensitivity of information belonging to the accused found in a spouse's phone and the legal protections that protect spousal communications, a person has a reasonable expectation

that the information found in a spouse's phone will not be subject to governmental intrusion and, therefore, has standing to contest an illegal intrusion into that phone.

STATEMENT OF FACTS

On May 19, 2021, Jahi Lenear was home with family members Rhonda Lenear, Samson Lenear, and Dakari "Kari" Lenear. (3 R.R. at 103-104). At the time, Jahi Lenear and Rhonda Lenear were in the process of divorce. (3 R.R. at 102). Jahi Lenear demanded to have discussion with Rhonda Lenear, but Rhonda Lenear ended the conversation, stating it was time to get back to work. (3 R.R. at 106). Jahi Lenear was angered by Rhonda Lenear's decision to end the conversation. (3 R.R. at 106). Jahi Lenear told Samson Lenear and Kari Lenear to go into the garage, instructed them to turn the music on, and told them that no matter what happens, Jahi Lenear still loved them. (3 R.R. at 104).

With Kari Lenear and Samson Lenear outside of the house, the argument between Jahi Lenear and Rhonda Lenear intensified. (3 R.R. at 11; 5 R.R. at State's Ex. 19). At some point, Rhonda Lenear decided to pull out her cell phone and start recording. (5 R.R. at State's Ex. 151). Eavesdropping on the argument, Kari Lenear snuck around the house to the front porch and saw Jahi Lenear holding a gun. (3 R.R. at 110). The argument continued escalating to the

point where it became violent and lethal – Rhonda Lenear was shot multiple times. (3 R.R. at State's Ex. 149). An actively-recording cell phone and a tactical pen were found next to Rhonda Lenear's body. (5 R.R. at State's Ex. 42, 76).

ARGUMENT

Preliminary Issue: Jahi Lenear has standing to object to the search of the Samsung SM-G781U with a pink case, as Jahi Lenear's ownership rights in the residence search, ownership rights in the phone, and reasonable expectation of privacy in a phone used by a spouse all impart standing

A. This Court reviews questions of standing *de novo*

In *Kothe*, the Court of Criminal Appeals clarified that legal questions of standing are subject to *de novo* review on appeal:

> Although we defer to the trial court's factual findings and view them in the light most favorable to the prevailing party, we review the legal issue of standing *de novo*.

Kothe v. State, 152 S.W.3d 54, 59 (Tex. Crim. App. 2004).

B. The trial court conflated Fourth Amendment standing with a greater right to possession

1. The Trial Court's focus on shared application use dictated its findings in the case

When considering the question of standing, the Court looked at joint application use and primary use of the Samsung SM-G781U with a pink case as determinative of whether Jahi Lenear had a privacy interest in the phone:

> There is no evidence before the Court that the defendant had, in fact, used that phone, that, in fact, there were combined, let's say, bank accounts, applications on that phone that they both use, any

> type of joint calendar, school activities for the kids, anything of that nature that will present enough evidence to the Court to find that, in fact, the defendant had that reasonable expectation of privacy on the complainant's phone.

(3 R.R. at 60).

In so doing, the Trial Court's findings conflated Fourth Amendment standing, which concerns the ability of a person to object to a government search of a cell phone, with who held a greater right to possession and management of the phone, which is relevant in unrelated criminal- and civil -law contexts:[2]

> Finding that the complainant's phone that had an individual password, that seems to be pink in color, that seemed to be the one that she was using, finding that the defendant would have absolute authority to get into the phone and that that complainant would absolutely lose her right of privacy to that phone.

(3 R.R. at 59). In the Trial Court's written findings, the Court made explicit its rationale:

> The trial court concludes that, assuming arguendo the community property presumption applied to the pink Samsung cell phone, the record supports the complainant none the less, had a greater possessory interest in the pink Samsung cell phone than the Defendant.

[2] *See e.g.*, *Morgan v. State*, 501 S.W.3d 84, 92 (Tex. Crim. App. 2016) (explaining how multiple people may have a hierarchy of rights to a property, but the critical question involved in a theft case is "who, at the time of the commission of the offense, had the greater right to possession of the property").

(C.R. at 518).

2. The Trial Court's rulings conflict with caselaw extending Fourth Amendment protections to places or object which the accused does not own or manage

The Trial Court's assertion that standing is limited to the person with greatest right to possession of a property or an object conflicts with well-established Fourth Amendment jurisprudence. For example, *Arizona v. Hicks* involved a search and seizure of stolen stereo equipment to which the accused had no right to possession:

> One of the policemen, Officer Nelson, noticed two sets of expensive stereo components, which seemed out of place in the squalid and otherwise ill-appointed four-room apartment. Suspecting that they were stolen, he read and recorded their serial numbers -- moving some of the components, including a Bang and Olufsen turntable, in order to do so -- which he then reported by phone to his headquarters. On being advised that the turntable had been taken in an armed robbery, he seized it immediately. It was later determined that some of the other serial numbers matched those on other stereo equipment taken in the same armed robbery, and a warrant was obtained and executed to seize that equipment as well. Respondent was subsequently indicted for the robbery.

480 U.S. 321, 324-25 (1987). The Supreme Court held that moving the stereo components to call in the serial numbers of stereo equipment violated the Fourth Amendment. If the stolen nature of the stereo equipment was insufficient to extinguish the accused's expectation of privacy that protected

the accused's apartment, Rhonda Lenear's greater right of possession of Samsung SM-G781U with a pink case cannot furnish a valid basis for finding that Dakari Lenear lacks standing.

