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

MARK ROBINSON

APPELLANT

VS.

THE STATE OF TEXAS

APPELLEE

APPELLANT'S BRIEF

ORAL ARGUMENT REQUESTED

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LIST OF PARTIES

The Appellant is Mark Robinson.

The Appellant's trial counsel is Phillip J. Morin, III.

The Appellant's appellate counsel is Crespín 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

List of Parties	i
Table of Contents	ii
Table of Citations	vi
Preliminary Statement	1
Statement of Facts	1
Trial Phase	1
A. State's Witnesses	1
1. Eric Jefferson	1
2. Rebecca Ceglieski	2
3. Moises Lopez	3
4. Cesar Sanchez	4
5. Tandi Dean	5
B. Defense's Witnesses	6
1. Mark Robinson	6

C. Jury's Verdict	8
Punishment Phase	8
A. State's Witnesses	8
1. Jim Roberts	8
2. Efrain Vera	9
B. Defense's Witness	10
1. Mark Robinson	10
C. Trial Court's Sentence	11
Points of Error	12
Point of Error Number One	13
Argument and Authorities on Point of Error Number One	13
Conclusion	17
Certificate of Compliance	17
Certificate of Service	17

TABLE OF CITATIONS

CASES

Brooks v. State , 323 S.W.3d 893 (Tex. Crim. App. 2010).....	13
Cormier v. State , 540 S.W.3d 185, 190 (Tex. App. – Houston [1 st Dist.] 2017, pet ref'd).....	14
Ferguson v. State , 335 S.W.3d 676, 684 (Tex. App. – Houston [14 th Dist.] 2011, no pet.).....	14
Jones v. State , 944 S.W.2d 642, 647 (Tex. Crim. App. 1996).....	14
Matson v. State , 819 S.W.2d 839, 846 (Tex. Crim. App. 1991).....	14
Wicker v. State , 667 S.W.2d 137 (Tex. Crim. App. 1984).....	13

STATUTES

Tex. Pen. Code §8.05(a) (West 2024).....	14
Tex. Pen. Code §38.11(j) (West 2024).....	14

PRELIMINARY STATEMENT

On October 8, 2024, a jury found Appellant, Mark Robinson, (Robinson) guilty of Prohibited Substance Or Item In A Correctional Facility. On October 8, 2024, the trial court assessed a sentence of 35 years in the Texas Department of Criminal Justice. Appellant Robinson perfected his appeal on October 10, 2024. (TR. Vol. 1 at 113)

STATEMENT OF FACTS

TRIAL PHASE

A. State's Witnesses

1. Eric Jefferson

Eric Jefferson testified that she is a Correctional Officer at the Ramsey One Unit and is part of the Contraband Intervention Team. (R.R. Vol. 5 at 13-14) Jefferson stated that about 2:00 a.m. on April 14, 2022, that he and a canine conducted a targeted search of Appellant's jail cell based on an anonymous tip that Appellant had a cellphone. (R.R. Vol. 5 at 14-16) He explained that during the strip search of Appellant he found a gray sock on Appellant's boxer waistband that

contained hand-rolled cigarettes, Ziploc bag with tobacco, and a flip phone cell phone. (R.R. Vol. 5 at 17) Jefferson added that he also recovered a cell phone charger on Appellant's top bunk that was plugged into the top wall socket. (R.R. Vol. 5 at 18-20) He noted that prison contraband is dangerous because the inmates get high from it and the guards have to use force to remove the contraband. (R.R. Vol. 5 at 22)

On cross-examination, Jefferson testified that he also strip-searched Appellant's cellmate but did not find any contraband on him. (R.R. Vol. 5 at 26) He stated that the cell phone charger was plugged into the top outlet in the jail cell. (R.R. Vol. 5 at 27) Jefferson admitted that there was no video or audio of this search. (R.R. Vol. 5 at 27) He conceded that Appellant was cooperative during the search. (R.R. Vol. 5 at 28) Jefferson explained that he put the seized contraband in a brown bag and submitted the evidence to the Office of Inspector General. (R.R. Vol. 5 at 30)

2. Rebecca Ceglieski

Office of Inspector General evidence custodian Rebecca Ceglieski testified that she logged in each piece of evidence taken from Appellant.

