NO. 14-24-00158-CR

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

JOSEPH ANTHONY LEE MOORE
APPELLANT

VS.

THE STATE OF TEXAS
APPELLEE

APPELLANT'S BRIEF

Crespin Michael Linton
440 Louisiana, Suite 900
Houston, Texas 77002
Texas Bar No. 12392850
(713) 236-1319
(713) 236-1242 (Fax)
crespin@hal-pc.org

LIST OF PARTIES

The Appellant is Joseph Anthony Lee Moore.

The Appellant's trial counsel are Michael Diaz & Cary Faden.

The Appellant's appellate counsel is Crespin Michael Linton.

The Trial Judge is The Honorable Justin Gilbert.

The appellate attorney representing the State is Trey Picard, Assistant District Attorney, Brazoria County, Texas.

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

STATUTES

PRELIMINARY STATEMENT

On September 22, 2022, Joseph Anthony Lee Moore (Moore) was indicted for the felony charge of Capital Murder. On January 29, 2024, a jury found Moore guilty of the lesser-included charge of Murder. On January 30, 2024, the jury assessed a sentence of 38 years in the Texas Department of Criminal Justice. Appellant Moore perfected his appeal on February 12, 2024. (TR. at 226)

STATEMENT OF FACTS

PRETRIAL HEARING – DECEMBER 15, 2023

On December 15, 2023, the trial court conducted a pretrial hearing on Appellant's Motion To Suppress Statements.

A. State's Witnesses

1. Thomas Norsworthy

Texas Ranger Thomas Norsworthy testified that in July of 2022 he met Appellant at Memorial Hermann Hospital in Houston after Appellant requested to speak with law enforcement. (R.R. Vol. 3 at 5-6) Norsworthy explained that Appellant was in the hospital recovering from a suicide attempt by shooting himself as he was being arrested for a

murder in Lake Jackson, Texas. (R.R. Vol. 3 at 6) He stated that Appellant was being guarded by a Lake Jackson police officer. (R.R. Vol. 3 at 7) Norsworthy admitted that he was concerned about Appellant's ability to speak intelligently because of his injuries, but the charge nurse informed him that Appellant was coherent. (R.R. Vol. 3 at 9-12) He testified that he gave Appellant Miranda warnings after Appellant acknowledged that he wanted to talk about the murder case. (R.R. Vol. 3 at 14) Norsworthy stated that he had no concerns about Appellant providing a voluntary interview even though Appellant had trouble speaking. (R.R. Vol. 3 at 15)

On cross-examination, Norsworthy stated that Appellant knew where he was, provided an intelligent and knowing waiver of his Miranda warnings, and did not ask to stop or terminate the interview. (R.R. Vol. 3 at 19) He noted that Appellant responded to his questions with intelligent answers, and he denied making Appellant any promises or threatening him. (R.R. Vol. 3 at 20) Norsworthy described Appellant as jovial and noted that he laughed on a couple of occasions and never mentioned suicide. (R.R. Vol. 3 at 21) He testified that Appellant did not seem to be in pain and never requested any medical personnel during the 52 minute interview. (R.R. Vol. 3 at 22) Norsworthy noted that

Appellant told him to ask Appellant's girlfriend to tell the truth when she meets with the police. (R.R. Vol. 3 at 23)

On redirect examination, Norsworthy stated that he and Detective Collins were the only officers in the hospital room. (R.R. Vol. 3 at 24)

The trial court denied Appellant's Motion To Suppress Appellant's statements to Texas Ranger Norsworthy and to Detective Collins. (R.R. Vol. 3 at 34)

The trial court also denied Appellant's motion to suppress the testimony of Jaime Bayless, Serenity Hernandez, and Jada McLarty because they obtained evidence against Appellant and were given immunity by the State. (R.R. Vol. 6 at 8)

TRIAL PHASE

A. State's Witnesses

1. Justin Wood

Justin Wood testified that he resides In Lake Jackson, Texas near the deceased Cory Bayless and worked for him at Brazosport Electric. (R.R. Vol. 6 at 23-24) Wood explained that around 10:45 p.m. on June 27, 2022 that he heard gunshots and saw a vehicle outside of his home from a security camera displayed on his cell phone. (R.R. Vol. 6 at 27)

He testified that he ran to the Bayless home when Jamie Bayless screamed for him and that he performed CPR on Cory Bayless. (R.R. Vol. 6 at 31-33) On cross-examination, Wood explained that his home's exterior cameras did not record, but he could see outside activity from the camera app on his cell phone. (R.R. Vol. 6 at 39) He admitted that he couldn't identify the vehicle outside of his home that night. (R.R. Vol. 6 at 39)

2. Jamie Bayless

Jamie Bayless (Jamie) testified that she married her husband on March 27, 2004 and that they had a son named Toby Bayless (Toby) who was 16 years old at the time of the murder. (R.R. Vol. 6 at 43-44) Jamie admitted that the prosecution gave her immunity for her testimony in this trial. (R.R. Vol. 6 at 44) She explained that she lives at 210 Jasmine Street in Lake Jackson and worked for Brazosport Electric which was owned by her father and husband. (R.R. Vol. 6 at 45) Jamie testified that on the evening of June 27, 2022 about 15 minutes after Toby had left the home to visit a friend that Toby reentered the home with a man dressed in a black clothes and wearing a black mask who had a gun pointed at his head. (R.R. Vol. 6 at 52-54) She explained

that her son and the man were followed by a second man with a gun who also wore black clothes and a black mask. (R.R. Vol. 6 at 54)

Jamie described how the second gunman pointed a gun at her and asked for her cell phone while the first gunman kept asking "where is the money?" (R.R. Vol. 6 at 55) She testified that the second gunman forced her on the floor as the first gunman was pistol whipping Toby. (R.R. Vol. 6 at 56) Jamie testified that she heard gunshots after the bedroom door opened and a few minutes later found her husband lying face-up on the screened porch of their home. (R.R. Vol. 6 at 57-58) She explained that she got a gun from Toby, ran outside, and fired at one of the gunman who had run from their home and was entering the passenger side of a parked car. (R.R. Vol. 6 at 59) Jamie stated that two of her neighbors arrived to help revive her husband while Toby called 911. (R.R. Vol. 6 at 60-61)

Jamie testified that she went back into the home and tripped over a safe in the hallway that contained money and drugs. (R.R. Vol. 6 at 63) She denied knowing that Toby sold drugs and had a safe with money and drugs. (R.R. Vol. 6 at 65) Jamie admitted that they installed a ring doorbell camera, a camera on each side of the house, and a camera that covered the backyard, and a camera in the living room.

(R.R. Vol. 6 at 67) She explained that they had the cameras installed after one of Toby's friends named "Big A" stole from him, and she denied that the cameras had anything to do with Toby's drug business. (R.R. Vol. 6 at 67-68) Jamie testified that her camera system showed that Toby left at 9:51 p.m. to go to Buc-ees, returned home at 10:14 p.m., and then left again at 10:52 p.m. to see a friend. (R.R. Vol. 6 at 70-72) She testified that she never saw the gunmen's faces. (R.R. Vol. 6 at 111)

On cross-examination, Jamie admitted that the State offered her immunity to testify because she moved Toby's safe from the hallway and hid it in her bedroom. (R.R. Vol. 6 at 113) She denied knowing how the safe was moved from Toby's bedroom into the hallway. (R.R. Vol. 6 at 114) Jamie stated that Toby told her that "Big A" had stolen money from him. (R.R. Vol. 6 at 120) She admitted that she was surprised that her son had such a large amount of money in his room. (R.R. Vol. 6 at 121) Jamie explained that she and Toby fought over his marijuana use and she and her husband realized that their son was doing bad things. (R.R. Vol. 6 at 122-125) She testified that gunmen initially only saw her and Toby when they entered the home with their guns. (R.R. Vol. 6 at 123)

3. Monica Patel

Doctor Monica Patel testified she is an assistant medical examiner for the Galveston County Medical Examiner's Office and she performed the autopsy on Cory Wayne Bayless. (R.R. Vol. 6 at 74-78) Patel explained that Wound No. 1 was a gunshot that entered the back, exited the right chest, and was potentially fatal. (R.R. Vol. 6 at 90) She testified that Wound No. 2 was a gunshot to the abdomen that was also potentially fatal. (R.R. Vol. 6 at 90) Patal also mentioned that she found a gunshot wound to the left arm. (R.R. Vol. 6 at 82) She concluded that the cause of death was multiple gunshot wounds and the manner of death was a homicide. (R.R. Vol. 6 at 91) Patel stated that she recovered a deformed projectile from the body. (R.R. Vol. 6 at 95) She explained that the toxicology results showed the presence of alcohol, cocaine, and marijuana in Cory Bayless' blood. (R.R. Vol. 6 at 97-98)

On cross-examination, Patel admitted that she didn't label the arm wound in her autopsy report because she did not consider it a fatal wound. (R.R. Vol. 6 at 102) She testified that she did not know the caliber of the projectile found in the body. (R.R. Vol. 6 at 103) Patel noted that both Wound Nos. 1 and 2 contributed to his death. (R.R. Vol.