C. The Fourth Amendment traditionally protects one's property from government intrusion. It is uncontested that Jahi Lenear owned the residence where the Samsung SM-G781U with a pink case was found and seized

The Fourth Amendment is traditionally based in property rights. *Florida v. Jardines*, 569 U.S. 1, 11 (2013). The Fourth Amendment's reach has been expanded, and not constricted, by *Katz* and subsequent caselaw.[3] The Trial Court acknowledged that the seizure of the phone occurred at Jahi Lenear's residence. (Motion to Suppress, Def. Ex. 1); (C.R. at 515). The standing analysis should have stopped there. The search occurred on Jahi Lenear's property and involved the seizure of a Samsung SM-G781U with a pink case from that property, which is sufficient to establish standing even under pre-*Katz* Fourth Amendment jurisprudence. *See e.g. Berger v. New York*, 388 U.S. 41, 59 (1967) ("The purpose of the probable-cause requirement of the Fourth Amendment,

[3] "More recent Fourth Amendment cases have clarified that the test most often associated with legitimate expectations of privacy, which was derived from the second Justice Harlan's concurrence in Katz v. United States, supplements, rather than displaces, "the traditional property-based understanding of the Fourth Amendment." *Byrd v. United States*, 584 U.S. 395, 403-04 (2018)

to keep the state out of constitutionally protected areas until it has reason to believe that a specific crime has been or is being committed, is thereby wholly aborted.").

D. Ownership through Texas's community property law has been recognized as furnishing standing to object to a search

1. The State conceded that the Jahi Lenear owned the Samsung SM-G781U with a pink case and paid the bills for the phone

During the hearing on the motion to suppress, the prosecution acknowledged that Jahi Lenear owned the Samsung SM-G781U with a pink case:

> THE COURT: So, State, will you concede that the cell phone -- I guess, is there any evidence that the complainant was using separate individual funds to pay for the subscription of that phone or that she paid individually for the actual phone?
>
> MS. MARSHALL: We have no tracing as far as separate property was used to purchase the phone. We would concede that the phone is community property.

(3 R.R. at 15). Furthermore, the Court noted that Jahi Lenear paid the phone bill, strengthening Jahi Lenear's connection to the phone. (Motion to Suppress, Def. Ex. 1); (3 R.R. at 59).

2. Texas's community property laws confer ownership and management interests upon each spouse

Community property and common law jurisdictions treat property differently while a marriage is intact:

> The states of this country accept one of two very different marital property regimes. The common law system is based upon title; neither spouse has an interest in the property of the other, unless property is jointly owned. In contrast, community property systems accept the concept that spouses each have an equal, vested interest in all property accumulated, by either's effort, during marriage. The significance of these distinctions at dissolution has ebbed, however: All common law states now permit some type of property adjustment at dissolution, whether the dissolution is by divorce or death. The economic ramifications of divorce certainly are becoming more similar, regardless whether the marriage is dissolved in a common law or marital property state.
>
> In contrast, the two marital property systems operate quite differently in an intact marriage. In common law states, as long as no divorce action has been filed, property is managed by the owner. Under such a system, one spouse could have no power to manage any property accumulated during marriage, even if the property was acquired during marriage by the other spouse's effort. If the acquiring spouse is the record owner, that spouse can sell the property, or even give it away without the other's consent. In contrast, spouses in community property states are equal owners of all property acquired during marriage due to either's effort, regardless of title. Community property states have accepted for quite some time that the equal ownership principle imposes some limitations during marriage upon the management powers of one spouse.

J. Thomas Oldham, *Management of the Community Estate During an Intact Marriage*, 56 LAW AND CONTEMPORARY PROBLEMS 99-170 (1993). As Texas is a community property state, during Jahi Lenear's and Rhonda Lenear's marriage, Jahi Lenear has ownership rights and some management rights that

extend even to property that is typically managed and possessed by Rhonda Lenear.

3. Texas cases considering the issue of community property have found that ownership through community property rights is sufficient to confer standing

In other contexts, Texas cases have found that community property ownership is sufficient to confer standing, even when the searched property is primarily used by the accused's spouse. In *Gongora*, the accused objected to a warrantless search of a red car, testifying that "the owner of the red car was his wife." *Gongora v. State*, No. 01-93-00974-CR, 1995 Tex. App. LEXIS 2360, at *7-8 (Tex. App.—Houston [1st Dist.] Sep. 28, 1995, no writ) (mem. op., not designated for publication). This Court concluded, "[t]hat testimony, if believed, is sufficient to show that appellant had a legitimate expectation of privacy with respect to the contents of the red car." *Id.* Similarly, in *Bassano*, the accused objected to the search of a cooler inside the accused's wife's Oldsmobile. *State v. Bassano*, 827 S.W.2d 557, 559-60 (Tex. App.—Corpus Christi 1992, pet. ref'd). The Thirteenth Court of Appeals concluded that Texas's community property law conferred standing upon the accused to object to the search of the container inside the Oldsmobile:

> Here, appellee owned the house at 805 Sundance Street, and he and his wife, Kimberly, lived there. The Oldsmobile, which was

> registered to Kimberly, was parked in the house's driveway at the time the search warrant was executed. The suspected marihuana was in a cooler which was inside the Oldsmobile's trunk. Appellee had, under Texas community property laws, a possessory right of use and control of his wife's Oldsmobile. This right of possession, combined with the fact that the suspected marihuana was found in a cooler inside the Oldsmobile's trunk, showed that appellee sought to preserve the suspected marihuana as private and that his expectations, viewed objectively, were justifiable under the circumstances.

