COURT OF APPEALS

FOURTEENTH SUPREME JUDICIAL DISTRICT

HOUSTON, TEXAS

ADRIAN SMITH

Appellant

VS.

NO. 14-24-00858-CR
(TR. CT. NO. 21-DCR-097768)

THE STATE OF TEXAS

Appellee

On Appeal From the 434TH District Court of Fort Bend County, Texas

APPELLANT'S BRIEF

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ORAL ARGUMENT REQUESTED

NO. 14-24-00858-CR

ADRIAN SMITH

Appellant

VS.

THE STATE OF TEXAS

Appellee

Identity of Parties and Counsel

The following is a complete list of all parties to the trial court's judgment appealed from and the names and addresses of all trial and appellate counsel.

HONORABLE J. CHRISTIAN BECERRA
434TH DISTRICT COURT
Fort Bend County
301 Jackson, Room 101
Richmond, Texas 77469

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Appellant will be referred to as Adrian in this Brief as he was throughout the trial.

The complainant Khalil Khan will be referred to as Khalil in this brief as he was throughout the trial.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

NO. 14-24-00858-CR

ADRIAN SMITH

Appellant

VS.

THE STATE OF TEXAS

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APPELLANT'S BRIEF

TO THE COURT OF APPEALS:

Appellant, ADRIAN SMITH, submits this brief to set aside the Judgment and Sentence in the 434TH District Court of Fort Bend County, Texas, the Honorable J. Christian Becerra presiding, convicting appellant in trial court Case No. 21-DCR-097768 of murder and sentencing him to confinement in the Institutional Division of TDCJ for 27 years.

STATEMENT OF THE CASE

Adrian was charged with murder. CR 10. A jury found Adrian guilty of

murder. CR 493, 502; 28 RR 114. The jury assessed punishment at 27 years in prison. CR 500, 502; 30 RR 27. Adrian did not file a Motion For New Trial. Adrian gave timely notice of appeal. CR 509. The trial court certified that Adrian has the right to appeal. CR 506.

ISSUES PRESENTED

ISSUE 1 THE TRIAL COURT MISDIRECTED THE JURY IN THE MURDER APPLICATION PARAGRAPHS WHICH OMITTED ADRIAN'S CULPABLE MENTAL STATE, FAILED TO DEFINE ADRIAN'S "OWN CONDUCT", AND FAILED TO STATE ADRIAN'S OWN CONDUCT CAUSED THE DEATH OF KHALIL.

ISSUE 2 THE TRIAL COURT ERRED IN REFUSING TO CHARGE THE JURY ON SUDDEN PASSION.

ISSUE 3 THE TRIAL COURT ABUSED ITS DISCRETION IN CHARGING THE JURY ON PARTIES.

ISSUE 4 THE TRIAL COURT ERRED IN REFUSING TO ADMIT INTO EVIDENCE DX-5 WHICH IS EXCERPTS OF AN AUDIO RECORDING OF ADRIAN'S COUSIN ARMON'S INCULPATORY POLICE INTERVIEW.

STATEMENT OF FACTS

The Players

Angel White (Angel) lived with the deceased complainant Khalil Khan (Khalil). She was the mother of two children from a prior marriage, Armon White (Armon) age 18 and Tyvon White (Tyvon) age 13. She also had a child with Khalil, Aniyah Khan, age 1. They all lived at a house on Sugar Mountain Street in Sugar

Land, Texas (Sugar Mountain). Khalil had a son from a prior relationship who did not live with them.

Appellant Adrian Smith(Adrian) is Angel's nephew. His mother (nicknamed FeeFee) lives in St. Louis. Adrian moved from St. Louis to live with Angel and her family at the Sugar Mountain home. He sometimes stayed over at his girlfriend Tashae Bonner's apartment (Tashae). Tashae let Adrian drive her maroon Nissan. Armon had several teenage friends who were involved in the events preceding Khalil's death: Taj Cox (Taj), Nicholas Saldua (Nico), and Taofik Adewodu (Taofik). 20 RR 9-12. These teenage friends testified at trial.

Khalil's Drug Use, Temper, Rage, Lack of Control

Angel said Khalil had a drug problem and a temper. She said he would go off and start screaming and yelling, had fits of rage, and was uncontrollable. Angel said Khalil would say "I got shooters on the ready". 24 RR 38, 105, 115. On July 17, 2021, Angel had texted Khalil not to come back to the house and that he was no good. 24 RR 108, 113. Angel told Detective Kelly Khalil was unstable, stayed at hotels and friend's houses, and was doing street drugs. 19 RR 73.

Khalil's Insurance Policy

At the time of the events relative to the case, Khalil was upset about not being allowed to see his son. 24 RR 50. Khalil's son Kafil Khan was named as the sole beneficiary of a $2 million life insurance policy on Khalil. 27 RR 42-43.

Angel Is Charged With Fraudulent Change Of Beneficiaries

On July 21, 2021, two weeks before Khalil's shooting death, Angel called the insurance company, represented herself to be Khalil, and changed the beneficiary designation on Khalil's life insurance policy to herself $1 million, Aniyah $500,000.00 and Kafil Khan $500,000.00. 19 RR 164, 166; 23 RR 134-135; 25 RR 67; 27 RR 44, 49-50.

Angel's Immunity Agreement

At the time of trial, Angel has a pending first degree felony charge of fraudulently securing execution of a document (the insurance beneficiary designations) by deception in cause no. 22-DCR-101956 in Fort Bend County. Angel testified she had been given a Limited Use Immunity Agreement by the Fort Bend County District Attorney's Office. (SX-247R). The agreement provided that none of Angel's testimony in Adrian's trial could be used against her in the felony fraud case or any potential charges related to Khalil's death. 24 RR 27, 29. Angel denied that any deal had been made regarding her pending felony fraud case. 19 RR 165; 24 RR 29; 25 RR 34-35. She testified she had collected $1.5 million in insurance proceeds for her and Aniyah. 25 RR 62. She admitted she hadn't told the police about the insurance policy. 25 RR 66.

The Conflicts Leading Up To Khalil's Death

Taofik

The day of the shooting, the first conflict occurred when Taofik visited the Sugar Mountain home. Khalil felt Taofik had been disrespectful because Taofik didn't look at Khalil or acknowledge him. 20 RR 96. Taofik said Khalil started huffing and puffing and yelling. 20 RR 96. Taofik said Khalil said I have some shooters I can get. 20 RR 97. Taj recalled there was an argument between Taofik and Khalil about Taofik not saying hello to Khalil. 21 RR 103-105, 121.

Taofik recalled he was present at 3 events: the Taofik disrespect incident at Sugar Mountain, a later confrontation at Taj's house, and at the Ice Box gas station (Taj's house and the Ice Box are discussed below). 20 RR 97-98.

Taj

Taj said he couldn't remember the details of most of the events before the shooting, even after reading his police interview. An excerpt of his interview was read to the jury as a past recollection recorded. 21 RR 137-138.

Taj recalled a fight between Khalil and Armon at his house. He believed his dad had to break the fight up. 21 RR 114-115. After the fight the boys went to Armon's house to help him pack his clothes. 21 RR 115.

Nico

Angel and Khalil then went to Nico's home. Khalil kept going on and on. Angel was trying to defuse things. 24 RR 54. Angel and Nico would get Khalil in the car, but he'd jump out again. Khalil did not want to go home. 24 RR 57-58.

Nico testified about his recollections of Khalil and Angel's visit that night. 20 RR 18-22. He said Khalil was a little volatile. 20 RR 20.

Ice Box

Angel took Khalil to a gas station named Ice Box. Taj, Taofik, and Armon were there. 24 RR 59.

Nico testified about his recollection of events at the Ice Box. 20 RR 26-42. He recalled it as volatile words between Khalil, Armon, and Adrian. 20 RR 31, 33-34, 38-44-47. Nico said the conflict was not resolved, instead it escalated. 20 RR 31, 60.

Nico tried to calm things down. Khalil was still hostile. Khalil was going off. 24 RR 60.