6 at 106) She explained that she found multiple shots to the torso but only one shot to the upper extremity. (R.R. Vol. 6 at 108)

4. Jennifer Weaver

Jennifer Weaver testified that she lives in a house on Wisteria Street in Lake Jackson, Texas which is only 5 houses from Jasmine Street. (R.R. Vol. 6 at 130-131) Weaver explained that she heard the gunshots on the night of June 27, 2022 and emailed a clip of the footage from her security cameras which showed the erratic driving of a car shortly after the shooting at 11:10 p.m. (R.R. Vol. 6 at 132-136) On cross-examination, she admitted that she could not determine the make or model of the car in the video. (R.R. Vol. 6 at 137) Weaver described the driving as erratic because the driver drove over a sidewalk and into a yard in order to make a turn. (R.R. Vol. 6 at 137) She conceded that they could not identify the occupants of the car. (R.R. Vol. 6 at 140)

5. Kristy Carlson

Lake Jackson Police Department Detective Lieutenant Kristy Carlson testified that she helped collect evidence from the crime scene, counted the money recovered from the safe, interviewed Jamie and

Toby Bayless at Memorial Hemann Hospital, and collected DNA samples from Jamie and Toby Bayless and the Appellant. (R.R. Vol. 6 at 141-148) Carlson admitted that Appellant was not conscious when she obtained his DNA sample. (R.R. Vol. 6 at 149)

On cross-examination, Carlson explained that she counted $12,856.00 in the safe and believed the money was associated with the narcotics trade because Toby told her that he sold pills. (R.R. Vol. 6 at 162-170) She confirmed that the money found in the safe was seized as part of the criminal investigation. (R.R. Vol. 3 at 97)

6. Toby Bayless

Toby Bayless (Toby) testified that he was 17 years old on June 27, 2022 and had just completed the 11th grade at high school. (R.R. Vol. 6 at 174) Toby admitted he owned a 2011 Nissan Frontier even though he didn't have a job, but he conceded that he made money by selling drugs. (R.R. Vol. 6 at 175) He also admitted that he was given immunity for his testimony but conceded that the immunity did not affect his indictment for the felony offense of Possession of a Controlled Substance. (R.R. Vol. 6 at 176) Toby testified that he began selling fake Percocet pills and marijuana during his sophomore year in high

school which he obtained from his dealer named Bracshod McCoy. (R.R. Vol. 6 at 176-177) He noted that he started working with McCoy in the beginning of 2021. (R.R. Vol. 6 at 178)

Toby explained that he purchased 500 pills from McCoy around 1:00 p.m. on June 27, 2022 for $7,500.00 at the Circle K store in Richwood, Texas and discovered that he was 12 pills short when he counted the pills in his bedroom. (R.R. Vol. 6 at 182) He stated that he withdrew $7,500.00 from his safe which contained between $23,000.00 to $24,000.00 in cash. (R.R. Vol. 6 at 182) Toby testified that McCoy said that he would give him the 12 pills later that evening. (R.R. Vol. 6 at 184-185) He stated that he returned home between 9:00 p.m. to 10:00 p.m. from making multiple drug sales at the nearby Jasmine Park so he could get some ice cream for his mother at Buc-ee's. (R.R. Vol. 6 at 188) Toby explained that after giving the ice cream to his mother that he left home for the Circle K store, picked up the 12 pills from McCoy, and returned home. (R.R. Vol. 6 at 189-192)

Toby testified that after he exited his car in the driveway of his parents' home that two people dressed in black with masks appeared with guns and one of them pointed a gun at his head, told him to put his hands up, and then hit him in the head with the pistol. (R.R. Vol. 6 at

194-195) He said that he did not recognize either of the people. (R.R. Vol. 6 at 196) Toby testified that they escorted him inside the house at gunpoint where they pointed a gun at his mother and hit him again on the head with a gun. (R.R. Vol. 6 at 197) He stated that the suspects declared that "Big A sent us" and then asked the location of his bedroom. (R.R. Vol. 6 at 199) Toby explained that his father then charged out of his room and the people shot his father and then shot him in the stomach. (R.R. Vol. 6 at 198) He testified that he ran to his room, grabbed his Glock, and returned to the living room where his mother took the gun and fired shots at the suspects who fled the home. (R.R. Vol. 6 at 200-201) Toby stated that he called 911 after seeing his father lying on the front porch. (R.R. Vol. 6 at 202)

Toby testified that he was life-flighted to Memorial Hermann Hospital where a doctor removed 6 inches of his small intestine and bullet fragments from his body. (R.R. Vol. 6 at 206) He stated that he was interviewed by a Lake Jackson police officer at the hospital. (R.R. Vol. 6 at 207) Toby recognized that his father died trying to save him and his mother. (R.R. Vol. 6 at 212)

On cross-examination, Toby admitted that he had more than 100 customers who purchased pills and more than 20 customers who

purchased marijuana from him. (R.R. Vol. 6 at 213) He conceded that he was indicted for the second-degree felony of possession of more than 400 grams of Fentanyl. (R.R. Vol. 6 at 215) Toby admitted that he earned between $10,000.00 and $30,000.00 a month selling Percocet. (R.R. Vol. 6 at 216) He stated that he owned 2 assault rifles and a Glock and claimed that his parents did not know about his safe. (R.R. Vol. 6 at 217) Toby explained that he purchased Percocet pill from McCoy for $10.00 to $20.00 per pill and sold the pill for $30.00. (R.R. Vol. 6 at 220) He denied that he and McCoy were having any problems. (R.R. Vol. 6 at 222)

Toby described one suspect as wearing a hoodie with a bear logo and the second suspect as wearing a solid black hoodie with red sleeves. (R.R. Vol. 6 at 223) He claimed that the second suspect hit him on the head four times with a gun. (R.R. Vol. 6 at 224) Toby stated that the suspects asked him for his safe after ordering his mother on the floor. (R.R. Vol. 6 at 226-227) He testified that the suspect with the bear logo did not hit anyone. (R.R. Vol. 6 at 228) Toby admitted that he did not know which suspect shot his father. (R.R. Vol. 6 at 229) He testified that he got shot after his father was shot. (R.R. Vol. 6 at 230) Toby noted that after he was shot that the suspect with the bear logo

hoodie fled the house while the suspect wearing the black hoodie with the red sleeves remained and shot his father again. (R.R. Vol. 6 at 230) Toby admitted that he knew Daniel Curran as Dano and said that Dano and McCoy lived together. (R.R. Vol. 6 at 235-237) He conceded that he had never seen Appellant before trial. (R.R. Vol. 6 at 238) Toby testified that the two suspects were acting together to rob his family. (R.R. Vol. 6 at 238-240)