Id. In *McCuller*, the accused objected to the search of photographs found within a habitation where the accused's spouse was granted the right of possession of the habitation. *McCuller v. State*, 999 S.W.2d 801, 804 (Tex. App.—Tyler 1999, pet. ref'd). The Twelfth Court of Appeals concluded that even in this circumstance, the longstanding communal use of property that only the accused's spouse had a legal right to manage was sufficient to confer standing:

> As stated, Appellant and Jana were married and had lived together in the subject house as their private dwelling for many years. Although the right to possession of the habitation was granted to Jana, both McCullers were the parties in possession of the premises at the time the photographs were taken. Here, as the husband and manager of the household, Appellant had a legitimate expectation of privacy in the house. We conclude that Appellant had standing to assert the evidence suppression issue.

Id.

The Trial Court's ruling that there was no standing in this case centered around the day-to-day management of the Samsung SM-G781U with a pink

case. (3 R.R. at 59-60); (C.R. at 518-520). Neither *Bassano* or *Gongora* focused on how often or even whether the accused used a spouse's car to find that society recognized the accused's privacy right in community property. *Bassano*, 827 S.W.2d at 559-60; *Gongora*, 1995 Tex. App. LEXIS 2360 at *7-8. Nor did *McCuller* focus on the spouse's greater right to possession of the residence in question when finding that the accused had a privacy right within the shared marital domicile. *McCuller*, 999 S.W.2d at 804. The Trial Court's reliance on greater right to possession instead of common law ownership is a departure from Texas jurisprudence.

E. Society and our legal system both afford privacy and protection to the unique relationship between spouses. Fourth Amendment jurisprudence should be no different.

1. Fourth Amendment standing expands outward from ownership to other societally-recognized zones of privacy

The Fourth Amendment has been held to apply even when a person's reasonable expectation of privacy exists even absent ownership rights. In *Byrd v. United States*, the Supreme Court noted that "it is by now well established that a person need not always have a recognized common-law property interest in the place searched to be able to claim a reasonable expectation of privacy in it. 584 U.S. at 404. For instance, the Fourth Amendment has protected a person given gratuitous access to a friend's apartment, overnight

guests, a person's office, and a person in a phone booth. *Jones v. United States*, 362 U.S. 257, 259 (1960); *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990); *Mancusi v. DeForte*, 392 U.S. 364, 369 (1968); *Katz v. United States*, 389 U.S. 347, 352 (1967). The common denominator between these cases is "a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Byrd v. United* States, 584 U.S. at 405.

2. Data held by a third-party telecommunications company or cloud service provider is often afforded Fourth Amendment protection

The ruling in *Carpenter* expanded the reasonable expectation of privacy to include data residing on third party servers, noting that "[a] person does not surrender all Fourth Amendment protection by venturing into the public sphere." *Carpenter v. United States*, 585 U.S. 296, 310 (2018). Texas Courts, including this Court, have seemed to infer that this protection extends to other data that may be stored by a third party. *Johnson v. State*, *No. 01-21-00636-CR*, 2023 Tex. App. LEXIS 7940, at *6-7 (Tex. App.—Houston [1st Dist.] Oct. 19, 2023) (mem. op., not designated for publication) (reviewing whether probable cause supported warrant for social media records, cloud data, and cell phone data); *Rodriguez v. State*, No. 01-22-00937-CR, 2024 Tex. App.

LEXIS 5565, at *8-9 (Tex. App.—Houston [1st Dist.] Aug. 6, 2024, no pet. h.) (reviewing whether Court considered warrant before admitting cloud data into evidence).

3. Private data held by a spouse should be afforded at least as much Fourth Amendment protection as third-party data in the hands of a telecommunications or cloud service provider

Two spouses' lives are intricately and inextricably intertwined. The unique connection between spouses is spatial, financial, legal, medical, sexual, and familial and receives similarly unique protection under the law.[4] Spouses' shared legal rights are protected by a sacred right to privacy older even than legal systems. *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965). As was demonstrated to be the case here, a cell phone possessed by a person's spouse almost certainly contains private and often legally protected information of a financial, sexual, medical, personal struggles, interpersonal conflicts, and family life that is kept secret from the outside world. (4 Supp. R.R. at Def. Ex.

[4] *See e.g.* inheritance rights (TEX. PROBATE CODE § 201.202, 201.203), evidentiary privileges (TEX. R. EVID. 504), rights as taxpayers (26 U.S.C. § 6013), rights under insurance law (TEX. INSURANCE CODE § 1952.056), rights under wrongful death statutes (TEX. CIV. PRAC. CODE § 71.004), property rights (TEX. FAM. CODE, Ch. 3), next of kin rights (TEXAS HEALTH & SAFETY CODE § 711.002), child custody rights (TEX. FAMILY CODE, Ch. 153), and immigration rights (INA § 1430).

1,2, 6, 7, 8, 9). A person's spouse may possess the person's legally protected records, including personally identifiable information, property records, insurance cards, medical records, and business records. *Id*. Furthermore, a phone owned by a person's spouses may contain conversations that would subject a person to humiliation, public scorn, or even criminal prosecution. *Id*.