Angel testified Adrian was also at the Ice Box. She said Adrian was wearing a hoodie sweatshirt with a cartoon character on it. She said the sweatshirt belonged to Armon. Angel said Adrian reached into the car where Khalil was. They were arguing. She drove off. Angel said Adrian was upset and got aggressive. 24 RR

64-66. Angel said it was getting out of control, and Khalil was screaming when she drove off. 24 RR 67-68.

Khalil told Angel to take him to a Shell station. There Khalil met up with his friend Sammie (Sammie) and left with him. 24 RR 68-71. Khalil was still hostile when he left with Sammie. 24 RR 72.

Angel Kicks Adrian Out

Angel said on her way home she decided Adrian should not live with them anymore. Angel called her sister/Adrian's mom Fee Fee. She told Fee Fee Adrian needed to move out. 24 RR 73.

Angel said when she arrived home, Adrian was in his room getting his stuff. Angel did not recall what clothes Adrian had on. 24 RR 75-77. They had no conversation, and Adrian left. 19 RR 59.

Sammie And Khalil Confront Adrian And Armon At Kroger's

Sammie Shoots At Adrian And Armon

Armon told Angel there was a shooting at Kroger's. Armon was crying. Armon said the guy with Khalil fired the shots. Afterwards Sammie dropped Khalil off at the Sugar Mountain house. Khalil was raging and kept walking around. When Angel asked what happened, Khalil said you can't bring a knife to a gunfight. Angel said Khalil wasn't making any sense. 24 RR 76-81; 142-143; 25 RR 31-32.

Taofik testified about the events leading up to the shooting but he claimed he couldn't remember much, even after he was shown video surveillance of some of the events. 20 RR 62, 67-79, 92. The video of his prior police interview was played to Taofik to refresh his memory. 20 RR 90-93. Taofik was not at the Kroger's but Taofik said Armon called him and told him Khalil just shot at him. 21 RR 118-119.

Angel's Testimony About The Shooting Of Khalil

After Khalil returned from the Kroger's shooting, he was still raging. Khalil kept going up and down the stairs, yelling, and making a lot of noise and threats. 24 RR 84, 147.

Angel said she saw movement through the frosted glass of her front door. Angel said when she opened the door she saw Adrian. Angel said Adrian had on a white hoodie with a cartoon character and a mask on the bottom part of his face. 24 RR 84-85. Angel said it was the same hoodie Adrian had on at the Ice Box. 24 RR 86. Angel said she told Adrian don't come in here and shut the door.

Angel testified that when Adrian came to the front door Khalil got a big knife and went towards the back door. 24 RR 88-89. Angel said Adrian went to the back of the house, although she didn't actually see him. Angel said she just saw Adrian go around the bushes. Then she heard shots and saw Khalil fall. 19 RR 64; 24 RR 89-92. Angel said there were a lot of shots. 24 RR 91.

Angel said she went back to the front and saw Adrian running away. 24 RR 94. A neighbor said she heard saw a figure getting in and out of a black 4 door car. 16 RR 46.

The Crime Scene

The shots were fired from a small patio area. Detective Longtin noticed the back door was slightly ajar. 22 RR 73-74. The bullets were fired through the windows and blinds in the back door and the door itself. There were 11 shell casings located in the area. SX-34-38, 41-43, 135-136, 163. The knife was found near Khalil's body. SX-133-134.

Issues With Angel's Credibility

After Khalil's death Angel told the police repeatedly she hadn't talked to her son Armon and didn't know where Armon was. 19 RR 67, 85-86, 107-109, 122-124. Detective Longtin said he was never able to locate Armon and Angel never told the police where he was. He believes Angel and Armon are communicating with each other. The police have never been able to get a DNA sample from Armon. 23 RR 136-139.

Angel falsely told the police her son Armon and Adrian never hung out together. 19 RR 68.

Angel did not give police consent to search her and Tyvon's phones until August 10, 2021. 19 RR 120-121; 24 RR 111-113.

Angel didn't recall that she sent a text message to Adrian to call her and come pick up Armon after the incident at Taj's. 24 RR 132.

Angel didn't recall that at the Ice Box Armon reached into the back passenger seat to attack Khalil or Armon taking a swing at Khalil at Taj's. 24 RR 134-135. Detective Kelly said based on his initial interview with Angel, there didn't appear to be any prior major issues. 19 RR 53-38.

After Khalil got shot, Angel called Nico but did not call Armon. 24 RR 140-144.

In cross-examination, the defense established that when Angel discussed the events during a walk through with the police, Angel told the police she told Adrian at the front door stop you're not coming in my house and I'm going to call the police, and she pulled out her phone and called 911. 24 RR 152-153. That segment of the walk through video was played to the jury. 25 RR 6-12.

The 911 call was played to the jury, and Angel admitted she could not hear any gunshots on the 911 call. 19 RR 182; 25 RR 40-41.

The 911 operator asked Angel who shot Khalil. Angel did not tell the operator Adrian shot Khalil. 25 RR 41-43, 66.

Angel testified she couldn't remember if Armon was at the house at the time of the shooting. 19 RR 125; 25 RR 12-13. When Angel was interviewed at the shooting scene by Officer Slusser regarding who killed Khalil, Angel said "they"

came to her house. 16 RR 124-125, 143-144. Detective Kelly said Armon said he knew Khalil had a knife. The police did not share that information with anyone. Detective Kelly said if someone knew Khalil had a knife that was a clear indicator that person was at the scene. 19 RR 204-206.

When Officer Estrada asked Angel who shot Khalil, she did not say Adrian. 17 RR 72,74.

In cross-examination, Angel admitted she did not tell the police anything about the events leading up to the shooting: the conflict with Armon, the conflict at Taj's house, the incident at the Ice Box or the Kroger shooting. 25 RR 47-49. Angel didn't want the police or E.M.S. or the CAC talking to Tyvon. 16 RR 136-140, 142; 17 RR 18-22; 19 RR 88-89; 23 RR 124; 25 RR 49-54.

The police did not believe Angel was being forthcoming or truthful.

Detective Gless at first thought Angel was being truthful but his opinion of her changed. 19 RR 69. Angel failed to divulge that she was present at some of the conflicts leading up to the shooting. 19 RR 105, 109-113, 191-193. Detective Gless wondered if Angel was trying to cover for Armon. 19 RR 125. Detective Gless disputed Angel's claim that she could see someone through her door. 19 RR 175-177. Detective Kelly said Angel, Armon, and Sammie were all uncooperative.

Detective Longtin said he felt Angel was hiding Armon or at least keeping Longtin from finding Armon. 22 RR 101. Longtin said Angel had been

uncooperative and tried to minimize Armon's involvement. Longtin said Angel never mentioned any of the prior arguments, fights, or Kroger shooting leading up to Khalil's shooting. The police had to confront Angel with the information they learned about the other events. 23 RR 121-122. Angel had actually witnessed the fight at Taj's house between Armon and Khalil. 23 RR 122-123, 127. Angel kept officers from interviewing Tyvon. 23 RR 124. Angel also witnessed the altercation at the Ice Box. 23 RR 127. Longtin said he had to go back to talk to Angel multiple times because things she said were incomplete or untrue. There were times Longtin knew Angel was not telling the truth. 23 RR 129-130.

SUMMARY OF THE ARGUMENT

ISSUE 1 THE TRIAL COURT MISDIRECTED THE JURY IN THE MURDER APPLICATION PARAGRAPHS WHICH OMITTED ADRIAN'S CULPABLE MENTAL STATE, FAILED TO DEFINE ADRIAN'S "OWN CONDUCT", AND FAILED TO STATE ADRIAN'S OWN CONDUCT CAUSED THE DEATH OF KHALIL.

Defense counsel did not object to the application paragraphs in the guilt-innocence charge.

The application paragraphs omit Adrian's culpable mental state, fail to specify what Adrian's "own conduct" was, and fail to state that Adrian's own conduct caused the death of Khalil.

The whole jury charge, evidence, argument of counsel, and other relevant information all weigh in favor of egregious harm.

The charge authorized the jury to convict Adrian without finding Adrian guilty of the required mens rea, actus reus, and causation. This is egregious harm requiring reversal.