7. Christopher Collins

Lake Jackson Police Department Detective Christopher Collins testified that on June 27, 2022 around 11:30 p.m. that he responded to the Bayless home at 210 Jasmine Street and saw Cory Bayless lying dead on the threshold of his home. (R.R. Vol. 7 at 7-10) Collins stated that he obtained a search warrant for the house, collected evidence, and took photographs of the crime scene. (R.R. Vol. 7 at 11-14) He stated that he collected several firearms on Toby's bed, a .22 caliber shell casing, a 9-millimeter shell casing, Toby's cell phone, and 12 Percocet pills. (R.R. Vol. 7 at 14-35) Collins noted that he went to Jennifer Weaver's home, viewed her surveillance video, and speculated that the suspect drove a Ford Edge SUV. (R.R. Vol. 7 at 36) He testified that he

recovered Jamie's cell phone on Narcissus Street which is near the Bayless home. (R.R. Vol. 7 at 39) Collins mentioned that he viewed video from the Bayless home, the Circle K store in Richwood, and TJ's car wash in Clute. (R.R. Vol. 7 at 41) He noted that the Circle K video showed Toby meeting McCoy the first time on June 27, 2022 at 4:00 p.m. and the second time at 11:00 p.m. with Toby driving a white Nissan and McCoy driving a black Cadillac. (R.R. Vol. 7 at 42-48)

Collins explained that Jada McLarty (McLarty) contacted the police after she found blood in her 2013 white Ford Edge and saw the police description of the car used by the suspects. (R.R. Vol. 7 at 51) He described how the area's license plate reader camera system showed McLarty's car at a Fuel Max gas station in Sweeny, Texas and the gas station's video showed Appellant exit the driver's side door at 9:11 p.m. on June 27, 2022 wearing a hoodie with a bear logo. (R.R. Vol. 7 at 53-56) Collins testified that Appellant was coming from his girlfriend Serenity Hernandez's home located at 1008 Alice Street in Sweeny, Texas. (R.R. Vol. 7 at 57)

Collins stated that the video from TJ's car wash in Clute showed Appellant exiting the Ford Edge at 10:16 p.m., entering a black Cadillac sedan, and both cars leaving at 10:21 p.m. (R.R. Vol. 7 at 59-60) He

emphasized that the Cadillac that appeared in T.J.'s car wash video was the same Cadillac that appeared in the Circle K video for the 11:00 p.m. meeting with Toby. (R.R. Vol. 7 at 60) Collins testified that Appellant left the car wash, drove to an apartment complex near the car wash to obtain a .22 caliber pistol, and then drove to the Bayless home where its ring camera showed that Appellant arrived at 10:56 p.m. (R.R. Vol. 7 at 61-62) He added that the Bayless ring camera showed Toby returning home at 11:07 p.m. (R.R. Vol. 7 at 63)

Collins testified that the Bayless ring camera showed Toby leaving the house at 9:50 p.m., returning at 10:14 p.m., and leaving again at 10:52 p.m. (R.R. Vol. 7 at 64) He stated that the video showed that Appellant was the first suspect to approach Toby when he returned home. (R.R. Vol. 7 at 64) Collins testified that the video showed that Appellant said "Big A sent us" and then pointed a gun at Jamie and took her two cell phones. (R.R. Vol. 7 at 65-66) He stated that he heard on the video the second gunman, Daniel Curran, ask the location of Toby's room just before Cory charged the suspects. (R.R. Vol. 7 at 67) Collins testified that Appellant first fired his gun at Cory and then shot Toby before he fled the house. (R.R. Vol. 67-69) He stated that he could

hear 3 more shots being fired after Appellant ran from the house. (R.R. Vol. 7 at 69)

Collins testified that based on the medical examiner's findings that the shots to Cory's back (Wound No. 1) and to Cory's abdomen (Wound No. 2) were caused by a .40 caliber gun while the wound to Cory's arm was caused by a .22 caliber gun. (R.R. Vol. 7 at 72) He stated that the wound to Cory's left upper arm was caused by Appellant's gun. (R.R. Vol. 7 at 73) Collins testified that Appellant and Curran operated together. (R.R. Vol. 7 at 73)

Collins testified that he obtained DNA swabs from McLarty's car. (R.R. Vol. 7 at 74) He described how Appellant shot himself with the same .22 caliber gun used during the Bayless murder when Collins and other law enforcement went to Hernandez's house to arrest Appellant for Capital Murder. (R.R. Vol. 7 at 76-80) Collins testified that he collected the hoodie with the bear logo, Appellant's cell phone, Hernandez's cell phone, and Maryah Isais' cell phone from Hernandez's house. (R.R. Vol. 7 at 82-85) He stated that Isais was McCoy's girlfriend. (R.R. Vol. 7 at 87) Collins stated that he later arrested Curran and McCoy, but he never found the .40 caliber gun used to kill Cory. (R.R. Vol. 7 at 90) He

testified that he collected DNA samples from McCoy, Isais, McLarty, and Alexis Perales. (R.R. Vol. 7 at 91)

Collins explained an officer successfully downloaded the cell phone contents of the phone belonging to Hernandez, Toby, Maryah, and Appellant. (R.R. Vol. 7 at 95) He showed a text on June 27, 2022 from McCoy to Isais that the pills were 12 short. (R.R. Vol. 7 at 101-102) Collins showed an exchange of texts between McCoy and Toby about meeting in Clute on the evening of June 27, 2022. (R.R. Vol. 7 at 103-107) He showed a text from Hernandez to McLarty at 6:44 p.m. on June 27, 2022 that read as follows: "They want to use your car again tonight. Bracc says it's a for sure thing. Everyone gonna have bread tonight." (R.R. Vol. 7 at 109) Collins then showed a text from McLarty to Hernandez at 11:01 a.m. on June 29, 2022 that read as follows: "The whole car needs to be –or need to be cleaned." (R.R. Vol. 7 at 112) He stated that Hernandez replied to her sister that Appellant would clean the car. (R.R. Vol. 7 at 112-113)

Collins testified that on June 27, 2022 the cell phone records showed that there were 14 telephone calls between Appellant and Curran, 23 calls between Appellant and McCoy, and many calls between Appellant and Hernandez. (R.R. Vol. 7 at 119-123) He testified that on

June 27, 2022 at 10:35 p.m. Appellant sent Hernandez a photograph of him holding a .22 caliber Rugar gun in the Ford Edge. (R.R. Vol. 7 at 125) Collins showed a text response from Appellant to Hernandez at 10:50 p.m. on June 27, 2022 when she asked what he was doing and he texted the following: "Do what I love to do." (R.R. Vol. 7 at 126) He testified that he helped Texas Ranger Norsworthy conduct the interview of Appellant at Memorial Hermann Hospital on July 22, 2022. (R.R. Vol. 7 at 129-132)

On cross-examination, Collins testified that Appellant shot Cory in the arm, shot Toby in the abdomen, and then fled the Bayless house. (R.R. Vol. 7 at 138) He admitted that Appellant had run from the house before Curran fired multiple shots at Cory. (R.R. Vol. 7 at 139) Collins conceded that a .40 caliber bullet is much bigger and more powerful than a .22 caliber bullet. (R.R. Vol. 7 at 140-142) He admitted that Appellant's shot hit Cory's soft tissue and not a vital organ. (R.R. Vol. 7 at 143) Collins conceded that the home video showed Cory standing up after being shot by Appellant, running toward the front door before being shot multiple times by Curran, and then dying on the front porch. (R.R. Vol. 7 at 143) He admitted that the video showed Jamie moving Toby's safe from the hallway into the bathroom of the master bedroom. (R.R.