(R.R. Vol. 5 at 33) On cross-examination, Ceglieski noted that she stores the evidence after she logs it into her system. (R.R. Vol. 5 at 35)

3. Moises Lopez

Ramsey One Security Threat Group Sergeant Moises Lopez testified that he monitors contraband and inmate telephone calls at the prison. (R.R. Vol. 5 at 38-39) Lopez explained that inmates are not allowed to possess cell phones because they can extort people who can bring contraband to the inmates. (R.R. Vol. 5 at 42) He stated that he accompanied Jefferson on the search of Appellant's cell and witnessed Jefferson find the sock containing contraband on Appellant's person. (R.R. Vol. 5 at 43-44) Lopez noted that the sock contained a flip phone and about 20 cigarettes. (R.R. Vol. 5 at 45) He explained that he believed that an inmate is likely contacting family with a cell phone if the inmate is receiving commissary funds without a record of phone calls to family using the approved prison phone. (R.R. Vol. 5 at 46) Lopez explained that the guards are prohibited from filming strip searches for privacy reasons. (R.R. Vol. 5 at 47)

On cross-examination, Lopez explained that he investigates inmates with large commissary and little inmate calls for the possibility of illegal cell phone possession. (R.R. Vol. 5 at 51) He stated that he saw

that Appellant had an abundance of commissary by looking inside his cell. (R.R. Vol. 5 at 53) Lopez testified that he saw an abundance of commissary bags which contained food, drinks, clothes, and books. (R.R. Vol. 5 at 54) He admitted that most cell phones are brought into prison by corrupt officers. (R.R. Vol. 5 at 56-57) Lopez noted that there is no privacy in prison, so the inmates are subject to being search at any time. (R.R. Vol. 5 at 59)

4. Cesar Sanchez

Office of Inspector General Criminal Investigator Cesar Sanchez testified that he investigated the contraband confiscated from Appellant on April 14, 2022, but admitted that he was unable to locate the source of the flip phone. (R.R. Vol. 5 at 66-70) Sanchez explained that inmates receive a booklet upon their incarceration which contains the prison's rules and regulations and one of these rules prohibits inmates from possessing a cell phone. (R.R. Vol. 5 at 69) On cross-examination, Sanchez noted that he had the flip phone analyzed and the drugs sent to a laboratory for testing. (R.R. Vol. 5 at 70)

5. Tandi Dean

Office of Inspector General Digital Forensic Investigator Tandi Dean testified he received a flip phone from the custodian Ciglieski and extracted the data from the cell phone. (R.R. Vol. 5 at 72-74) Tandi noted that most of the texts came from the telephone number (254) 379-1168. (R.R. Vol. 5 at 77) He explained that all of the phone's retrieved data came from April 12, 2022, through April 14, 2022. (R.R. Vol. 5 at 78) Tandi believed that the phone did not contain any data before April 12, 2022 because Appellant probably didn't receive the cell phone until April 12, 2022. (R.R. Vol. 5 at 79) He testified that the texter was Appellant's wife or girlfriend who texted him on April 13, 2022, the following in capital letters: "MARK ANTHONY ROBINSON, look at the phone ... or wake up or sum like damn wtf." (R.R. Vol. 5 at 81) Tandi noted that girlfriend texted Appellant on April 14, 2022, and referred to him as Mark Anthony Robinson. (R.R. Vol. 5 at 82) On cross-examination, Tandi admitted that none of the texts discussed Appellant possessing drugs. (R.R. Vol. 5 at 84) The State rested. (R.R. Vol. 5 at 85)