In *Riley v. California*, the Supreme Court of the United States held that the storage capacities, diverse types of records, the sensitivity of records, the long duration that records can be stored, the pervasiveness of cell phones, and the ability to track a person's movements all led to the conclusion that the warrant requirement extended to the information stored within a cell phone. *Riley v. California*, 573 U.S. 373, 394-95 (2014). All these privacy concerns apply equally to a phone possessed by the accused's spouse, as both spouses' joint and private lives are captured within the phone's data and the accused's life can be reconstructed through forensic analysis of the data.

Unlike a telecommunications or cloud-service provider that uses a person's data to train an AI model or to personalize and sell targeted ads, [5]

[5] *See e.g.* Privacy Policy, GOOGLE (last visited Apr. 25, 2025) *available at https://policies.google.com/privacy*
Research and development: Google uses information to improve our services and to develop new products, features and technologies that benefit our users and the public. For example, we use publicly available information to help train

society expects a spouse to keep secret their partner's private life. Furthermore, unlike a telecommunications or cloud-service provider who may have incentives to profit off of sales of a person's data to third parties and must be regulated,[6] a spouse is generally expected by society to act in the best interest of their entire family. A spousal relationship involves each partner uniting their fates and creating a private family life, there is reasonable expectation of privacy in the contents of a spouse's phone that is at least as strong as the expectation in a cloud provider's third-party servers. As the nature and amount of the data available in a phone is much greater and more sensitive than the types of spousal property that has already been afforded protection (i.e., a car), a person's privacy interest in a spouse's phone should be correspondingly greater. The Fourth Amendment should protect the uniquely sensitive and secret data about the accused stored in the accused's spouse's

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Advertising: Google processes information to provide advertising, including online identifiers, browsing and search activity, and information about your location and interactions with advertisements. This keeps Google's services and many of the websites and services you use free of charge. You can control what information we use to show you ads by visiting your ad settings in My Ad Center.

[6] *See e.g.*, 18 U.S. Code § 2702 (protecting stored communications from third party disclosure)

phone and the accused's privacy rights in the content of the phone, acting alone, should be sufficient to confer standing.

F. In *Halgas*, a court in New Jersey found that ownership of the property and legal protections to spousal communications are sufficient to confer standing

At least one Court in another jurisdiction faced a question of whether the accused has standing to object to the search of a spouse's cell phone. In *State v. Halgas*, a New Jersey Superior court presided over a case involving a very similar factual scenario as is presented here. No. A-2851-23, 2024 N.J. Super. Unpub. LEXIS 2590 (Super. Ct. App. Div. 2024)The phone in question was found in the accused's home, the accused paid the phone bill, and the accused had a demonstrable privacy interest in the information stored on the phone:

> At the hearing, counsel for [Christopher Halgas] argued [Christopher Halgas] owned the phones in question, paid the associated bills, and exercised control over them through an online portal. The State does not dispute those claims but contends they are insufficient to confer standing to challenge the search.
>
> [Rosemary Halgas] was represented by independent counsel at the hearing. Through her counsel, she advised the court that she never consented to a search of her phone and objects to the seizure of the phone from the marital home in which she and defendant have a possessory interest. [Rosemary Halgas] also objected to the charges against and the prosecution of defendant. Counsel asserted [Rosemary Halgas] "does have an interest here

> and her rights were violated" and "the State's action was inappropriate . . . from a constitutional perspective."

Id. at *9. Finding that the accused had standing, the Court recognized two independent sources of this standing: the phone was found inside the accused's residence and the marital privilege created a reasonable expectation of privacy in the phone. *Id.* at *14.

> In this case, the evidence at issue, including the phones and any text messages or other information retrieved from those devices, was seized from defendant's home. Because [Christopher Halgas] indisputably has a proprietary and possessory interest, as well as an expectation of privacy, in the place searched—his home—he had standing to bring a motion to suppress under both the Federal and State standards.
>
> [Christopher Halgas] also had an expectation of privacy and possessory interest in any text messages he sent [Rosemary Halgas] because they were protected by the marital privilege at the time of the search.

Id.

Both justifications articulated in *Halgas* apply with equal force to the case at bar. As found in *Halgas*, ownership of the property searched standing alone should be sufficient to establish standing. As in *Halgas*, spousal privilege creates a reasonable expectation of privacy in the searched phone. TEX. R. EVID. 504.

G. Finding standing in this case will not upset the legal order. Standing is not the final word on whether or not a search offends the Fourth Amendment.

While a defendant may have standing to object to the search of a phone, the State may still prove that a search of a phone is valid, either through a valid search warrant, consent, or another recognized exception to the Fourth Amendment warrant requirement. In *Rodriguez v. State*, this court separated the determination of standing from admissibility of evidence received during a search:

> Assuming, therefore, without deciding that these factors are sufficient to establish appellant's standing to complain of the invasion of his right to privacy as an overnight guest, we nevertheless hold that any expectation of privacy appellant had in his mother's house was overridden by his mother's valid consent to the police to enter.

Rodriguez v. Texas, 313 S.W.3d 403, 407-08 (Tex. App.—Houston [1st Dist.] 2009, no pet.). Regardless of whether the accused has standing to object to the search of a spouse's phone, the spouse may still have a greater right to manage and possess the phone, can still consent to a search of the phone, still has the ability to testify about a crime committed by the accused against the family, and still retains a right to privacy in their phone. *See e.g. Baird v. State*, 398 S.W.3d 220, 230 (Tex. Crim. App. 2013) (person with apparent consent to access accused's computer had the ability to report illicit photographs to law enforcement).