Vol. 7 at 144) Collins expressed no concern that Appellant was hooked to a ventilator when he gave his statement. (R.R. Vol. 7 at 147) He admitted some time elapsed from when Appellant fled the house and when Curran fired multiple shots at Cory. (R.R. Vol. 7 at 148) Collins conceded that none of Appellant's texts discussed killing anyone but only mentioned robbing Toby. (R.R. Vol. 7 at 151) He believed that both Appellant and Curran were responsible for Cory's murder. (R.R. Vol. 7 at 163) While Collins stated that Appellant is a party to the murder, he admitted that he didn't stay and help Curran kill Cory. (R.R. Vol. 7 at 165)

8. Ashley McCain

Lake Jackson Police Department Ashley McCain testified that she responded to the Bayless home crime scene, collected evidence at the home, obtained Buc-ees' surveillance video, and assisted Collins in Appellant's arrest at Hernandez's Sweeny home. (R.R. Vol. 8 at 7-12) McCain stated that she collected the .22 caliber Ruger that Appellant used in his suicide attempt. (R.R. Vol. 8 at 12-13) She noted that at the Bayless home she collected firearms, a safe, narcotics, two .22 shell casings, one .40 caliber shell casing, and a 9 mm shell casing. (R.R. Vol. 8 at 44) McCain testified that she found a safe in the master

bedroom which contained large amounts of cash and Toby's bank card. (R.R. Vol. 8 at 45) She stated that she collected cell phones, narcotic pills, an AK-47, and an AR-15 in Toby's bedroom. (R.R. Vol. 8 at 46) McCain noted that she located 12 pills in Toby's car. (R.R. Vol. 8 at 47)

McCain testified that she was involved in the execution of the Appellant's arrest warrant at the Alice Street home and noted that Deputy Hargraves took photographs of the home. (R.R. Vol. 8 at 49) She stated that some of the items photographed were the .22 caliber gun, Appellant's cell phone, black sweatpants with a bear logo, a white ski mask, and black boots. (R.R. Vol. 8 at 50-57) McCain testified that she took DNA swabs of the items collected at this home and from the Ford Edge car. (R.R. Vol. 8 at 57-61) She described how Blue Star reagent she sprayed in the car showed the presence of blood in the car. (R.R. Vol. 8 at 63-65)

On cross-examination, McCain admitted that the Bayless home surveillance video showed Jamie Bayless moving the safe from Toby's room to the master bathroom before the police arrived. (R.R. Vol. 8 at 67) She conceded that Toby is only charged with the possession of drugs even though he was selling drugs. (R.R. Vol. 8 at 68) McCain admitted that Toby was not the registered owner of the 9mm handgun,

the AK-47 assault rifle, and the AR-15 assault rifle found in his bedroom. (R.R. Vol. 8 at 69-71)

9. Nicole Groshon

Texas Department of Public Safety Crime Lab Forensic Scientist Nicole Groshon testified that she examined the 22 caliber Rugar handgun, shell casings, fired cartridge cases, and fired bullets. (R.R. Vol. 8 at 17-25) Groshon concluded that the 22 caliber Rugar was functional, that 3 items were fired from the Rugar, and that 2 fired 40 caliber bullets were fired from the same gun. (R.R. Vol. 8 at 30-33) On cross-examination, she stated that a person can't put a 40-caliber bullet into a 22 caliber gun. (R.R. Vol. 8 at 39)

10. Lindsay Rubenstein

Texas Department of Public Safety Crime Lab Forensic Scientist Lindsay Rubenstein testified that she analyzes evidence for the presence of biological fluids and materials. (R.R. Vol. 8 at 75-76) Rubenstein explained that she takes samples from the evidence submitted by the police and prepares the samples for DNA analysis. (R.R. Vol. 8 at 78) She testified that she prepared DNA samples from swabs of shoes, Ford Edge, nail clippings, from the Bayless family,

Appellant, Curran, white ski mask, Rugar, Cadillac sedan, Isais, McCoy, and McLarty. (R.R. Vol. 8 at 80-84) On cross-examination, Rubenstein admitted that she did not find blood on Appellant's shoes. (R.R. Vol. 8 at 104)

11. Madison Lantzsch

Texas Department of Public Safety Crime Lab Forensic Scientist Madison Lantzsch testified she interprets and analyzes DNA profiles of evidence submitted to their lab. (R.R. Vol. 8 at 108-110) Lantzsch stated that the DNA from the Ford Edge's left rear door was uninterpretable because it had too many contributors. (R.R. Vol. 8 at 119) She testified that the DNA from the Ford Edge's right rear door excluded McLarty, the Bayless family, Isaias, McCoy, Alexis Perales, and Appellant. (R.R. Vol. 8 at 120) Lantzsch explained that Cory's DNA was found on the Ford Edge's right front door. (R.R. Vol. 8 at 122) She noted that the DNA found on Cory's fingernail clippings was a mixture of Cory and Curran's DNA. (R.R. Vol. 8 at 124-125)

Lantzsch testified that Appellant was a possible contributor to the DNA found on a cutting of the white ski mask. (R.R. Vol. 8 at 127-128) She noted that Cory's DNA was found on the swab of the front

passenger door of the Ford Edge. (R.R. Vol. 8 at 129) Lantzsch testified that both Curran and Appellant's DNA was found on the grip and trigger of the 22 caliber Rugar pistol. (R.R. Vol. 8 at 131)

12. Jada McLarty

Jada McLarty testified that she is 19 years old, has two children, and has a 21-year-old sister named Serenity Hernandez who lives at 1008 Alice Street in Sweeny, Texas. (R.R. Vol. 8 at 158-159) McLarty stated that she owns a 2013 Ford Edge. (R.R. Vol. 8 at 160) She admitted that she was given immunity to testify. (R.R. Vol. 8 at 161) McLarty realized that her car may have been involved in Cory's murder when she saw her car on a crime scene video posted on the Brazoria County Scanner. (R.R. Vol. 8 at 163-164)

McLarty testified that Hernandez and her boyfriend, who is the Appellant, asked to borrow her car around 8:00 p.m. on June 27, 2022 when she was visiting her sister. (R.R. Vol. 8 at 166-167) She explained that Hernandez didn't want Appellant to use Hernandez's car because Appellant had been cheating on her. (R.R. Vol. 8 at 168) McLarty admitted that she knew that Appellant intended to use the car to make money, but she didn't know the specifics of the plan and didn't ask

any questions. (R.R. Vol. 8 at 171-176) She stated that she drove home after Appellant returned to her sister's house with the car. (R.R. Vol. 8 at 180)

McLarty testified that the next day she saw blood on the passenger side of her car and had her sister and Appellant clean the car. (R.R. Vol. 8 at 181-182) She explained that she notified the police that she saw her car on the crime scene video. (R.R. Vol. 8 at 184) McLarty testified that Lake Jackson Police Officers came to her house and towed the car for this investigation. (R.R. Vol. 8 at 185)

On cross-examination, McLarty admitted that she loaned the car to Appellant knowing that he would use it for an illegal activity. (R.R. Vol. 8 at 187) She conceded that she did not tell her sister that she contacted the police to report her car being used in the murder. (R.R. Vol. 8 at 191)

13. Serenity Hernandez

Serenity Hernandez testified that she is 21 years old and lives with her mother and her two children at 1008 Alice Street in Sweeny, Texas. (R.R. Vol. 8 at 194) Hernandez admitted that she was given immunity for her testimony. (R.R. Vol. 8 at 195) She stated that she and Appellant began dating in April of 2022. (R.R. Vol. 8 at 195-196) Hernandez

explained that Appellant originally asked to borrow her car to “hit a lick,” but she denied him because of their relationship problems. (R.R. Vol. 8 at 199) She stated that McLarty agreed to allow Appellant to borrow her car after Appellant promised that everyone would get paid if he could use the car. (R.R. Vol. 8 at 200-201)

Hernandez denied that she knew where Appellant was going with her car, but she admitted that she knew he was meeting Curran and that he carried a gun. (R.R. Vol. 8 at 202-204) She testified that Appellant called her at 11:48 p.m. and told her that “it went wrong.” (R.R. Vol. 8 at 208) Hernandez conceded that Appellant had texted her a picture that night of him standing next to McLarty’s car wearing a black outfit with a bear logo while holding a gun. (R.R. Vol. 8 at 210) She testified that Appellant seemed nervous when he returned home and admitted that someone had been killed. (R.R. Vol. 8 at 213-214)

Hernandez testified that Appellant told her that he and Curran fired shots at Toby’s father after the father charged at them. (R.R. Vol. 8 at 217 & 226) She claimed that Appellant admitted to firing one shot at the father while Curran shot the father after Appellant had fled the house. (R.R. Vol. 8 at 217) Hernandez explained that the next day that they had fun together either in Houston or at the beach. (R.R. Vol. 8 at 219)

She described how a couple of days later that Appellant shot himself when the police came to arrest him. (R.R. Vol. 8 at 221-222)