ISSUE 2 THE TRIAL COURT ERRED IN REFUSING TO CHARGE THE JURY ON SUDDEN PASSION.

The defense objected to the omission of a sudden passion from the punishment charge.

Some evidence raised sudden passion even if it was weak, contradicted, or unbelievable.

The omission of the sudden passion charge prevented defense counsel from being able to argue the mitigating effects of sudden passion. If the charge had been included and found in Adrian's favor, Adrian's sentence would have been capped at 20 years. There was no other significant mitigating evidence introduced in punishment which magnified the harm caused by the omission of the requested sudden passion instruction.

ISSUE 3 THE TRIAL COURT ABUSED ITS DISCRETION IN CHARGING THE JURY ON PARTIES.

The parties charge was not raised by the evidence. The parties charge lowered the State's burden to prove Adrian guilty as the principal by authorizing the jury to find Adrian guilty under the parties charge. Alternatively, the parties charge failed to identify the parties and the manner and means that they aided each other.

ISSUE 4 THE TRIAL COURT ERRED IN REFUSING TO ADMIT INTO EVIDENCE DX-5 WHICH IS EXCERPTS OF AN AUDIO RECORDING OF ADRIAN'S COUSIN ARMON'S INCULPATORY POLICE INTERVIEW.

The proffered excerpts of Armon's statements to Detective Longtin contained information that should have been admitted in evidence as admissions against interest.

The admissions were that Armon was at the Sugar Mountain home at the time Khalil was killed, that the sweatshirt allegedly worn by the shooter belonged to Armon, and that Armon was familiar with the nearby neighborhood where the sweatshirt was found.

There was ample corroborating evidence that clearly indicated the trustworthiness of Armon's statement.

Armon had ample motive to kill Khalil who had assaulted him, threatened to kill him, and caused him to be shot at.

Other evidence indicated he was at the shooting scene when Khalil was killed. Armon was aware that Khalil had armed himself with a knife at the back door where the shooting occurred. This was information the police had not released to the public.

The phone conference with the detective was initiated by Armon. It was not a custodial interrogation. The conversation was not confrontational, accusatory, or heated.

Regarding harm, the evidence was hotly contested and did not overwhelmingly establish Adrian's guilt. The exclusion of Armon's inculpatory admissions hurt the defense effort to portray Armon as an alternate perpetrator. The State never conceded that Armon was at the home. This admission would have further undermined the credibility of Angel who by her own account was the only eyewitness to Khalil's shooting.

ARGUMENT

ISSUE 1 THE TRIAL COURT MISDIRECTED THE JURY IN THE MURDER APPLICATION PARAGRAPHS WHICH OMITTED ADRIAN'S CULPABLE MENTAL STATE, FAILED TO DEFINE ADRIAN'S "OWN CONDUCT", AND FAILED TO STATE ADRIAN'S OWN CONDUCT CAUSED THE DEATH OF KHALIL.

Application Paragraphs

These are the application paragraphs in Appellant's case.

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that the Defendant, Adrian Smith, on or about the 3rd day of August, 2021, in Fort Bend County, Texas, did then and there by his own conduct, or acting with intent to promote or assist the commission of the offense, aid or attempt to aid another person to intentionally or knowingly cause the death of Khalil Khan, by shooting Khalil Khan with a firearm, then you will find the defendant guilty of the offense of Murder as charged in the indictment.

Additionally, if you find from the evidence beyond a reasonable doubt that the Defendant, Adrian Smith, on or about the 3rd day of August, 2021, in Fort Bend County, Texas, did then and there by his own conduct, or acting with intent to promote or assist the commission of the offense, aid or attempt to aid another person with intent to cause serious bodily injury to an individual, namely, Khalil Khan, commit an act clearly dangerous to human life, to-wit: by shooting Khalil Khan with a firearm, then you will find the Defendant guilty of the offense of Murder as charged in the indictment.

The application paragraphs omit that Adrian acted intentionally and knowingly with regard to his own conduct, fails to specify what Adrian's own conduct was, and fails to state that Adrian's own conduct caused the death of Khalil.

There was no objection to the application paragraphs.

Standard of Review

When a defendant fails to object to error in the jury charge, reviewing courts consider whether the error results in egregious harm. An erroneous jury charge is egregiously harmful if it affects the very basis of the case, deprives the accused of a valuable right, or vitally affects a defensive theory. *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984).

Egregious harm is a fact-specific analysis and is a difficult standard to meet. To determine whether jury charge error resulted in egregious harm an appellate court should look at the entire record. Specifically, the appellate court should consider (1) the entirety of the charge; (2) the state of the evidence, including the contested issues and weight of probative evidence; (3) the arguments of counsel; and (4) any other relevant information revealed by the trial record as a whole. *Alkayyali v. State*, 2025 WL 1318487 at 7 (Tex. Crim. App.).

Entirety Of The Jury Charge

The entirety of the jury charge weighs in favor of finding egregious harm. The

abstract portion of the charge properly defined murder under Tex. Penal Code § 19.01(b)(1) and (2). However, the application paragraphs failed to require the jury to properly apply these definitions. Error in the abstract paragraph of a jury charge does not constitute egregious harm when the application paragraph correctly instructs the jury. Reversible error may occur when the abstract paragraph fails to provide a statutory definition of an element needed by the jury to determine whether the State proved the element beyond a reasonable doubt. There is no reason why a failure in the application paragraphs should be treated differently. *Alkayyali,* 2025 WL 1318487 at 7.

The application paragraph is the heart and soul of the jury charge because it specifies the factual circumstances under which the jury should convict or acquit *Vasquez v. State*, 389 S.W.3d 361, 366 (Tex. Crim. App. 2012).

As written, the jury charge authorized the jury to convict Adrian of murder for his own conduct without determining that Adrian acted intentionally or knowingly, without stating what Adrian's own conduct was, and without stating that Adrian's own conduct caused the death of Khalil.

This factor weighs strongly in favor of egregious harm.

The Evidence

A defendant suffers egregious harm when elements of an offense are disputed

at trial and the jury is not required to find those elements to be proven beyond a reasonable doubt prior to convicting a defendant. *Sanchez v. State*, 209 S.W.3d 117, 125 (Tex. Crim. App. 2006).

In this case, Adrian's guilt was hotly contested. The credibility and motives of the only witness to the shooting were vigorously questioned. There was also circumstantial evidence that Armon may have killed Khalil. It is undisputed that Khalil was raging and uncontrollable and had threatened to kill Adrian and Armon and caused them to be shot at.

Argument Of Counsel

Both sides focused primarily on the issue of whether there was sufficient evidence to find Adrian guilty beyond a reasonable doubt as a principal. The State acknowledged that there were others who had motives to kill Khalil, either in self-defense or defense of a third party or for money. The credibility of the State's witnesses, especially the only alleged witness to Khalil's shooting, was highly suspect as demonstrated by multiple detectives who testified in the case.

This factor weighs in favor of egregious harm.

Other Relevant Information

Angel's son Armon was still a viable suspect at the time of Adrian's trial. Angel had failed to divulge multiple incidents of serious conflict between Khalil and

Armon before and on the day of Khalil's shooting. Angel was under indictment for criminally changing the beneficiaries on Khalil's $2 million life insurance policy to herself and Aniyah, her child with Khalil. Angel was given Limited Use Immunity by the State to testify for the State. Angel and Taofik testified with their defense counsel standing by in the courtroom.

This factor weighs in favor of egregious harm. Because the jury verdict is general by statute, we can only speculate under what theory the jury might have found Adrian guilty. A defendant should be found to have suffered reversible error anytime he is convicted based on a jury charge that authorizes a jury to convict him without first finding every constituent element of the charge offense. *Alkayyali,* 2025 WL 1318487 at 11-12 (Yeary, J Concurring).