Issue One, Part 1: The four corners of the search warrant affidavit are insufficient to connect the Samsung SM-G781U with a pink case with Rhonda Lenear's death investigation

A. The search warrant affidavit for Jahi Lenear's residence contains scant information learned during the death investigation at the time the search warrant was authorized

The search warrant issued for Dakari "Jahi" Lenear's house at 9510 Walnut Glen Drive contains only two paragraphs containing details uncovered by the investigation of Rhonda Lenear's death:

> Affiant spoke with Deputy R. Tindall, a peace officer employed by the Harris County Precinct 4 Constable's Office, and learned the following. Deputy Tindall stated that on May 19, 2021 she and other deputies of the Precinct 4 Constable's Office were dispatched to 9510 Walnut Glen Drive in Harris County, Texas at 17:17 hours in regards to a shooting. Deputy Tindall stated the preliminary information provided through dispatch was that the reporting party's father had just shot her mother and was fighting with a brother. Deputy Tindall stated she and Deputy B. Berry arrived and observed a juvenile female outside of the residence. The female, who was crying, directed the deputies to the residence at 9510 Walnut Glen Drive. Deputy Tindall stated she observed a black male, later identified as Dakari Lenear, exit the home through the front door with his hands raised. Deputy Tindall stated she detained Dakari Lenear by placing him in the rear seat of her patrol vehicle.
>
> Affiant spoke with Deputy B. Berry, also a peace officer employed by Harris County Precinct 4, who stated that after Dakari Lenear was detained, he entered the home to search for any victims and check on the life-status of the shooting victim. Deputy Berry stated as he entered the down-stairs living area, he observed the body of an adult, Black female, lying supine on the floor. Deputy Berry observed a large pool of blood under the torso of this person and no signs of life. Deputy Berry stated he also noted at least one

> gunshot wound to the right hand of this deceased person. Deputy Berry stated Cy-Fair EMS Medic 10 arrived at the scene and pronounced the victim deceased at 1734 hours. Deputy Berry stated the rest of the residence was checked and found to contain no further victims or suspects.

(C.R. at 283-284).

The affidavit then listed several targets of the search warrant, but did not provide any further information connecting those items to Rhonda Lenear's death:

> Based on the above information from Deputies Tindall and Berry, Affiant has reason to believe and does believe that inside the location at 9510 Walnut Glen Drive, Harris County, Texas, is items and contents of items constituting evidence of Murder and/or Aggravated Assault; items constituting evidence tending to show that a particular person committed the offense of Murder and/or Aggravated Assault; and any and all instrumentalities of the crime of Murder and/or Aggravated Assault, more particularly described as human remains; any and all firearms evidence, including, but not limited to projectiles, bullets, shell casings, firearms, and gunshot residue; blood or DNA and items that may contain biological or scientific material including fingerprints, bodily tissue and hair fiber(s); cell phone(s), tablets, computers, or other electronic devices which may have belonged to a victim, suspect, or witness; and video or audio surveillance recordings of the interior or exterior of the residence.

(C.R. at 284).

B. Trial counsel obtained a ruling on the first motion to suppress, preserving error

Defense counsel filed a written motion to suppress contesting the nexus between the probable cause statement in the search warrant and the seizure

of the Samsung SM-G781U with a pink case from inside Jahi Lenear's house. (C.R. at 272-286). Before Jahi Lenear was arraigned and the jury was sworn, the Trial Court conducted a hearing on both motions to suppress in the case. (3 R.R. at 13-60). The Trial Court denied the first motion to suppress, issuing oral findings. (3 R.R. at 58-60); (C.R. at 287).

C. This Court reviews the Trial Court's probable cause determination *de novo*, giving deference to the magistrate's probable cause determination

When a motion to suppress involves questions of probable cause, the appellate court reviews those determinations *de novo*, applying a deferential standard of review:

> Probable cause exists when, under the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular location. This is a flexible, non-demanding standard. Id. The duty of reviewing courts is to ensure a magistrate had a substantial basis for concluding that probable cause existed. Id. Reviewing courts must give great deference to a magistrate's probable cause determination, including a magistrate's implicit finding. Even in close cases, reviewing courts give great deference to a magistrate's probable cause determination to encourage police officers to use the warrant process. When in doubt, reviewing courts should defer to all reasonable inferences a magistrate could have made. Reviewing courts should not invalidate a warrant by interpreting an affidavit in a hyper-technical rather than commonsense manner.

State v. Baldwin, 664 S.W.3d 122, 130 (Tex. Crim. App. 2022).

D. Argument

1. Article 18.01(c) and the Fourth Amendment require a search warrant affidavit to articulate specific facts connecting a target of a search to an offense under investigation

The Fourth Amendment requires a connection between the offense under investigation and the target of a search. In *Illinois v. Gates*, the Supreme Court held that:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Illinois v. Gates, 462 U.S. 213, 238 (1983). In *Bonds*, the Court of Criminal Appeals expanded this requirement to include a "sufficient nexus between criminal activity, the things to be seized, and the place to be searched." *Bonds v. State*, 403 S.W.3d 867, 873 (Tex. Crim. App. 2013). In *Diaz*, the Fourteenth Court of Appeals applied this offense-item-location nexus requirement in the context of a search warrant targeting a cell phone:

> As applicable to a cell phone search warrant, the application must state the facts and circumstances providing the applicant with probable cause to believe that searching the telephone or device is "likely to produce evidence in the investigation" of specific criminal activity described in the affidavit

Diaz v. State, 604 S.W.3d 595, 603 (Tex. App.—Houston [14th Dist.] 2020), *aff'd*, 632 S.W.3d 889 (Tex. Crim. App. 2021).