14. Thomas Norsworthy

Texas Ranger Thomas Norsworthy testified that he and Detective Collins interviewed Appellant at Memorial Hermann Hospital on July 22, 2022 after Appellant had reached out to law enforcement to request an interview. (R.R. Vol. 9 at 9-13) Norsworthy admitted that Appellant was a patient in the ICU, but noted that the medical staff ensured him that Appellant was coherent and was not under the influence of narcotics. (R.R. Vol. 8 at 14) He described Appellant's speech as labored and conceded that he may have been on a ventilator. (R.R. Vol. 8 at 14) Norsworthy testified that he recorded the interview with a pocket voice recorder and with his and Detective Collins' body worn cameras. (R.R. Vol. 9 at 15) He stated that he advised Appellant of his Miranda warnings and made no threats to him. (R.R. Vol. 9 at 14-16) Norsworthy described the conversation as cordial and noted that Appellant even laughed at some jokes. (R.R. Vol. 9 at 17) He stated that he had the officer providing security leave the room for the interview. (R.R. Vol. 9 at 18) Norsworthy expressed his surprise at Appellant's bravado and lack

of remorse for Cory's death. (R.R. Vol. 9 at 19) He stated that Appellant told him that he told McCoy that he knew what to do if the Baylesses resisted. (R.R. Vol. 9 at 20) Appellant admitted that he should have known to dispose of the gun used in the robbery. (R.R. Vol. 9 at 21)

On cross-examination, Norsworthy admitted that he was concerned about Appellant's ability to give an interview after awakening from a coma with a ventilator tube in his mouth. (R.R. Vol. 9 at 22) He described Appellant as cooperative and agreed that his story matched the events depicted on the Bayless home video. (R.R. Vol. 9 at 25) Norsworthy admitted that he never asked Appellant if he stayed and encouraged Curran to kill Cory. (R.R. Vol. 9 at 28) He conceded that McCoy was very influential in planning this robbery. (R.R. Vol. 9 at 30) Norsworthy admitted that McLarty and Hernandez loaned the car to Appellant to get a kickback from the robbery of the Bayless home. (R.R. Vol. 9 at 31) He believed that Appellant knew the location of the .40 caliber gun used by Curran. (R.R. Vol. 9 at 33) Norsworthy stated that the more he confronted Appellant with facts the more forthcoming he was. (R.R. Vol. 9 at 34)

Norsworthy stated that Appellant may not have planned to kill Cory, but Cory still died because of their home invasion. (R.R. Vol. 9 at 36) He believed that McCoy, Curran, and Appellant conspired to rob Toby and Appellant assisted in the commission of the offense. (R.R. Vol. 9 at 38) While he admitted that Appellant did not encourage or help Curran kill Cory, Norsworthy claimed that Appellant should have anticipated that someone could have died if a loaded gun is brought to a robbery. (R.R. Vol. 9 at 43-47) He conceded that Cory got up after being shot by Appellant before Curran shot him multiple times. (R.R. Vol. 9 at 51)

The State rested. (R.R. Vol. 9 at 52)

The Defense rested. (R.R. Vol. 9 at 55)

B. Jury's Verdict

The jury found Appellant Moore guilty of Murder. (R.R. Vol. 10 at 84)

PUNISHMENT PHASE

Appellant pleaded "Not True" to the enhancement allegation that he had been convicted of Aggravated Robbery in Brazoria County Court At Law No. 3 on December 18, 2017 in Cause No. JV-21961. (R.R. Vol. 11 at 9)

A. State's Witnesses

1. Matthew Boswell

Brazoria County Sheriff's Deputy Matthew Boswell testified, over Appellant's objection, that Appellant was found delinquent in juvenile court on December 18, 2017 for Aggravated Robbery and received a 3-year determinate sentence. (R.R. Vol. 11 at 12-30) Boswell also stated that Appellant was convicted of the misdemeanor offense of Unlawfully Carrying a Weapon on April 1, 2022 in Brazoria County Court At Law No. 4 and received a sentence of 30 days in jail. (R.R. Vol. 11 at 26-27) On cross-examination, Boswell admitted that the deadly weapon used in Appellant's juvenile aggravated robbery was an air pistol. (R.R. Vol. 11 at 34)

2. Shawn Salahian

Former Assistant Brazoria County District Attorney Shawn Salahian testified that a "Determinate Sentence" is a juvenile prison sentence which can be served as an adult depending on the length of the sentence. (R.R. Vol. 11 at 36-39) Salahian stated that he prosecuted Appellant for the Aggravated Robbery charge as a juvenile and explained that Appellant robbed people with an air-soft pistol at an Angleton bowling alley. (R.R. Vol. 11 at 41-44) He testified that Appellant's was punished with a 3 year determinate sentence. (R.R. Vol. 11 at 45)

On cross-examination, Salahian admitted that the primary goal of the juvenile justice system is rehabilitation. (R.R. Vol. 11 at 46) He conceded that an air-soft pistol is not a firearm. (R.R. Vol. 11 at 47) Salahian noted that before a prosecutor would seek a determinate sentence for a juvenile that the prosecutor would ensure that the juvenile would have had been offered many opportunities of rehabilitation first. (R.R. Vol. 11 at 48-51)

3. Tyler Rongey

Tyler Rongey testified that in 2017 he was a 16-year-old Sophomore at Angleton High School who went to an Angleton bowling

alley with his friend Dylan Rosales to sell a watch in response to his Snapchat sales offer. (R.R. Vol. 11 at 55-57) Rongey described how one skinny young male and one fat young male met them in the bowling alley parking lot, got into their truck, and pointed a gun at him. (R.R. Vol. 11 at 57-58) He stated that the two robbers took their phones, watch, and cash and fled in a silver Honda CRV. (R.R. Vol. 11 at 59) Rongey explained that the Angleton Police Department was able to arrest Appellant based on the license plate number of Honda which he provided them after the robbery. (R.R. Vol. 11 at 59-60)

On cross-examination, Rongey stated that Rosales told him that he knew the two males from school. (R.R. Vol. 11 at 61-62) He admitted that he could not identify Appellant as one of the two robbers. (R.R. Vol. 11 at 63) Rongey explained that there were two or three other people sitting inside the CRV during the robbery. (R.R. Vol. 11 at 66)

4. Christopher Collins

Lake Jackson Police Department Detective Christopher Collins testified that Appellant was a confirmed member of the 50 Deuce Hoover Crips gang. (R.R. Vol. 11 at 68-69) Collins testified that his investigation showed that Appellant and Curran also intended to rob a

person named Zae Torres, but Torres failed to respond to Curran's attempt for a meeting. (R.R. Vol. 11 at 71) He stated that Appellant claimed that Curran was also a 52 Hoover Crip. (R.R. Vol. 11 at 74)

On cross-examination, Collins explained that he did not file a charge of attempted robbery against Appellant for the attempted robbery of Torres because of the serious nature of the current Murder charge. (R.R. Vol. 11 at 74-75) While Collins testified that Appellant was a self-admitted member of the Crips, he admitted that many people claim to be gang members to keep other people from harassing them. (R.R. Vol. 11 at 79-80) He noted that Appellant had been sentenced to deferred adjudication probation for the felony of Unauthorized Use of a Vehicle in Refugio County, Texas on February 10, 2022 which was only 4 months prior to Cory's murder on June 27, 2022. (R.R. Vol. 11 at 85-87)

The State rested. (R.R. Vol. 11 at 90)

B. Defense Witness

1. Emolia Bonner

Emolia Bonner testified that she is the 68-year-old grandmother of Appellant whose father resides in a Huntsville prison and whose mother

lives in Angleton. (R.R. Vol. 11 at 92-94) Bonner explained that CPS gave her custody of Appellant and his two siblings when he was 3 years old after his mother went to jail for drugs. (R.R. Vol. 11 at 95-96) She noted that Appellant began living with his mother when he was 14 years old. (R.R. Vol. 11 at 99) Bonner described Appellant as a good boy who did his chores around the house and attended church with her at True Honor Baptist Church in Clute. (R.R. Vol. 11 at 100) She explained that she took Appellant to a psychiatrist to obtain hyperactivity medication. (R.R. Vol. 11 at 104) Bonner asked the jury to sentence her grandson to a reasonable prison sentence. (R.R. Vol. 11 at 105)