B. Defense's Witnesses

1. Mark Robinson

Mark Robinson testified that he is 41 years old and resided in holding cell 14 at Ramsey One Unit during April of 2022. (R.R. Vol. 5 at 105) Robinson stated that he and his cell mate shared bunk beds, a toilet, and a table. (R.R. Vol. 5 at 106) He described being in prison as horrible. (R.R. Vol. 5 at 107) Robinson added that some of the guards are as bad as the inmates with their tit for tat attitude. (R.R. Vol. 5 at 109) He testified that the cell phone confiscated from him was someone else's phone. (R.R. Vol. 5 at 110) Robinson denied having any commissary, money, or visitors. (R.R. Vol. 5 at 111) He claimed that the guards were taking the inmates' commissary for themselves. (R.R. Vol. 5 at 114) Robinson claimed that that a Crip gang inmate named Parlay gave him a note which ordered him to hold the phone, or they would kill him. (R. R. Vol. 5 at 115) He also claimed that the Crip gang recently assaulted him. (R.R. Vol. 5 at 115) Robinson claimed that he was scared for his life from this gang in April of 2022. (R.R. Vol. 5 at 116)

On cross-examination, Robinson admitted that his name is Mark Anthony Robinson and that he was sent to prison for felony Assault Family Violence. (R.R. Vol. 5 at 117) He conceded that he knew it was against the law to have a cell phone. (R.R. Vol. 117) Robinson admitted that he has access to the prison provided phone so that he can contact his family. (R.R. Vol. 5 at 118) He claimed that he possessed the cell phone under duress. (R.R. Vol. 5 at 119) Robinson admitted that he sent and received texts on April 14, 2022. (R.R. Vol. 5 at 119) He claimed that he did not have the money to buy a cell phone in prison because it costs between \$1,500.00 to \$3,000.00 to purchase one. (R.R. Vol. 5 at 120) Robinson stated that in November of 2022 that he requested that the Office of the Inspector General allow him to wear a wire to help their office to catch corrupt inmates and guards. (R.R. Vol. 5 at 121) He stated that prison officials punished him in a disciplinary hearing for having the cell phone. (R.R. Vol. 5 at 123) Robinson admitted that he didn't disclose to prison officials that Parlay threatened him into holding the cell phone until after these current charges were filed. (R.R. Vol. 5 at 125) The Defense rested. (R.R. Vol. 5 at 126)

C. Jury's Verdict

The jury found Appellant guilty of Prohibited Substance Or Item In A Correctional Facility. (R.R. Vol. 5 at 155)

PUNISHMENT PHASE

Appellant pleaded "Not True" to the enhancement allegations that on November 13, 2001, he was convicted of Injury to a Child in McLennan Count, that on July 30, 2010, he was convicted of felony Assault Family Member in McLennan County, that on February 18, 2014, he was convicted of Assault Family Member Previous Conviction in McLennan County, and that on May 24, 2017 that he was convicted of felony Assault Family Member in McLennan County. (R.R. Vol. 6 at 11-19)

A. State's Witnesses

1. Jim Roberts

The State of Texas Special Prosecution Unit Civil Investigator Jim Roberts testified that he is a latent fingerprint investigator. (R.R. Vol. 6 at 20-21) Roberts stated that Appellant's fingerprints matched the fingerprints found on the July 30, 2010, criminal judgment for Assault

Family Violence Enhanced, the February 18, 2014, criminal judgment for Assault Family Violence, and on the May 24, 2017 criminal judgment for Assault Family Violence by Occlusion. (R.R. Vol. 6 at 22-29) He admitted that he could not identify the fingerprints on the November 13, 2001, criminal judgment for revocation of probation for Injury to a Child but noted that the defendant's name and date of birth were the same as the other three criminal judgments. (R.R. Vol. 6 at 30-31)

2. Efrain Vera

The Texas Department of Criminal Justice Regional Narcotics Detention Canine Sergeant Efrain Vera testified that on April 14, 2022, that he conducted a search of Appellant's cell and his dog named Tuck alerted to contraband on the top bunk of the bunk bed. (R.R. Vol. 6 at 33-35) Vera stated that he found balloons containing synthetic cannabis hidden in Appellant's top mattress. (R.R. Vol. 6 at 35) He noted that he searched the cell after Jefferson had removed Appellant from the cell. (R.R. Vol. 6 at 36)

On cross-examination, Vera testified that Appellant was assigned the top bunk. (R.R. Vol. 6 at 38) He described how the drugs were wrapped in a tortilla bag inside the mattress. (R.R. Vol. 6 at 38) Vera

noted that he has seen many inmates make cigarettes for sale inside the prison. (R.R. Vol. 6 at 39)

The State rested. (R.R. Vol. 6 at 39)