The defective application paragraphs failed to require the jury to find beyond a reasonable doubt that Adrian had the required culpable mental state to be convicted of murder, failed to state what Adrian's "own conduct" was, and failed to state Adrian's own conduct caused Khalil's death. If a jury charge fails to require that the State prove every contested element of an offense beyond a reasonable doubt, this results in egregious harm. *Alkayyali,* 2025 WL 1318487 at 1. Compare *Chatman v. State*, 846 S.W.2d 329-330 (Tex. Crim. App. 1994) which held that the following unobjected to application paragraph was sufficient when it told jurors to convict-

> if you believe from the evidence beyond a reasonable doubt that (in particular county on or about a specific date) the defendant (name), either acting along or as a party, as that term has been defined, intentionally or knowingly caused the death of an individual (name) by shooting him with a deadly weapon, namely: a firearm.

That charge included the culpable mental state and stated the defendant caused the death of the complainant by shooting him. Adrian's application charge contained none of those elements.

Adrian suffered egregious harm, and the case should be reversed and remanded to the trial court.

ISSUE 2 THE TRIAL COURT ERRED IN REFUSING TO CHARGE THE JURY ON SUDDEN PASSION.

The defense requested a special issue in sudden passion in the punishment charge. 29 RR 108-110. The trial judge denied the defense request. 29 RR 117.

It must first be determined if the charge was erroneous. If the charge is erroneous and the errors are preserved by timely objection, the record must only show some harm to mandate reversal.

Raising Sudden Passion

At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. Tex. Penal Code § 19.02(d) Sudden passion means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation. Tex. Penal Code § 19.02(a)(2). Adequate cause means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection. Tex. Penal Code § 19.02(a)(1).

In determining whether sudden passion was an issue in the punishment phase of a trial, appellate courts review the record to see if there was some evidence that: (1) the defendant acted under the immediate influence of terror, anger, rage, or resentment; (2) the defendant's sudden passion was induced by some provocation by the victim and such provocation would commonly produce such passion in a person of ordinary temper; (3) the defendant committed the murder before regaining his capacity for cool reflection; and (4) there was a causal connection between the

victim's provocation, the defendant's passion, and the homicide. *Beltran v. State*, 472 S.W.3d 283, 294 (Tex. Crim. App. 2015).

A defendant that presents evidence of sudden passion is entitled to an instruction on this mitigating circumstance even if that evidence is weak, impeached, contradicted, or unbelievable. *Trevino v. State*, 100 S.W.3d 232, 238 (Tex. Crim. App. 2003) (per curiam). The question is whether there was any evidence from which a rational jury could infer sudden passion. *Moore v. State*, 969 S.W.2d 4, 11 (Tex. Crim. App. 1998). Anything more than a scintilla of evidence is sufficient to entitle a defendant to a sudden passion instruction at punishment. *Jones v. State*, 984 S.W.2d 254, 257 (Tex. Crim. App. 1998) (quoting *Bignall v. State*, 887 S.W.2d 21, 23 (Tex. Crim. App. 1994).

Sudden Passion Was Raised By The Evidence

Defense counsel properly argued that there was circumstantial evidence sufficient to merit a sudden passion jury issue. 29 RR 109-110. There had been several confrontations between Adrian and Khalil in the hours before Khalil's death, including one 15 minutes before Adrian and Armon got a voicemail from Khalil threatening their lives. There was evidence Khalil and Sammie had shot at Adrian and Armon at Kroger's 43 minutes before Khalil was shot. Defense counsel hypothesized that Adrian had gone to the Sugar Mountain house to protect Armon

who went to the house to retrieve his X-Box. The detectives testified they believed Armon was at the house when the shooting occurred. 19 RR 204-206; 23 RR 139,143. There was evidence Adrian was at the house and that Khalil reacted by going to the back door with a large knife. Khalil was still raging and kept walking around the house just before Adrian arrived. 24 RR 80, 84, 147. Defense counsel argued Khalil confronted Adrian with the knife at the back door. 24 RR 84, 88-92. Such a provocation could have produced terror, anger, or rage in Adrian or in a person of ordinary temper.

Adrian could have shot before regaining his capacity for cool reflection. Eleven shots were fired rapidly through the door. 17 RR 191, 196-198; 18 RR 34. This supports a finding that the shooter fired under the influence of sudden passion (terror, anger, or rage). This scenario supported a causal connection between Khalil's provocation, Adrian's sudden passing passion, and the homicide. See *Newkirk v. State*, 506 S.W.3d 188, 193 (Tex. App. – Texarkana 2016).

Evidence Offered In Support Of Defensive Issues Is Viewed In The Light Most Favorable To The Defense

The State's arguments against the sudden passion charge do not support the denial of the sudden passion charge.

The State argued Adrian never acknowledged he was there. The State itself presented eyewitness and forensic testimony that Adrian and Armon had been verbally threatened and shot at by Khalil, that Adrian and Armon were both at the house at the time of the shooting, and that Khalil had grabbed a large knife and gone to the back door where the shooting occurred.

The appellate court should review evidence offered in support of a defensive issue in the light most favorable to the defense. *Granger v. State*, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999); *Griffin v. State*, 461 S.W.3d 188, 192 (Tex. App. – Houston [1st Dist.] 2014).

Appellate Review Should Focus On Evidence

Supporting The Charge On Sudden Passion

The appellate court's duty is to look at the evidence supporting the charge on sudden passion, not the evidence refuting it. Even if the evidence is weak, contradicted, impeached, or unbelievable, a defendant is entitled to a sudden passion charge if there is "some" evidence to support sudden passion. *Beltran v. State*, 472 S.W.3d 283, 294 (Tex. Crim. App. 2015); *Trevino v. State*, 100 S.W.3d 232, 238-239 (Tex. Crim. App. 2003) (per curiam); *Rodriguez v. State*, 2022 WL 94755 at 1 (Tex. App. – San Antonio).

In trial, the State cited *Griffin v. State*, 461 S.W.3d 188 (Tex. App. – Houston [1st Dist.] 2014). In *Griffin*, the Court of Appeals held that the defendant's testimony that he was in fear for his life because the decedent acted first and went for his pistol was not sufficient to require a sudden passion charge. 461 S.W.3d at 192-194. The appellate court said the other person acting first and going for his pistol did support provocation, but that testimony standing alone did not support a finding that the defendant acted under the immediate influence of a passion such as terror, anger, rage, or resentment. 461 S.W.3d at 193-194. The appeals court noted there was no other evidence in the record to demonstrate sudden passion such as terror, anger, rage, or resentment.

Griffin is distinguishable from Adrian's case because in Adrian's case there is other evidence to raise the issue of sudden passion such as terror, anger, or rage. As pointed out by defense counsel, the evidence was undisputed that Khalil had grabbed a large knife and headed to a door at the back of the house where the shooting immediately occurred. 24 RR 84, 88-92; 29 RR 109. The scene supported that there was some sort of confrontation between Adrian and Khalil. 29 RR 110. The knife was found next to Khalil's body. SX-133 and 134. The door had been opened. 22 RR 73-74. The shooter fired immediately after Khalil headed to the back door. The shooter fired 11 rounds rapidly through the door. 17 RR 191, 196-198; 18 RR 34; 19 RR 64; 24 RR 87-92. *Rodriguez v. State,* 2022 WL 947577 at 5 (Tex. App. San

Antonio), found that numerous random knife cuts and stabs supported the sudden passion elements of terror/fear/rage and lack of cool reflection.. Likewise, shots fired in rapid succession supports the sudden passion factor. *Trevino v. State*, 100 S.W.3d 232, 241 (Tex. Crim. App. 2003). In Adrian's case, sudden passion was raised by the location and manner of the shooting including the rapid fire of numerous shots through the door.

Fifteen minutes before, Adrian and Armon had received a voicemail from Khalil threatening their lives. 29 RR 110. Not long before that Khalil and Sammie had shot at Adrian and Armon at Kroger's. Armon, crying, had called his mother about that shooting. 24 RR 76-81, 142-143; 25 RR 31-32; 29 RR 10. Angel testified that Khalil had been out of control and extremely agitated the whole day and was still agitated and upset right before the shooting occurred. 24 RR 80, 84, 147. It is certainly possible that Adrian had gone to the Sugar Mountain house to protect Adrian when Adrian tried to retrieve something he had left there. Regardless of whether Khalil or Adrian opened the back door, Adrian could have been startled by being confronted by Khalil, still raging, either holding a big knife or lunging at Adrian with the knife. Under these circumstances, Adrian's mind could have been rendered incapable of cool reflection. Additionally, there would be a causal connection between Khalil's provocation, the passion (fear, terror, anger), and the homicide. *McKinney v. State*, 179 S.W.3d 232 (Tex. Crim. App. 2003).