On cross-examination, Bonner admitted that her son is in prison for drugs and Appellant has three children. (R.R. Vol. 11 at 107) She conceded that Appellant's 10th grade report card showed As and Bs and disciplinary referrals for several reasons. (R.R. Vol. 11 at 111-112) Bonner explained that she did not agree with the jury's decision because she claimed that her grandson only meant to rob Toby. (R.R. Vol. 11 at 113) She admitted that Appellant called her from jail and said that Curran shot the man who died. (R.R. Vol. 11 at 115) Bonner expressed that she did not understand how Appellant made As and Bs because he could barely read. (R.R. Vol. 11 at 117)

2. Dr. Carla Galusha

Dr. Carla Galusha testified that she is a clinical psychologist who conducted a psychological evaluation of Appellant and interviewed him on January 8, 2024 in the jail for 2 ½ hours. (R.R. Vol. 11 at 122-127) Galusha stated that Appellant claimed that his mother was uninvolved in his life and his father was incarcerated for most of his childhood. (R.R. Vol. 11 at 129) She noted that CPS was involved in Appellant's life from 2004 through 2015 because of neglect, no food in his home, and his mother involvement with drug dealers. (R.R. Vol. 11 at 130-131) Galusha explained that Appellant said he has been diagnosed with ADHD and Bi-Polar Disorder and was currently taking the following drugs in jail: Abilify for antipsychotic episodes and Trazadone for agitation and irritability. (R.R. Vol. 11 at 132)

Bonner testified that Appellant scored 70 on the IQ Test which used to be known as borderline mental retardation. (R.R. Vol. 11 at 135-136) She claimed that Appellant suffered adverse child experiences from parental neglect, instability, and abandonment. (R.R. Vol. 11 at 138) Bonner noted that Appellant began smoking marijuana at 11 years of age. (R.R. Vol. 11 at 139) She mentioned that Dr. Michael Fuller's juvenile assessment also showed that Appellant's intellectual functioning

was on the borderline range of mental retardation. (R.R. Vol. 11 at 141) Bonner testified that Appellant met the criteria for ADHD, Bi-Polar Disorder, and Cannabis Use Disorder. (R.R. Vol. 11 at 141) She concluded that Appellant's mental problems contributed to his impulsive behaviors. (R.R. Vol. 11 at 142)

On cross-examination, Galusha admitted that she interviewed Appellant less than a month before trial and finished her report yesterday. (R.R. Vol. 11 at 143) She conceded that she did not read the offense report of this murder. (R.R. Vol. 11 at 146) Galusha admitted that she was court-appointed at the request of defense counsel and is paid for her time at an hourly rate. (R.R. Vol. 11 at 148-149) She conceded that she did not view Appellant's police interview. (R.R. Vol. 11 at 156) Galusha admitted that she did not examine Appellant for lack of remorse for the crime. (R.R. Vol. 11 at 164) She conceded that having ADHD and Bi-Polar Disorder does not make a person predisposed to commit a crime. (R.R. Vol. 11 at 168)

The Defense rested. (R.R. Vol. 11 at 170)

C. Jury's Sentence

The jury assessed a sentence of 38 years in the Texas Department of Criminal Justice. (R.R. Vol. 11 at 203)

POINTS OF ERROR

POINT OF ERROR ONE:

The Evidence Was Insufficient To Support Appellant's Conviction For Murder.

POINT OF ERROR TWO:

The Evidence Was Insufficient To Prove That Appellant Acted As A Party To Murder.

POINT OF ERROR THREE:

The Trial Court Erred By Denying Appellant's Motion To Suppress.

POINT OF ERROR FOUR:

The Trial Court Erred By Admitting Appellant's Juvenile Determinate Sentence Judgment.

POINT OF ERROR NO. 1

THE EVIDENCE WAS INSUFFICENT TO SUPPORT APPELLANT'S CONVICTIONS FOR MURDER

Appellant contends that the State has not proven its case beyond a reasonable doubt because the State has failed to show beyond a reasonable doubt that Appellant killed Cory Bayless.

The test for reviewing the insufficiency of the evidence where a defendant has been found guilty is for the reviewing court to determine whether, after viewing the relevant evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Brooks v. State**, 323 S.W.3d 893 (Tex. Crim. App. 2010) Thus, the issue on appeal is not whether the appellate court believes the State's evidence but instead believes the appellant's evidence outweighs the State's evidence. **Wicker v. State**, 667 S.W. 2d 137, 143 (Tex. Crim. App. 1984) The verdict may not be overturned unless it is irrational or unsupported by proof beyond a reasonable doubt. **Matson v. State**, 819 S.W. 2d 839, 846 (Tex. Crim. App. 1991) The jury, as the sole judge of the facts, is entitled to resolve any conflicts in the evidence, to evaluate the

credibility of witnesses, and to determine the weight to be given any particular evidence. **Jones v. State**, 944 S.W. 2d 642, 647 (Tex. Crim. App. 1996)

Section 19.02(a) of the **Texas Penal Code** provides that a person commits the offense of Murder if he intentionally or knowingly causes the death of an individual. (West 2024)

The only evidence which shows that Appellant killed Cory Bayless was that Appellant shot Cory Bayless in the arm when he and Curran tried to rob the Bayless home.

Appellant contends that the following listed evidence so overwhelmingly outweighs the evidence which shows that he committed Murder that the jury's verdict is unsupported by proof beyond a reasonable doubt.

1) Appellant's gunshot was not fatal.
2) Appellant only intended to commit a robbery.
3) Curran fired the fatal shots.

1. Appellant's gunshot was not fatal.

Dr. Patel testified that she did not even label the arm wound in her autopsy report because it would not have been fatal. (R.R. Vol. 6 at 102) Detective Collins noted that the fatal wounds to Cory Bayless' back and abdomen were caused by a .40 caliber gun used by Curran while the non-fatal wound to Cory Bayless' left arm was caused by a .22 caliber gun used by Appellant. (R.R. Vol. 7 at 71-73)

2. Appellant only intended to commit a robbery.

Detective Collins admitted that none of the texts of Appellant, McLarty, or Hernandez discussed the killing of anyone but only discussed robbing Toby Bayless for money since he was a drug dealer. (R.R. Vol. 7 at 151) In addition, Ranger Norsworthy admitted that Appellant told him that he had no plans to kill Cory Bayless but only to rob Toby Bayless of his drug money. (R.R. Vol. 9 at 36)

3. Curran fired the fatal shots.

Toby Bayless testified that Appellant ran out of the house after shooting his father while Curran stayed in the house. (R.R. Vol. 6 at 230) Detective Collins testified that the Bayless home surveillance video showed that Appellant shot Cory Bayless as he charged from his bedroom to confront Appellant and Curran. (R.R. Vol. 7 at 67-68)

Collins noted that after shooting both Cory and Toby Bayless that Appellant fled the house. (R.R. Vol. 7 at 69) He testified that Curran then fired 3 more gunshots after Appellant fled the house. (R.R. Vol. 7 at 69) Collins admitted that Appellant was running through the Bayless' front yard when Curran fired the fatal shots to Cory Bayless. (R.R. Vol. 7 at 139) He further conceded that the home video showed that Cory Bayless got back up after being initially shot by Appellant and then continued to charge at Curran before Curran shot him multiple times with his .40 caliber gun. (R.R. Vol. 7 at 143) Collins admitted that some time passed after Appellant ran out of the house and before Curran shot Cory Bayless. (R.R. Vol. 7 at 148) He conceded that Appellant did not remain in the house and help Curran shoot Cory Bayless multiple times. (R.R. Vol. 7 at 165)

The State failed to provide sufficient evidence that Appellant killed Cory Bayless by failing to prove that he was person who fired the fatal gunshots to Cory Bayless' back and abdomen. Patel testified that the wound to Cory Bayless' left arm was not fatal while the wounds to his back and abdomen were both fatal. Detective Collins testified that the fatal wounds were caused by the .40 caliber gun used by Curran and not

by the .22 caliber gun used by Appellant in this robbery. While Appellant may be guilty of the Aggravated Assault of Cory Bayless by shooting him in his left arm, he is not guilty of Murder for the gunshots fired by Curran to Bayless's back and abdomen which caused the death of Bayless.