The requirements imposed by Code of Criminal Procedure similarly contain an offense-item-location nexus requirement. The Samsung SM-G781U with a pink case is not the instrumentality of some crime, contraband, a person, and constitutes "mere evidence." TEX. CODE CRIM. PROC., art. 18.02(a)(10). Article 18.01(c) applies to the seizure of "mere evidence" and requires a search warrant affidavit to:

> [set] forth sufficient facts to establish probable cause:
>
> > (1) that a specific offense has been committed,
> >
> > (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and
> >
> > (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched.

TEX. CODE CRIM. PROC., art. 18.01(c). Thus, under Article 18.01(c)(2), there must be a probable cause connecting the searched item to the investigation.

The analysis of a search warrant under the Fourth Amendment and under Article 18.01(c) is limited to the four corners of the search warrant affidavit. *State v. McLain*, 337 S.W.3d 268, 271 (Tex. Crim. App. 2011). Thus,

the proper analysis is not a *post-hoc* evaluation whether officers could have formulated probable cause to justify a search, but whether the magistrate "had a substantial basis for concluding that probable cause existed" when making the decision to issue the warrant. *Id.* Detective Crain's observations upon arriving at Jahi Lenear's house, warrant in hand, cannot furnish additional probable cause to support the search of the phone.

2. The four corners of the search warrant affidavit do not connect the Samsung SM-G781U with a pink case to the offense under investigation

Unlike firearms, projectile evidence, blood, and gunshot residue present at a crime scene, there is no direct and inherent connection between a cell phone and a death investigation. (C.R. at 281-286). Correspondingly, a search warrant affidavit must connect a phone to an investigation in order to satisfy the Fourth Amendment and the probable cause requirements imposed by Article 18.01(c).:

> In the present case, there is no evidence that the suspects planned the offense over multiple days other than the fact that Baldwin's white sedan was seen in the neighborhood the day before the offense. There is no evidence that these particular suspects communicated about the crime by cell phone, as there was in Walker, 494 S.W.3d at 909. All that is present here is that two black men committed an offense together, which is clearly insufficient to establish a connection between cell phone usage and the offense.

Baldwin, 664 S.W.3d at 135.

In the instant search warrant affidavit, are no specific facts alleging the use of a cell phone before, during, or after Rhonda Lenear's death. (C.R. at 281-286). As conceded by Deputy Crain during the suppression hearing, Deputy Crain did not know about the actively recording phone at the time the search warrant was drafted in this case. (3. R.R. at 40). There was no information about the ongoing divorce or acrimonious marital communications in the case. Furthermore, the search warrant lacks boilerplate language that explains how a cell phone may contain data that aids an investigation.[7] *Id*. at 126-27.

The search warrant affidavit could have linked the Samsung SM-G781U with a pink case to Rhonda Lenear's death in multiple ways, including:

1. The cell phone was actively recording, potentially contemporaneously with Rhonda Lenear's death, and was believed to contain evidence of what was transpiring at the time of Rhonda Lenear's death

[7] During the hearing on the motion to suppress, Deputy Crain claimed that the warrant contained information and boilerplate connecting the cell phone to the offense under investigation. (3 R.R. at 41). However, the affidavit itself lacked any of the boilerplate language typical of cell phone search warrants.

2. Dakari Lenear and Rhonda Lenear were spouses in the process of divorce, and the phone was believed to contain evidence of the state of the relationship between Rhonda Lenear and Dakari Lenear
3. As the phone was visibly on and recording when officers entered the residence, forensic analysis of the phone could help build a timeline of events contemporaneous to Rhonda Lenear's death

As the warrant lacks any such connection between the phone and Rhonda Lenear's death investigation, the search warrant affidavit fails to provide any reasonable connection between a cell phone and the investigation and lacks probable cause. *See Diaz*, 604 S.W.3d at 603; TEX. CODE CRIM. PROC., art. 18.01(c)(2).

Inasmuch as law enforcement may have believed there may have existed some other type of relevance connecting the Samsung SM-G781U with a pink case to the investigation of Rhonda Lenear's death or of Jahi Lenear, the search warrant affidavit lacks specific facts supporting the cell phone's seizure. *See Stocker v. State*, 693 S.W.3d 385, 388 (Tex. Crim. App. 2024).[8] The Trial Court erred in overruling the written motion to suppress in

[8] To the extent that the court of appeals read our opinion in Baldwin necessarily to require, as a prerequisite of probable cause, that an affidavit must establish (1) use of the cell phone either during, or

this case, as the search warrant lacks any specific facts connecting the Samsung SM-G781U with a pink case to the investigation underway.

E. Harm

1. Standard of Review

Where the erroneous admission of evidence has Fourth Amendment implications, the Court must "reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment":

> Without a constitutional basis, the Supreme Court would not have authority to make the Fourth Amendment exclusionary rule applicable to the states. As a result, the harm analysis for the erroneous admission of evidence obtained in violation of the Fourth Amendment must be Rule 44.2(a)'s constitutional standard.

Hernandez v. State, 60 S.W.3d 106, 108 (Tex. Crim. App. 2001).