While the State may cite evidence presented at trial that does not support sudden passion, the appellate court's duty is to look at the evidence supporting the sudden passion charge not the evidence refuting it. *Sanchez v. State*, 745 S.W.2d 353, 357 (Tex. Crim. App. 1988).

In *Trevino v. State*, 100 S.W.3d 232-233 (Tex. Crim. App. 2003), the Court noted that exactly what happened the day the defendant shot his wife to death was the subject of heated debate at trial. The State's witnesses portrayed the incident as a cold-blooded murder by a controlling and abusive husband, who after the murder, staged the crime scene to look like self-defense. The defense argued that the shooting occurred in self-defense after a heated argument and struggle. The Court of Criminal Appeals reversed the conviction where the defendant was denied a jury charge on sudden passion because there was some evidence that the defendant was under the immediate influence of sudden passion.

Harm

Because the omission of the sudden passion charge was objected to, reversal is required if there is some harm.

If there is a grave doubt as to harmlessness, the reviewing court must reverse. *Burnett v. State*, 88 S.W.3d 633, 637-638 (Tex. Crim. App. 2002).

In analyzing whether objected to charge error caused some harm, the appellate court should consider four factors: (1) the entire charge; (2) the state of the evidence; (3) jury arguments; and (4) any other relevant information in the record. *Campbell v. State*, 664 S.W.3d 240, 245 (Tex. Crim. App. 2022); *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984).

Regarding "some harm" *Arline v. State*, 721 S.W.2d 348, 351 (Tex. Crim. App. 1986) provides:

> Presumably, this Court chose the term "some" to indicate the minimum degree of harm necessary for reversal of cases involving preserved charging error. However, that term was left undefined. We now expressly find that, in the context of *Almanza*, supra, and Article 36.19, supra, the presence of *any* harm, regardless of degree, which results from preserved charging error, is sufficient to require a reversal of the conviction. Cases involving preserved charging error will be affirmed only if *no* harm has occurred.

In *Trevino v. State*, 100 S.W.3d 232 (Tex. Crim. App. 2003), the defendant was sentenced to 60 years. The State argued that the jury's rejection of self-defense demonstrated that there was no harm in not charging in sudden passion. The Court

of Criminal Appeals held that it could not say with fair assurance that the error in not charging on sudden passion did not have an injurious effect in determining the punishment verdict. Further, the Court said it could not conclude that had the jury received an instruction of sudden passion, the jury would not have made an affirmative finding on the issue. This amounted to some harm sufficient to reverse. 100 S.W.3d at 243.

Submitting sudden passion would have been a significant mitigating factor for the jury to consider, which defense counsel did not have an opportunity to argue. This shows some harm sufficient to reverse. *Rodriguez v. State*, 2022 WL 947577 at 5 (Tex. App. – San Antonio).

In *Beltran*, the defendant was convicted and sentence to 70 years. The Court of Criminal Appeals reversed for failure to give a sudden passion charge, and remanded the case for a harm analysis. 472 S.W.3d at 295-296. On remand, the Fifth Court of Appeals found harm because it felt a likelihood existed the jury could have believed Beltran acted out of sudden passion. The Court of Appeals stated that the jury could have rejected Beltran's self-defense claim because the jury believed Beltran could have retreated or because the jury felt the force used was not reasonably necessary, and still determine that Beltran killed the complainant after being provoked by the complainant's sexual assault. The Court of Appeals noted

that the State pointed to significant evidence showing Beltran's, state of mind before and after the murder, but that did not negate sudden passion because the critical period was when the killing occurred. *Beltran v. State*, 2016 WL3749707 at 7 (Tex. App. – Dallas). The Court of Appeals further stated that even if Beltran displayed consciousness of guilt after the murder, as demonstrated by him staging a robbery and lying during interrogation, which established that he committed the offense, that would not preclude a finding that he killed while under the immediate influence of sudden passion. The Court of Appeals noted that even though the punishment charge said the jury could consider all the facts shown in evidence, that did not ameliorate the omission of the sudden passion instruction which would have capped punishment at 20 years. The Court of Appeals stated that even though defense counsel argued for mercy, he could not address the merits of sudden passion. Finally, the Court of Appeals noted there were no other significant mitigating factors in the record, magnifying the potential effect that the omission of the requested instruction had on the jury's assessment of punishment. *Beltran v. State*, 2016 WL3749707 at 7 (Tex. App. – Dallas).

The analysis in the *Beltran* remand is squarely on point for the harm analysis in Adrian's case.

ISSUE 3 THE TRIAL COURT ABUSED ITS DISCRETION IN CHARGING THE JURY ON PARTIES.

The defense made multiple objections to the parties charge. 27 RR 58-65, 69-70, 72-73. The objections were as follows.

1) No evidence supports a law of parties charge because there is no affirmative proof that anyone committed an act in furtherance of the crime that is alleged to have been committed by Adrian by his own acts. No one else besides Adrian was charged with this murder. 27 RR 61-62.

2) Alternatively, there was no evidence someone else committed the murder and Adrian did an act in furtherness of that crime. 27 RR 63-64.

3) There was no evidence anyone did anything to help anyone else commit this murder. 27 RR 64-65, 69.

4) A request for the charge to require the jury to name the co-parties and the manner and means of how the parties aided or abetted each other. 27 RR 70.

The trial court overruled the defense objections and requests. 27 RR 72.

If there is a grave doubt as to harmlessness, the reviewing court must reverse. *Burnett v. State*, 88 S.W.3d 633, 637-638 (Tex. Crim. App. 2002).

In analyzing whether objected to charge error caused some harm, the appellate court should consider four factors: (1) the entire charge; (2) the state of the evidence;

(3) jury arguments; and (4) any other relevant information in the record. *Campbell v. State*, 664 S.W.3d 240, 245 (Tex. Crim. App. 2022); *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984).

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Inclusion Of The Parties Charge Caused Some Harm

Entire Charge

This factor supports a finding of some harm.

The principal application paragraphs were severely flawed and caused egregious harm. See Issue 1.

In addition to objecting to any parties charge, the defense objected to the failure of the parties charge to name the co-parties and the manner and means of how the parties aided or abetted each other. The State argued no additional instructions about who were parties and the manner and mean by which they assisted each other were necessary. 27 RR 70-71. Failure to include an application paragraph for the parties charge injures the rights of a defendant. It deprives the defendant of a neutral and unbiased application of law. *Williams v. State*, 547 S.W.2d 18 (Tex. Crim. App. 1977). The complete failure to apply the law to the facts is reversible error. *Beggs v. State*, 597 S.W.2d 375, 379 (Tex. Crim. App. 1980); *Plata v. State*, 926 S.W.2d 300, 304 (Tex. Crim. App. 1996), overruled on other grounds, *Malik v. State*, 953 S.W.2d 234, 239 (Tex. Crim. App. 1997) ; *Johnson v. State*, 739 S.W.2d 299 (Tex. Crim. App. 1987) (plurality opinion).

A line of cases has held that a defendant is entitled on proper request or objection in the court to – in *Plata's* terms – "an application paragraph specifying all of the conditions to be met before a conviction under a parties theory is authorized". *Plata v. State*, 926 S.W.2d 300, 304 (Tex. Crim. App. 1996), 739 S.W.2d 299 (Tex. Crim. App. 1987) (plurality opinion); accord *Scott v. State*, 768 S.W.2d 308-310 (Tex. Crim. App. 1989). See also *Ransom v. State*, 920 S.W.2d 288, 303 (Tex. Crim. App. 1994).