Even when viewing the evidence in the light most favorable to the jury's verdict, a rational trier of fact would not have found the essential elements of Murder beyond a reasonable doubt. Therefore, the evidence is legally insufficient to sustain Appellant's conviction for Murder.

POINT OF ERROR NO. 2

THE EVIDENCE IS INSUFFICIENT TO PROVE THAT APPELLANT ACTED AS A PARTY TO MURDER

The Appellant contends that the evidence is insufficient to prove that he acted as a party to the murder of Cory Bayless.

"A person is criminally responsible for an offense committed by the conduct of another if acting with intent to promote or assist the commission of the offense; he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense." **Texas Pen. Code** §7.02(a)(2) (West 2024) In reviewing the evidence regarding a defendant's culpability under the law of parties, the courts may look to events occurring before, during, and after the commission of the offense, and may rely upon actions of the defendant which show an understanding and common design to do the prohibited act. **Ransom v. State**, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994) "Mere presence at the scene of the offense does not establish guilt as a party to the offense." **Porter v. State**, 634 S.W.2d 846, 849 (Tex. Crim. App. 1982) To prove party liability, the State must show that the offense was

committed and that the accused acted with intent to promote or assist the commission of the offense by soliciting, encouraging, directing, aiding, or attempting to aid the primary actor. **Cary v. State**, 507 S.W.3d 750, 757-758 (Tex. Crim. App. 2016) "What matters under Section 7.02(a) is the criminal mens rae of each accomplice; each may be convicted only of those crimes for which he had the requisite mental state." **Ex Parte Thompson**, 179 S.W.3d 549, 554 (Tex. Crim. App. 2005) "To support the conviction of one who starts or participates in a fight with the victim for the subsequent shooting of the victim by another as the altercation progressed, the very least that is required is encouragement of the commission of the offense by words or by agreement made prior to or contemporaneous with the act." **Gross v. State**, 380 S.W.3d 181, 188 (Tex. Crim. App. 2012)

In Appellant's interview with Ranger Norsworthy, he admitted that he and Curran went to the Bayless home to rob Toby Bayless of his drug money but not to kill Cory Bayless. (R.R. Vol. 9 at 36) Moreover, Detective Collins testified that the Bayless home surveillance video clearly showed that Cory Bayless was not killed after Appellant shot him in the left arm because Cory Bayless got up and continued charging

after Curran who then killed him with the fatal gunshots to his back and abdomen. Importantly, Collins admitted that Appellant had run from the Bayless home long before Curran made the decision to shoot Cory Bayless multiple times with his .40 caliber gun. As set out in **Ex Parte Thompson**, Appellant had the mens rae to commit the felony of Aggravated Robbery but not Murder.

Curran could have easily followed Appellant and fled the house after the initial gunshots and Cory Bayless would have survived this home invasion for his son's drug money. Instead, Curran acted on his own by remaining in the house to kill Cory Bayless. While Appellant acted with Curran to promote and assist in the robbery of the Bayless home, he did not solicit, encourage, direct, aid, or attempt to aid Curran in the killing of Cory Bayless. In fact, Appellant did the opposite by fleeing the home when he realized the intended robbery of Toby Bayless's drug money could no longer be successful. The idea that Appellant should have anticipated the murder of Cory Bayless while planning the robbery of Cory's son does not square with Appellant's decision to flee the house when he realized that their plans to rob Toby Bayless had failed. Appellant contends that the Court should not hold

him responsible for Curran's decision to remain in the house and kill Cory Bayless after Appellant left the crime scene.

Without evidence that Appellant assisted and encouraged Curran in shooting Cory Bayless, the State has only shown that Appellant was a party to an aggravated robbery or an aggravated assault and not a party to a murder. Therefore, the State has failed to prove that Appellant was a party to the murder of Cory Bayless.

POINT OF ERROR NO. 3

THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO SUPPRESS

On December 15, 2023, the trial court conducted a hearing on Defendant's Motion To Suppress Statements concerning Appellant's hospital bed statements given to Ranger Norsworthy and Detective Collins on July 22, 2022 at Memorial Hermann Hospital in Houston, Texas. (R.R. Vol. 3 at 5) Appellant contends that his statements were not voluntary because they were made in a hospital bed only three weeks after he shot himself in a suicide attempt. The trial court denied Appellant's motion to suppress these statements. (R.R. Vol. 3 at 34 & TR. at 92)

The appellate court reviews a trial court's ruling on a motion to suppress evidence for an abuse of discretion. **Balentine v. State**, 71 S.W.3d 763 (Tex. Crim. App. 2002) At a suppression hearing, the trial court is the sole and exclusive trier of fact and judge of credibility of the witnesses, as well as the weight to be given their testimony. **Romero v. State**, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990) In reviewing a trial

court's ruling on the motion to suppress, the appellate court gives almost total deference to a trial court's determination of historical facts, and reviews de novo the court's application of the law. **Rayford v. State**, 125 S.W.3d 521, 528 (Tex. Crim. App. 2003)

Article 38.22 of the Texas Code of Criminal Procedure requires that before an oral statement is admissible, the accused must be warned that:

(1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial;

(2) any statement he makes may be used as evidence against him in court;

(3) he has the right to have a lawyer present to advise him prior to and during any questioning;

(4) if he is unable to employ a lawyer, he has a right to have a lawyer appointed to advise him prior to and during any questioning; and

(5) he has a right to terminate the interview at any time.

Tex. Code. Crim. Proc., Art. 38.22, §2(a) (Vernon 2024)

Courts of this state shall strictly construe the requirements of Article 38.22 of the Texas Code of Criminal Procedure and may not find

a statement admissible unless all requirements have been satisfied by the state. **Davidson v. State**, 25 S.W.3d 183, 185 (Tex. Crim. App. 2000)

Article 38.23 of the Texas Code of Criminal Procedure provides that "[n]o evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of a criminal case." (West 2024)

Appellant contends that the trial court erred in failing suppress his statements made to Ranger Norsworthy and Detective Collins because 1) his incoherent medical state while recovering from a gunshot wound rendered his statements involuntary and 2) Appellant's voice on both the videotape and audiotape is mainly inaudible so that its content should be inadmissible.

HOSPITAL BED STATEMENT

A viewing of State's Exhibit 66 shows Appellant lying in a hospital bed, dressed in hospital clothing, and with tubes connected to his body. Appellant's statements to Ranger Norsworthy were so labored that most

of his statements were inaudible. Appellant was hospitalized because he shot himself with a gun in a suicide attempt on June 29, 2022. In fact, Appellant was in a near death coma until just a few days before the interview. Instead of waiting for Appellant to fully recover from his self-inflicted gunshot wound, Ranger Norsworthy obtained a hospital bed statement.

In **Kearney v. State**, 181 S.W.3d 438, 447 (Tex. App. - Waco 2005, pet. ref'd), the Waco Court of Appeals found a hospital bed statement to be voluntary and admissible, but reasoned as follows: "Kearney's medical records reflect superficial gunshot wounds and an overnight hospital stay. On the taped confession (which we have reviewed), Kearney was able to understand the Miranda warnings and Neveu's questions; he even chooses not to answer a question which is evidence that he not only understood the question, but understood that he had a right not to answer it."

Due process requires that the statements obtained from a defendant in a hospital not be used in any way against him in a trial where it is apparent from the record that they were not the product of his free and rational choice. **Mincey v. Arizona**, 437 U.S. 385, 386 (1978) In **Mincey**, the court held that the defendant's hospital bed confession

was not admissible because the defendant did not want to speak to law enforcement and was lying on his back on a hospital bed, encumbered by tubes, needles, and breathing apparatus that rendered him at the complete mercy of the officer's interrogation. **Mincey**, at 399.