B. Defense's Witness

1. Mark Robinson

Mark Robinson testified that he has four brothers and four sisters and grew up in Waco, Texas. (R.R. Vol. 6 at 41) Robinson stated that he dropped out of high school in the 9th grade at age thirteen when his father kicked him out of the house. (R.R. Vol. 6 at 42) He noted that he had a rough childhood and began getting into trouble at the age of 17. (R.R. Vol. 6 at 45) Robinson asked for the Judge to give him the minimum sentence. (R.R. Vol. 6 at 48)

On cross-examination, Robinson denied being convicted of Possession of Marijuana in 2010 and 2013 and Possession of Hydrocodone in 2013. (R.R. Vol. 6 at 49-50)

The Defense rested. (R.R. Vol. 6 at 53)

C. Trial Court's Sentence

The trial court found all four enhancement allegations to be True and assessed a sentence of 35 years in the Texas Department of Criminal Justice to be served consecutively to the sentence that Appellant was currently serving. (R.R. Vol. 6 at 60-61)

POINTS OF ERROR

POINT OF ERROR ONE:

The evidence was insufficient to support Appellant's conviction for Prohibited Substance In A Correctional Facility.

POINT OF ERROR NO. 1

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR PROHIBITED SUBSTANCE IN A CORRECTIONAL FACILITY

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 Robinson knowingly or intentionally possessed a cell phone in prison because he was under duress from a prison gang to hold the phone under the threat of death.

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 38.11(j) of the **Texas Penal Code** provides that a person commits an offense if the person, while confined in a correctional facility, possesses a cellular telephone or other wireless communications device or a component of one of those devices. (West 2024) “A person commits a crime if he intentionally or knowingly possesses a cellular telephone while an inmate in a correctional facility operated by the TDCJ.” **Ferguson v. State**, 335 S.W.3d 676, 684 (Tex. App. – Houston [14th Dist.] 2011, no pet.)

“Duress is an affirmative defense that applies if the defendant engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another. **Tex. Penal Code** §8.05(a). Compulsion means a force or threat of force that would render a person of reasonable firmness incapable of

resisting pressure. **Cormier v. State**, 540 S.W.3d 185, 190 (Tex. App. – [1st Dist.] 2017, pet. ref'd)

The only evidence which shows that Appellant possessed a cell phone in the Ramsey Unit prison was Jefferson's testimony that he found a cell phone in a sock attached to Appellant's boxer shorts during a strip search.

Appellant contends that the following listed evidence so overwhelmingly outweighs the evidence which shows that he did not voluntarily possess the cell phone because he was under duress.

- 1) Appellant was under duress to hold the phone.

1. Appellant was under duress to hold the phone.

Appellant testified that a Crip gang member named Parlay gave him a note to hold the cell phone or the gang would snub him out. (R.R. Vol. 5 at 115) He added that in April of 2022 that he was scared for his life. (R.R. Vol. 5 at 116) On cross-examination, Appellant admitted that he held the phone because he was under duress. (R.R. Vol. 5 at 119)

The State failed to provide sufficient evidence to show that Appellant intentionally or knowingly possessed the cell phone because

he was under duress from a fellow inmate who was a Crip gang member and who threatened to kill him if he didn't hold the phone. Appellant was a prisoner and could not leave the prison to escape the gang member's deadly threat. The gang member's threat of imminent death compelled Appellant to possess the cell phone when he knew it was illegal to do so. As a captive inmate, Appellant could not resist the pressure of a gang member who Appellant knew could easily and believably act on the threat to kill him.

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 Prohibited Item in a Correctional Facility beyond a reasonable doubt. Therefore, the evidence is legally insufficient to sustain Appellant's conviction for Prohibited Item in a Correctional Facility.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's Brief, as calculated under Texas Appellate Rule of Appellate Procedure 9.4, contains 3199 words as determined by the Word program used to prepare this document.

/s/ Crespin Michael Linton
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CERTIFICATE OF SERVICE

I do hereby certify that on this the 21st day of January 2025, 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 Street, 4th Floor Angleton, Texas 77515 at treyp@brazoriacountytx.gov.

/s/ Crespin Michael Linton
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