Johnson and *Scott* require that on request the trial court specify in the application paragraph that the state must prove all the following:

1) The specified elements of the guilt of the primary actor;

2) That the defendant solicited, encouraged, directed, aided, or attempted to aid the primary actor's commission of the offense; and

3) That the defendant did this "with intent to promote or assist the commission of the offense" by the primary actor.

Appellant asks this Court to apply this line of cases to Adrian's case.

There is conflicting authority. Several Texas courts have refused to find error in the rejection of defendants' requests for more specific or elaborate instructions on parties. See, for example, *Cunningham v. State*, 848 S.W.2d 898, 906 (Tex. App. – Corpus Christi – Edinburg 1993, pet. ref'd) (rejecting contention that "the charge should have stated the manner and means or specific acts by which appellant was guilty as an accomplice"). Here the parties application paragraph fails to specify who the principal actor was, fails to name who the parties were, and fails to specify what acts the parties did to aid one another.

No Evidence Supported Parties Charge

This factor supports a finding of some harm.

The evidence did not support a parties charge. There was no evidence that any of the persons in conflict with Khalil (Taj, Taofik, Nico, or Armon) aided Adrian in committing the murder. Likewise, there was no evidence that Adrian aided Taj, Taofik, Nico, or Armon in committing the murder. There was evidence Khalil displayed anger, aggression, and hostility towards Taj, Taofik, Nico, Armon and Adrian. The fact that these young men were sometimes present during the various incidents involving Khalil does not support a parties charge. Mere presence does not establish party status. The effect of the parties charge was to lessen the State's burden to prove that Adrian killed Khalil. The clear lack of evidence to support a parties charge is reflected by the absence of argument made by the State on the parties theory. The State never mentions the parties theory in its response to both defense motions for directed verdict. 27 RR 37-38.

Jury Arguments

The jury arguments support a finding of some harm.

Both sides addressed the parties issue in final argument. In the State's opening final arguments, the prosecutor makes reference to the parties theory, and states there is plenty of blame to go around on Angel and Khalil. 28 RR 15-16, 18. The balance of the State's opening argument focuses on Adrian. 28 RR 20-38. As noted by defense counsel, the State spent 45 minutes in it argument about Adrian killing

Khalil, not other parties. 27 RR 51.

The defense initial closing argument theory was that Armon not Adrian likely killed Khalil. 27 RR 41-51, 56. The defense asked why the State didn't tell the jury who the other parties were that killed Khalil and what anyone did to help them. 27 RR 52. The defense then argued the State presented no evidence against Adrian or any of the other boys as parties. 27 RR 53-55.

The second half of the defense closing again focused on the lack of proof that Adrian killed Khalil. 27 RR 57-59. The defense reminded the jury about how Angel shielded Armon. 27 RR 61-70. Defense counsel argued there is no evidence anyone aided anyone else. 27 RR 60. The defense emphasized that Khalil's main conflict was with Armon. (It is all directed at Armon). 27 RR 70-73.

The State's final argument also focused on Adrian as Khalil's killer. 27 RR 76, 79, 82, 85-87, 89-95, 100-110. The State argued party liability - that cars moving together and the phone shutdowns showed people working together to kill Khalil. 27 RR 96-97.

Other Relevant Information In The Record

Without the testimony of Angel, there would not be sufficient evidence to convict Adrian. As previously set out, Angel's testimony was highly suspect.

Several police detectives said Angel was not forthcoming or truthful. Both Angel and her son had strong reasons, personal and financial, to kill Khalil.

No actual eyewitness, credible or not, saw Adrian kill Khalil. The forensic evidence, although not inconsistent with Adrian being the killer, likewise did not definitively prove his guilt.

The guilt-innocence charge errors individually and cumulatively constituted an abuse of discretion by the trial court, harmed Adrian, and denied him due process and a fair trial. The errors affected the substantial rights of Adrian to have the jury correctly instructed on the law applicable to the case. Tex. R. App. P. 44.2(b).

There is case law which holds that where the evidence clearly supports a defendant's guilt as a principal actor, any error in the trial court charging on the law of parties is harmless. *Ladd v. State*, 3 S.W.3d 547, 564-565 (Tex. Crim. App. 1999); *Black v. State*, 723 S.W.2d 674-675 (Tex. Crim. App. 1986). Here the evidence did not clearly support Adrian's guilt. Additionally, where the application paragraphs are egregiously erroneous, as they were here (See Issue 1), these cases are distinguishable and not controlling.

All four factors support a finding that the inclusion of the parties charge caused some harm.

ISSUE 4 THE TRIAL COURT ERRED IN REFUSING TO ADMIT INTO EVIDENCE DX-5 WHICH IS EXCERPTS OF AN AUDIO RECORDING OF ADRIAN'S COUSIN ARMON'S INCULPATORY POLICE INTERVIEW.

The Audio Recording - State's Objections And Defense Responses

During Detective Longtin's testimony, Adrian's counsel identified DX-5 as excerpts from an audio recording of Adrian's cousin Armon's phone interview with Detective Longtin in which Armon made inculpatory statements.

The defense sought to admit excerpts totaling approximately 20 minutes from the one and one-half hour long recording. The first two clips were admissions by Armon that he was at the Sugar Mountain home when Khalil was shot. The second two clips were Armon's admission that the Sponge Bob sweatshirt recovered on the night of the shooting in the Mayfield Park neighborhood belonged to Armon. The final clip showed Armon's familiarity with the neighborhood where the sweatshirt and gloves were found.

The State objected to hearsay. The State's objections were sustained. 22 RR 92-102; 23 RR 5-35.

Defense counsel made an offer of proof. 22 RR 92-102; 23 RR 5-35. Defense Counsel presented and argued a Memorandum In Support Of Admission Of Armon White's Statements. 23 RR 11 (DX-10-H).

Hearsay/Admission Against Interest

Armon's statements fall within the admission against interest exception to hearsay under Tex. R. Ev. 803(24).

A statement can be self-inculpatory, and therefore admissible under the admission against interest rule, without consisting of a confession that the declarant committed an element of a crime. Even statements that are on their face neutral may actually be against a declarant's penal interest such as admission of being at the crime scene when the crime occurred. *Williamson v. United* States, 512 U.S. 594, 603-604, 606 (1994). Such a statement qualifies as incriminating since it tends to expose the declarant to criminal liability when considered in context. The same is true of knowledge about details at the crime scene which have not been divulged by the police to the public, such as Khalil getting a large knife which was found by his body.

The issue is whether the trial court properly analyzed the admissibility under Tex. R. Ev. 803(24) of the statement from Armon that Armon was at the Sugar Mountain home at the time of Khalil's shooting and saw the knife Khalil had.

Tex.R. Ev. Rule 803(24) has two requirements for admissibility of hearsay statements. First, the trial court must determine whether the statement subjects the declarant to criminal liability. Second, the trial court must then determine whether

sufficient corroborating circumstances exist that clearly indicate the trustworthiness of the statement. "Blame-shifting" statements that implicate another person but minimize the declarant's culpability are not admissible under this rule, absent extraordinary circumstances. When analyzing the sufficiency of corroborating circumstances, a number of factors are relevant: (1) whether the guilt of the declarant is inconsistent with the guilt of the defendant; (2) whether the declarant was situated so that he might have committed the crime; (3) the timing of the declaration; (4) the spontaneity of the declaration; (5) the relationship between the declarant and the party to whom the statement was made; and (6) the existence of independent corroborative facts. *Woods v. State*, 152 S.W.3d 105 (Tex. Crim. App. 2004).

Addressing whether the guilt of the declarant is inconsistent with the guilt of the defendant, it is both inconsistent and consistent. As Armon's DNA has never been procured, he cannot be eliminated as an unknown-contributor present on both the sweatshirt and the gloves. Thus, he cannot be eliminated as the shooter. Under the law of parties, if applicable, both the shooter and other conspirators could be criminally liable.

The evidence in this case shows Armon was situated to commit the crime. The State's analysis of his cell phone data shows his phone to be in the immediate area of the crime scene. His presence is corroborated by his statement's similarity

to the video introduced by the State from the school. Additionally, the level of detail provided by Armon about the shooting scene corroborates his location on the scene. 23 RR 7-8. Finally, there is not evidence that will eliminate him from being on the scene.