2. Jahi Lenear was harmed by the erroneous denial of the motion to suppress and by the admission of the audiotape at trial

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> immediately before or after, commission of (2) the specific offense on trial, it was misguided. Such a showing is not always required before a magistrate may find that a search warrant affidavit "state[s] facts and circumstances that provide . . . probable cause to believe that . . . searching the telephone . . . is likely to produce evidence **in** the investigation of" certain criminal activity.

Stocker, 693 S.W.3d at 388

Jahi Lenear decided to plead guilty after the Court issued its ruling denying the motion to suppress in this case: "THE COURT: He just told us that he now wants to plead guilty because of your ruling." (3 R.R. at 63). This claim was raised during the motion for new trial. (2 Supp. R.R. 50); (2 Supp. R.R. at 32); (4 Supp. R.R. at Def. Hearing Ex. 4.). At no time did the prosecutor object to this claim or assert that there was some other reason that Jahi Lenear pleaded guilty. Similarly, the Court did not reject this claim. (3 R.R. at 63); (C.R. at 509-529).

Beyond underlying Jahi Lenear's decision to plead guilty, the recording obtained from the phone played heavily into the State's punishment arguments:

1) For support of the principle that Jahi Lenear planned Rhonda Lenear's death (4 R.R. at 54);
2) As evidence of Jahi Lenear's threats directed at Rhonda Lenear before her death (4 R.R. at 55); and
3) To play Rhonda Lenear's last words and characterizing her last actions (4 R.R. at 57).

The phone recording added a palpable and substantially more sinister light to a very sad and tragic scenario, and likely contributed to Jahi Lenear's extreme 65-year punishment.

Issue One, Part 2: The warrantless search of the Samsung SM-G781U with a pink case violated the Fourth Amendment and Article 18.0215

A. The State claimed that "implicit consent" from Rhonda Lenear's mother authorized the search Samsung SM-G781U with a pink case

Law enforcement obtained the password to the phone Jahi Lenear's residence from Rhonda Lenear's mother, who went unnamed during the hearing and did not testify at the motion to suppress. (3 R.R. at 31). Rather than obtaining a search warrant to authorize the forensic analysis of the Samsung SM-G781U with a pink case, law enforcement proceeded to search the phone under the theory that Rhonda Lenear's mother had provided "implied consent" to search the phone. (3 R.R. 31). No legal process, consent form, or testimony from Rhonda Lenear's mother was made part of the record. Other than having the password to Rhonda Lenear's phone, the State offered no reason why the prosecution believed Rhonda Lenear's mother had actual authority to consent to the search of the Samsung SM-G781U with a pink case.

B. Trial counsel obtained a ruling on the second motion to suppress, preserving error

Defense counsel filed a second written motion to suppress the search of the data contained within the Samsung SM-G781U with a pink case. (C.R. at 296-300). Before Jahi Lenear was arraigned and the jury was sworn, the Court conducted a hearing on both motions to suppress. (3 R.R. at 13-60). The Court denied the second motion to suppress, issuing oral findings. (3 R.R. at 58-60); (C.R. at 301).

C. This Court reviews the legal issues of "implicit consent" *de novo*

When a motion to suppress involves legal questions that do not depend on credibility or demeanor, the appellate court reviews those determinations *de novo*:

> In reviewing a trial court's ruling on a motion to suppress evidence and its determination of the reasonableness of either a temporary investigative detention or an arrest, appellate courts use a bifurcated standard of review. They must give "almost total deference to a trial court's determination of the historical facts that the record supports especially when the trial court's fact findings are based on an evaluation of credibility and demeanor." This "deferential standard of review in Guzman also applies to a trial court's determination of historical facts when that determination is based on a videotape recording admitted into evidence at a suppression hearing." Appellate courts also afford the same level of deference to a trial court's ruling on "application of law to fact questions," or "mixed questions of law and fact," if the resolution of those questions turns on an evaluation of credibility and demeanor. The appellate courts review de novo "mixed questions of law and fact" that do not depend upon credibility and demeanor.

Amador v. State, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007).

D. Argument

1. It is well-settled that law enforcement must obtain a warrant before searching a cell phone

It has been over a decade since the Supreme Court issued its seminal opinion in *Riley v. California*, holding that the unique qualitative and quantitative aspects of the data contained within cell phones necessitate that police obtain a warrant before searching a cell phone. *Riley v. California*, 573 U.S. at 401. Before the decision in *Riley*, the Court of Criminal Appeals independently arrived at the same conclusion in *Granville*:

> In sum, we conclude, as did the court of appeals, that a cell phone is not like a pair of pants or a shoe. Given modern technology and the incredible amount of personal information stored and accessible on a cell phone, we hold that a citizen does not lose his reasonable expectation of privacy in the contents of his cell phone merely because that cell phone is being stored in a jail property room. Officer Harrell could have seized appellant's phone and held it while he sought a search warrant, but, even with probable cause, he could not "activate and search the contents of an inventoried cellular phone" without one.

State v. Granville, 423 S.W.3d 399, 417 (Tex. Crim. App. 2014).

In addition to the protection afforded by the Fourth Amendment, Article 18.0215 imposes a warrant requirement that applies to searches of cell phones:

> A peace officer may not search a person's cellular telephone or other wireless communications device, pursuant to a lawful arrest of the person without obtaining a warrant under this article.

TEX. CODE CRIM. PROC., art. 18.0215(a). Under both Fourth Amendment and Texas jurisprudence, the default rule that in order to search a cell phone, law enforcement must obtain a warrant.