Although Appellant asked to speak to law enforcement unlike in **Mincey**, he still lay on a hospital bed, encumbered by tubes, needles, and breathing apparatus like in **Mincey**. Appellant contends, that despite his request to speak with officers, that he was too incoherent from the effects of his gunshot suicide attempt and this incoherence rendered his statement involuntary. Unlike the superficial wounds in **Kearney**, Appellant almost died from his suicide attempt and was hospitalized for an extended period of time before he awakened from a coma and provided a statement to law enforcement.

Additionally, Appellant contends that Ranger Norsworthy should not only have questioned whether he was physically able to provide a voluntary statement but whether he was mentally fit to provide a voluntary statement. Appellant was not hospitalized for a gunshot wound caused by any of the Bayless family, but by a gunshot would caused by himself. The fact that Appellant was willing to take his own life clearly showed that he did not possess the mental faculties sufficient

to knowingly and intelligently waive his Miranda warnings and then provide Ranger Norsworthy with a statement.

Appellant contends that the combination of his physical incapacity with his mental instability rendered his statement involuntary.

APPELLANT'S INAUDIBLE VOICE

Appellant contends that a second reason that his statement is inadmissible is because the majority of his statements were inaudible so that the audible statements in the videotape and audiotape were made by Ranger Norsworthy and not by himself. A viewing of the videotaped interview in State's Exhibit 66 reveals that most of Appellant's statements were so labored that they sounded like grunts. While the playing of audio recording of Appellant's interview in State's Exhibit 89 provided more clarity to Appellant's voice than in State's Exhibit 66, Appellant contends that most of his statements remained inaudible.

Appellant contends that Ranger Norsworthy acted as an interpreter who translated Appellant's inaudible grunts by stating in his own words what he believed that Appellant had stated. In **Montoya v. State**, 810 S.W.2d 160, 174 (Tex. Crim. App. 1989), the Court of Criminal Appeals found a Spanish-speaking defendant's statements

were voluntarily made when a bilingual police officer wrote out defendant's dictated Spanish statement in longhand in English, read back the statement in Spanish to the defendant, and the defendant signed a typed version after agreeing that it was his statement.

Unlike in **Montoya**, the State failed to provide any evidence that Ranger Norsworthy was qualified to translate Appellant's grunts into English as Sergeant Martinez was qualified to translate Montoya's Spanish into English. Also, Ranger Norsworthy failed to provide a summary of Appellant's statement for Appellant to agree with in an audible voice for the jury to hear. Appellant contends that Ranger Norsworthy failed to provide a reliable and accurate translation of his labored speech by stating what Norsworthy believed Appellant was speaking. Without a qualified translation of Appellant's labored speech, the jury should only have heard Ranger Norsworthy's questions and Appellant's labored responses without hearing Norsworthy's interpretation of what he believed Appellant had told him. Therefore, State's Exhibits 66 and 89 are actually Ranger Norsworthy's statements and not Appellant's statements and thus should have been denied admission into evidence.

The admission of Appellant's hospital bed statement to Ranger Norsworthy and Detective Collins was highly prejudicial to Appellant and was so harmful and influential to the jury that it affected a substantial right to a fair trial and directly contributed to the conviction of Murder under Tex. Rule of App. Proc. 44.2 when the only evidence pointing to Appellant's guilt was some distinctive clothing which he owned that appeared similar to the clothing worn by one of the people who robbed the Bayless home.

In conclusion, Appellant contends that trial court abused its discretion by failing to suppress his custodial statements given to Ranger Norsworthy and Detective Collins from a hospital bed.

POINT OF ERROR NO. 4

THE TRIAL COURT ERRED BY ADMITTING APPELLANT'S JUVENILE DETERMINATE SENTENCE JUDGMENT

Appellant objected to the admission of State's Exhibit No. 97 which was the Order giving Appellant credit for his time in custody toward a juvenile sentence and the Order Of Disposition For Determinate Sentence because the document did not contain Appellant's fingerprints for comparison. (R.R. Vol. 11 at 21) The trial court overruled Appellant's objection to this exhibit. (R.R. Vol. 11 at 25)

The courts review a trial court's decision to admit or exclude evidence for an abuse of discretion. **Sheffield v. State**, 189 S.W.3d 782, 793 (Tex. Crim. App. 2006) To establish a defendant's conviction of a prior offense, the State must prove beyond a reasonable doubt that (1) a prior conviction exists, and 2) the defendant is linked to that conviction. **Flowers v. State**, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007) "No specific document or mode of proof is required to prove these elements… While the evidence of a certified copy of a final

judgment and sentence may be preferred and convenient means, the State may prove both of these elements in a number of different ways, including (1) the defendant's admission or stipulation, (2) testimony by a person who was present when the person was convicted of the specified crime and can identify the defendant as that person, or (3) documentary proof (such as a judgment) that contains sufficient information to establish both the existence of a prior conviction and the defendant's identity as the person convicted." **Flowers**, at 921-922.

Deputy Boswell admitted that the Juvenile Judgment did not contain Appellant's fingerprints in order to make a direct comparison with the Appellant's fingerprints he had taken earlier on the day of trial. (R. R. Vol. 11 at 19) However, Boswell testified that the Juvenile Judgment had sufficient identifiers such as Appellant's name and date of birth to link it to Appellant's fingerprints on State's Exhibit No. 96 which was a fingerprint card for Appellant's juvenile aggravated robbery case. (R.R. Vol. 11 at 20) However, a review of State's Exhibit No. 96 does not contain the Juvenile Case Number JV21961 which is found in State's Exhibit No. 97. Therefore, Appellant contends that there is not

beyond a reasonable doubt proof to link both exhibits to support the admission of State's Exhibit No. 97 into evidence.

Additionally, Shawn Salahian's testimony that he was the prosecuting attorney in Appellant's Juvenile Aggravated Robbery case is also insufficient evidence of Appellant's juvenile adjudication found in State's Exhibit No. 97 because Salahian failed to testify that he was present for Appellant's final adjudication. Without Salahian's testimony that he was present when Appellant was adjudicated for the Juvenile Aggravated Robbery case and was sentenced to a 3-year Determine Sentence, the State failed to prove beyond a reasonable doubt that Appellant was adjudicated for the Juvenile Aggravated Robbery charge.

Therefore, the court abused its discretion by allowing this highly prejudicial evidence to be admitted.

CONCLUSION

For the reasons stated, Appellant Moore prays the Court to reverse and acquit or in the alternative to reverse and remand this cause for a new trial.

Respectfully submitted,

/s/ Crespin Michael Linton
Crespin Michael Linton
440 Louisiana, Suite 900
Houston, Texas 77002
Texas Bar No. 12392850
crespin@hal-pc.org
(713) 236-1319
(713) 236-1242 (Fax)

CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's Brief, as calculated under Texas Appellate Rule of Appellate Procedure 9.4, contains 11,942 words as determined by the Word program used to prepare this document.

/s/ Crespin Michael Linton
Crespin Michael Linton

CERTIFICATE OF SERVICE

I do hereby certify that on this the 10th day of July 2024, a true and correct copy of the foregoing Appellant's Brief was served by E-service in compliance with Local Rule 4 of the Court of Appeals or was served in compliance with Article 9.5 of the Rules of Appellate Procedure delivered to the Assistant District Attorney of Brazoria County, Texas, 111 E. Locust, 4th Floor Angleton, Texas 77515 at treyp@brazoriacountytx.gov.

/s/ Crespin Michael Linton
Crespin Michael Linton

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.

Crespin Linton
Bar No. 12392850
crespin@hal-pc.org
Envelope ID: 89628147
Filing Code Description: Brief Not Requesting Oral Argument
Filing Description:
Status as of 7/10/2024 12:51 PM CST

Associated Case Party: JosephAnthony LeeMoore

Name	BarNumber	Email	TimestampSubmitted	Status
Crespin MichaelLinton		crespin@hal-pc.org	7/10/2024 11:55:59 AM	SENT

Associated Case Party: State Of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Trey Picard		treyp@brazoriacountytx.gov	7/10/2024 11:55:59 AM	SENT