The timing of the statement must be considered in the context of Armon's evasion of the police in this case. The police had attempted to contact Armon on a number of occasions before being able to speak with him by phone. Armon called Detective Longtin on August 12, 2021, 9 days after the killing. 22 RR 93. Armon refused to provide his telephone number or his location to Detective Longtin during the statement.

The State will suggest that Armon's statement is unreliable because it could have been influenced by his mother. It is ridiculous to believe that Angel, given all of the steps that she took to minimize and shield her son from arrest and prosecution for his involvement in this case, would advise Armon to admit to police that he was present at the crime scene at the time the crime was being committed.

Appellant anticipates the State will argue that the statement was not spontaneous because it involved Detective Longtin. However, Armon called Detective Longtin. Armon was not read his rights. The conversation was not a custodial interrogation. The conversation was not confrontational, accusatory, or heated. Armon's recitation of the earlier events of the evening was consistent with

the known facts.

The level of corroboration should be dispositive of this issue. Armon's statement goes into a level of detail about the crime scene and shooting that indicate his presence at the scene. 19 RR 204-206; 23 RR 7-8. Armon was known to be in the presence of Taofik just prior to the shooting. Taofik's black Camry was consistent with one of the vehicles seen in the video from the school. Armon admits being dropped off at the school as police theorize the shooter was. Armon's cell phone places him in the area. Armon had access to both the hooded sweatshirt and the gloves introduced as evidence in this case. There is testimony before the jury that the sweatshirt was Armon's. The DNA testing revealed the presence of two unknown male DNA contributors on both the gloves and the sweatshirt. Since Armon's DNA was never obtained, Armon cannot be eliminated as a DNA contributor or suspect.

The Mayfield Park statement is sufficiently self-inculpatory as he describes in detail his familiarity with the area where the gloves and sweatshirt were found, to the point he provides street by street directions. Further, his statement tends to exculpate Adrian because Armon says Adrian is unfamiliar with the area.

As Adrian's location was unknown and Adrian had no way to compel Armon's attendance or to obtain the DNA sample necessary to exculpate Adrian, this is a factor that the Court should fairly consider in determining whether the

proffered evidence should have been admitted.

Armon's statement that he was at the crime scene at the time of Khalil's shooting potentionally subjected Armon to criminal liability.

Trustworthiness

A Court of Appeals must consider all evidence, both favorable and unfavorable to corroboration, in determining whether there is a clear indication of trustworthiness. See *Bingham v. State,* 987 S.W.2d 54, 59 (Tex. Crim. App. 1999); *Cofield v. State,* 891 S.W.2d 952, 955 (Tex. Crim. App. 1994); *Cunningham v. State,* 877 S.W.2d 310, 312 (Tex. Crim. App. 1994); and *Davis v. State,* 872 S.W.2d 743, 749 (Tex. Crim. App. 1994).

There was sufficient corroboration to show trustworthiness. The factors indicating trustworthiness outweigh those supporting untrustworthiness.

Time of Declaration Soon After Murder

Numerous cases have held that statements made soon after the commission of the crime before the declarant was a suspect or arrested carry more weight in favor of corroboration than statements made months after. See *Dewberry v. State,* 4 S.W.3d 735, 748-752 (Tex. Crim. App. 1999); *DeSouza v. State*, 2016 WL 1420991 (Tex. App.-Austin) at 6-7 (statement made about a month after crime not corroborating); *Nash v. State,* 2016 WL 368353 at 2-3 (Tex. App.-Eastland). Here, Armon's statement to the detective was 9 days after the shooting. The delay is partly

attributable to Armon's mother giving the police the wrong phone number.

Spontaneity/Relationship Between Witness And Declarant

Numerous cases have held that the spontaneity of a statement weighs in favor of credibility. See *Dewberry, supra.* Armon initiated the phone call with the detective. Armon was not in custody. Armon was not read his rights. The conversation was not adversarial or accusatory.

Crime Details

Cases find corroboration if the way in which the crime was committed or other crime details match the statements. See *Dewberry, supra; Nash, supra* (witness saw stolen money and CD's in possession of defendants); *White v. State,* 982 S.W.2d 642, 648 (Tex. App.-Texarkana 1998) (witness saw defendant and his father counting stolen money shortly after crime as stated by co-defendant); *Angleton v. State*, 971 S.W.2d 65, 68 (Tex. Crim. App. 1998) (variety of circumstances and contents served to establish that audiotape of conversation between murder defendant and alleged coconspirator was accurate and not the result of splicing or other alteration). The trustworthiness of a statement may be established by evidence that the declarant exhibited special knowledge peculiar to the case. *Herzing v. Metropolitan Life Inc. Co.*, 907 S.W.2d 574, 580-581 (Tex. App. – Corpus Christi 1995, writ denied); *Wilson v. State*, 884 S.W.2d 904, 906 (Tex. App. – San Antonio 1994, no pet.)

Here, Armon's statement was corroborated because it contained non-public information that Khalil had grabbed a knife which matched other testimony about what had happened. In light of the details of Armon's statements matching Angel's and other civilian and police witnesses' testimony about what occurred, Armon's statements were admissible. 23 RR 7-8. Detective Gless testified there was evidence Armon was at the home at the time of the shooting. 19 RR 204-206. Detective Gless and Angel also testified the sweatshirt belonged to Armon.

Armon admitted he was dropped off by the school which is corroborated by forensic cell tower location evidence and surveillance videos. Armon described the position of Khalil's body and that the back door where the shooting occurred was open. 23 RR 7-8.

Defendant and Co-Defendant Seen Together

Numerous cases cite as corroborating evidence that the defendant and co-actor were seen together shortly before and after the crime. See *Dewberry,* 4 S.W.3d at 748-752; *Nash,* 2016 WL 368353 at 2-3; *White v. State,* 982 S.W.2d 642, 648 (Tex. App.-Texarkana 1998). There was ample evidence Armon and Adrian were seen together throughout the day of the shooting. They were both targets of Khalil's threats and the Kroger's shooting. After Khalil's death, they left the area together to go to St. Louis.

Harm – Tex. R. App. P. 44.2(b)

The exclusion of DX-5 was error which affected the substantial right of Adrian to present exculpatory evidence in his trial. Tex. R. Ev. 103(a); Tex. R. App. P. 44.2(b). The error likely had a substantial and injurious effect or influence in determining the jury's verdict. *Roise v. State*, 7 S.W.3d 225, 238 (Tex. App. – Austin 1999, pet. ref'd). Reversal is proper when the reviewing court has "grave doubt that the result of the trial was free from the substantial effect of the error." *Barshaw v. State*, 342 S.W.3d 91 (Tex. Crim. App. 2011).

To evaluate the likelihood that the complained of error affected the jury's decision, the reviewing court should look to factors such as:

- the nature of evidence supporting the verdict
- the character of the alleged error and its interplay with other evidence in the case
- whether the State emphasized the error, and
- whether there was overwhelming evidence of guilt.

Bagheri v. State, 119 S.W.3d 755 (Tex. Crim. App. 2003).1

Evidence Supporting Verdict

The primary evidence supporting the verdict was Angel's testimony that she

saw Adrian at her front door, that shortly thereafter she heard the shots that killed Khalil at the back door, and then she saw Adrian run away from her front door. As previously noted, Angel's credibility and truthfulness was poor.

Character Of Error And Interplay With Other Evidence

The excluded evidence included admissions by an alternate perpetrator Armon that he was at the Sugar Mountain home when Khalil was shot, that the sweatshirt the possible shooter wore belonged to Armon, and that Armon was very familiar with the nearby neighborhood where the sweatshirt was recovered, while Adrian was not. While police detectives testified they believed Armon was at the home when Khalil was shot, Angel incredibly said she couldn't remember if he was there. The proffered statement by Armon would have been an admission by Armon himself that he was at the house at the time of Khalil's shooting and connecting him to the sweatshirt Angel claimed the shooter was wearing. Armon's statement would have further undercut the credibility of Angel's testimony.