2. The State failed to furnish any proof that Rhonda Lenear's mother had actual or apparent authority to consent to a search of the Samsung SM-G781U with a pink case

a. There is no evidence that Rhonda Lenear's mother had legal authority to consent to a search of the phone

While consent is a valid exception to the Fourth Amendment's warrant requirement or to Article 18.0215, "[w]hen a prosecutor seeks to rely upon consent to justify the lawfulness of a search, [the prosecutor] has the burden of proving that the consent was, in fact, freely and voluntarily given." *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968). When relying upon the consent of a third person to establish the validity of a search, the prosecution must show that third person exercises "common authority over premises or effects." *United States v. Matlock*, 415 U.S. 164, 170 (1974).

The prosecutor made no such showing in this case. The phone was not found in Rhonda Lenear's mother's possession when it was discovered. (3 R.R. at 30). The prosecutor did not offer any testimony establishing that Rhonda Lenear's mother had ownership of either the residence at 9510 Walnut Glen Drive or the Samsung SM-G781U with a pink case, nor was it established that

Rhonda Lenear's mother had any form of access to or control over the premises. It was not established that Rhonda Lenear's mother ever used or possessed the Samsung SM-G781U with a pink case in the past. Knowledge of the phone's password is not indicative of ownership, and was knowledge of the password was not exclusive to Rhonda Lenear's mother. During testimony, Kari Lenear testified about the password to the phone. (3 R.R. at 49). Having failed to establish Rhonda Lenear's mother's legal authority to consent to a search of the Samsung SM-G781U with a pink case, the warrantless search of the phone was illegal.

b. Even if Rhonda Lenear's mother had authority to consent to search of the Samsung SM-G781U with a pink case, the police could not override Jahi Lenear's prior refusal to give consent to the search

It was undisputed that Jahi Lenear did not provide consent to search his residence or to search the Samsung SM-G781U with a pink case. Law enforcement scrambled to draft a search warrant for 9510 Walnut Glen Drive in light of Jahi Lenear's refusal to permit law enforcement to search the residence. Law enforcement obtained "implicit consent" from Rhonda Lenear's mother in an attempt to circumvent Jahi Lenear's refusal to cooperate.

In *Georgia v. Randolph*, the Supreme Court held that a person with shared access to property has no right to consent to a search that an objecting co-tenant refuses:

> Since the co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all. Accordingly, in the balancing of competing individual and governmental interests entailed by the bar to unreasonable searches [...], the cooperative occupant's invitation adds nothing to the government's side to counter the force of an objecting individual's claim to security against the government's intrusion into his dwelling place. Since we hold to the "centuries-old principle of respect for the privacy of the home,"

Georgia v. Randolph, 547 U.S. 103, 114-15 (2006). In light of Jahi Lenear's refusal to cooperate with law enforcement, law enforcement's decision to seek "implicit consent" is unreasonable and unlawful.

It does not appear that *Georgia v. Randolph* has been applied in the context of a search of a cell phone. However, the heightened societal expectations of privacy in a cell phone are akin to the privacy interests that protect one's home. *See Riley v. California*, 573 U.S. at 396-97 ("A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is."). Furthermore, none of the limitations

to the rule announced in *Georgia v. Randolph* apply here. *See Miller v. State*, 393 S.W.3d 255, 262 (Tex. Crim. App. 2012) (ongoing emergency); *State v. Copeland*, 399 S.W.3d 159, 164 (Tex. Crim. App. 2013) (vehicular search). Given the primacy of the cell phone as a focal point of personal, private information shared between spouses, it seems extremely likely that the protections announced in *Georgia v. Randolph* should extend to the contents of a cell phone.

E. Harm

As the harm resulting from the admission of the cell phone into evidence is the same under the theory that the seizure of the phone was not supported by probable cause and that the search of the phone was warrantless and unlawful, this section incorporates the same argument outlined *supra* at Issue One, Part 1(E).

PRAYER

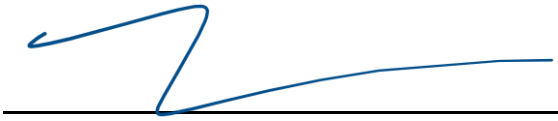
Jahi Lenear prays this this Court reverses the conviction in Cause 1723781 and remands this case for a new trial.

Respectfully Submitted,

NICOLAS HUGHES,
Attorney at Law
SBN: 24059981
SPN: 02328139
3515 Fannin Street
Houston, Texas 77004
Phone: 713-281-2684
Fax: 713-808-9444
Email: nicolas.hughes.law@gmail.com

CERTIFICATE OF SERVICE

I certify that a copy of the Appellate Brief has been electronically served upon the State of Texas on April 30, 2025.



NICOLAS HUGHES,

Attorney at Law

CERTIFICATE OF COMPLIANCE

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NICOLAS HUGHES,
Attorney at Law

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Nicolas Hughes on behalf of Nicolas Hughes
Bar No. 24059981
nicolas.hughes.law@gmail.com
Envelope ID: 100270758
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Nicolas Hughes		nicolas.hughes.law@gmail.com	4/30/2025 11:50:26 AM	SENT
Jessica Caird		caird_jessica@dao.hctx.net	4/30/2025 11:50:26 AM	SENT
Sean Teare		DAOeservice@dao.hctx.net	4/30/2025 11:50:26 AM	SENT