Whether The State Emphasized The Error

The State never conceded that Armon was at the crime scene when the shooting occurred.

Whether There Was Overwhelming Evidence Of Guilt

The evidence of Adrian's guilt was not overwhelming.

Angel did not actually see Adrian shoot Khalil. There is no video or audio of the shooting. The weapon was never found or linked to Adrian. The casings and bullets were never linked to Adrian by any witness, or fingerprints, or DNA.

Angel's credibility was highly suspect. The police did not feel Angel was forthcoming or truthful. Angel deceived the police by failing to divulge the severe, prolonged, and escalating conflict between Khalil and Armon. Armon had the motive to kill Khalil to protect himself, his younger brother, his mother, his cousin Adrian, and his friends Taofik, Taj, and Nico.

There was evidence Armon was at the Sugar Mountain home when the shooting occurred.

Armon fled to St. Louis with Adrian.

Armon has never submitted to a face to face interview with police.

The police requested an arrest warrant for Armon. The police were unable to serve Armon with a DNA search warrant or obtain his DNA.

At the time of trial, Armon was still a suspect.

Angel also had a motive to kill Khalil. She complained about his out of control behavior and drug use. In July, 2021, two weeks before Khalil's death, Angel kicked him out of the house and fraudulently altered Khalil's life insurance beneficiary designations to divert $1.5 million dollars to her and their daughter

Aniyah to the detriment of Khalil's son Kafil. Angel or Armon could have shot Khalil.

All of *Bagheri* factors support a finding of harm.

PRAYER

Appellant prays that this Court reverse the conviction and remand the case for a new trial. The issues raised individually and cumulatively show Adrian did not get a fair trial. Alternatively, Adrian prays that this Court reverse the punishment verdict and remand the case for a new punishment trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of Appellant's Brief was served on Fort Bend County Assistant District Attorney Jason Bennyhoff by email on July 9, 2025.

/s/Stephen A. Doggett
Stephen A. Doggett

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that Appellant's Brief contains 10,458 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/Stephen A. Doggett
Stephen A. Doggett

APPENDIX

JUDGMENT

21-DCR-097768
CONGJV 326
Conviction - Not Guilty Plea Jury Verdict
7176188

CAUSE NO.21-DCR-097768

INCIDENT NO. /TRN: [redacted]

THE STATE OF TEXAS	§	IN THE 434TH JUDICIAL DISTRICT COURT
	§	
V.	§	of
	§	
SMITH, ADRIAN	§	FORT BEND COUNTY, TEXAS
STATE ID NO [redacted]	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: Becerra, J. Christian

Date Sentence Imposed: 10/31/2024

Attorney for State: **Lisa Gregg**

Attorney for Defendant: **Tu, Paul**

Offense for which Defendant Convicted:

MURDER

Charging Instrument:

Indictment

Statute for Offense:

19.02(c)

Date of Offense:

08/03/2021

Plea to Offense:

Not Guilty

Degree of Offense: First Degree Felony

Verdict of Jury: Guilty

Findings on Deadly Weapon:

TRUE: Firearm

1st Enhancement Paragraph: **NA**

Finding on 1st Enhancement Paragraph: **NA**

2nd Enhancement Paragraph: **NA**

Finding on 2nd Enhancement Paragraph: **NA**

Punishment Assessed by:

Jury

Date Sentence Commences: (Date does not apply to confinement served as a condition of community supervision.)

10/31/2024

Punishment and Place: **27 YEARS TDCJ-ID**

ENTERED
11/4/24
AC

of Confinement:

THIS SENTENCE SHALL RUN: ___NA_____.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR ____NA_____.

(The document setting forth the conditions of community supervision is incorporated herein by this reference.)

☐ Defendant is required to register as sex offender in accordance with Chapter 62, CCP.

(For sex offender registration purposes only) The age of the victim at the time of the offense was _____NA____.

Fine:	Restitution:	Restitution Payable to: NA
$ _____	$ _NA_____	(See special finding or order of restitution which is incorporated herein by this reference.)
Court Costs:	Reimbursement Fees:	
$ 290.00	$322.00 _____	

Was the victim impact statement returned to the attorney representing the State? ____YES_____

(FOR STATE JAIL FELONY OFFENSES ONLY) Is Defendant presumptively entitled to diligent participation credit in accordance with Article 42A.559, Tex. Code Crim. Proc.? _____NA__

Total Jail Time Credit:

___1012 DAYS

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

NOTES: _____

This cause was called for trial by jury and the parties appeared. The State appeared by her District Attorney as named above.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared with counsel.

☐ Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

☐ Defendant was tried in absentia.

Both parties announced ready for trial. It appeared to the Court that Defendant was mentally competent to stand trial. A jury was selected, impaneled, and sworn, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury**. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.
☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

In accordance with the jury's verdict, the Court **ADJUDGES** Defendant **GUILTY** of the above offense. The Court **FINDS** that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court **ORDERS** Defendant punished in accordance with the jury's verdict or Court's findings as to the proper punishment as indicated above. After having conducted an inquiry into Defendant's ability to pay, the Court **ORDERS** Defendant to pay the fine, court costs, reimbursement fees, and restitution, if any, as indicated above and further detailed below.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court **ORDERS** Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions of this paragraph. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fine, court costs, reimbursement fees, and restitution due.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Defendant shall be confined in the county jail for the period indicated above. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fine, court costs, reimbursement fees, and restitution due.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY.** The Court **ORDERS** Defendant to proceed immediately to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay the fine, court costs, reimbursement fees, and restitution ordered by the Court in this cause.

☐ **Confinement as a Condition of Community Supervision.** The Court **ORDERS** Defendant confined days in as a condition of community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Fines Imposed Include (check each fine and enter each amount as pronounced by the court):

☐ General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, Transp. Code, or other Code) $ (not to exceed $10,000)
☐ Add'l Monthly Fine for Sex Offenders (Art. 42A.653, Code Crim. Proc.) $ ($5.00/per month of community supervision)
☐ Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) $ ($100)
☐ EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) $ ($100)
☐ Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) $ ($100)
☐ Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) $ ($50)
☐ State Traffic Fine (§ 542.4031, Transp. Code) $ ($50)
☐ Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) $ (not to exceed $50)
☐ Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) $ (To Be Determined by the Court)
☐ Repayment of Reward Fine - as Cond of CS (Art. 42A.301 (b) (20), Code Crim. Proc.) $ (not to exceed $50)
☐ DWI Traffic Fine (a/k/a Misc. Traffic Fines) (§ 709.001, Transp. Code) $ (not to exceed $6,000)

Execution / Suspension of Sentence

☒ The Court **ORDERS** Defendant's sentence **EXECUTED**. The Court **FINDS** that Defendant is entitled to the jail time credit indicated above. The attorney for the state, attorney for the defendant, the County Sheriff, and any other person having or who had custody of Defendant shall assist the clerk, or person responsible for completing this judgment, in calculating Defendant's credit for time served. All supporting documentation, if any, concerning Defendant's credit for time served is incorporated herein by this reference.

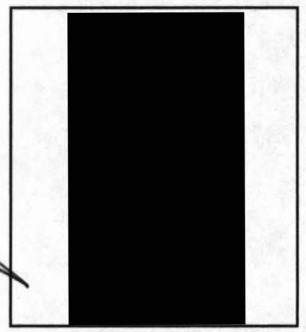
*****ANY CAPIAS ISSUED IN THIS CASE PRIOR TO THE DATE OF JUDGMENT IS WITHDRAWN*****

Date Judgment Entered: 10/31/2024

X

JUDGE PRESIDING

#4202



Defendant's Thumb Print

FILED

OCT 31 2024

AT 2:57 P M.

CLERK DISTRICT COURT, FORT BEND CO., TX

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stephen Doggett on behalf of Stephen Doggett
Bar No. 05945700
office@doggett-law.com
Envelope ID: 102943455
Filing Code Description: Brief Requesting Oral Argument
Filing Description: Appellant's Brief
Status as of 7/9/2025 4:45 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Bennyhoff		jason.bennyhoff@fortbendcountytx.gov	7/9/2025 4:39:24 PM	SENT