No. 14-24-00971-CR

IN THE FOURTEENTH COURT OF APPEALS
SUPREME JUDICIAL DISTRICT
HOUSTON, TEXAS

COREY DEWANE MORRISON

VS.

THE STATE OF TEXAS

Appealed From the
District Court of Harris County, Texas
184TH Judicial District Court
Cause No. 1863526

BRIEF FOR APPELLANT

ORAL ARGUMENT REQUESTED

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IDENTITY OF PARTIES AND COUNSEL

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STATEMENT OF THE CASE

This appeal lies from appellant's conviction in *The State of Texas vs. Corey Dewane Morrison*, Cause No. 1863526, in the 184TH Judicial District Court, Harris County, Texas. The defendant pled NOT guilty to Unlawful Possession of a Firearm by a Felon and was sentenced to twenty five (25) years by the jury on December 11, 2024. Appellant gave written notice of appeal on December 11, 2024. and appellate counsel was appointed December 13, 2024.

This Court has jurisdiction pursuant to Tex. R. App. P. 26.2(a)(Vernon Pamphlet 2025).

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Tex. R. App. P. Ann. 39.1 (Vernon Pamph. 2025), Appellant requests oral argument in this cause. The undersigned counsel believes that oral argument will assist this Court in disposing of the issues raised herein.

ISSUES PRESENTED (Restated)

APPELLANT'S FIRST POINT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING THE APPELLANT'S MOTION TO SUPPRESS THE SEIZED FIREARM WHERE THE RECORD REFLECTS THE TOTALITY OF THE CIRCUMSTANCES WAS NOT SUFFICIENT TO SUPPORT AN OFFICER'S REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

APPELLANT'S SECOND POINT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING THE APPELLANT'S MOTION TO SUPPRESS THE CONTENTS OF THE TOWED VEHICLE WHERE THE RECORD REFLECTS THE TOTALITY OF THE CIRCUMSTANCES WAS NOT SUFFICIENT TO SUPPORT AN OFFICER'S REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

APPELLANT'S THIRD POINT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO EXCLUDE THE JAIL CALL, STATE'S EXHIBIT 24, (R.R.VII.-96, 97), WHERE THE RECORD REFLECTS THAT THE STATE VIOLATED ITS DUTY UNDER ARTICLE 39.14 OF THE CODE OF CRIMINAL PROCEDURE, BY FAILING TO NOTIFY THE DEFENSE OF ITS INTENDED USE OF AN INCRIMINATING JAIL CALL AT TRIAL.

APPELLANT'S FOURTH POINT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE CUSTODIAN OF THE RECORDS TO TESTIFY, WHERE THE RECORD REFLECTS THAT THE STATE VIOLATED ITS DUTY UNDER ARTICLE 39.14 OF THE CODE OF CRIMINAL PROCEDURE BY FAILING TO PROVIDE TIMELY "NOTICE" THAT THE CUSTODIAN OF THE RECORDS WOULD BE CALLED AS A WITNESS. (R.R.VII.-162).

APPELLANT'S FIFTH POINT OF ERROR

THE EVIDENCE IS INSUFFICIENT TO SUPPORT APPELLANT'S

CONVICTION WHERE THE STATE FAILED TO PROVE THE APPELLANT COMMITTED UNLAWFUL POSSESSION OF A FIREARM BY A FELON BEYOND A REASONABLE DOUBT.

APPELLANT'S SIXTH POINT OF ERROR

THE TRIAL COURT ERRED IN OVERRULING THE APPELLANT'S MOTION FOR DIRECTED VERDICT.

STATEMENT OF FACTS

On December 4th, 2024, a Pre-Trial hearing was held. (R.R. II.-3). The State explained to the Defendant, Mr. Morrison, the evidence that the State intended to use against him:

> Officer Loggins was dispatched to a suspicious vehicle call for service.And he made his way to an address in Harris County,Texas where he observed a white truck-like vehicle, it's a GMC parked outside of a church. He approached to investigate and noticed that there were bullet holes and a broken out window in that vehicle.
>
> He also observed this defendant asleep in the front seat with the seat laid back. He initially called for backup and then he did eventually make contact with the defendant.
>
> All of this is on body cam . . .
>
> At that point Mr. Morrison wakes up, Officer Loggins does engage in a conversation with him, asks him to step out of the car, asks him if he's okay. There are bullet holes all over the car. Mr. Morrison does step out.The officer begins his investigation into what is going on with this vehicle and does attempt to detain Mr. Morrison. And at that point Mr. Morrison pulls away from the officer, repeatedly states he's not going back to jail. At that point attempts to evade.And there's a pretty lengthy evading, refusing to be detained.
>
> . . .
>
> And so the officer calls for backup repeatedly. Backup eventually gets there and detains Mr. Morrison. The officer, also whenever he went to detain Mr. Morrison, observed a firearm in the front seat of the vehicle. It's in plain view, it's not in a holster.
>
> After Mr. Morrison is detained other officers come and they collect that firearm. There's a magazine as well as a bullet in the chamber. I plan on introducing all three of those items into evidence.

> In addition, the officers still investigate how all these bullet holes got there, they attempted to do essentially an agg assault investigation. Mr. Morrison did repeatedly say that he was shot at, so that was investigated. Officers were able to locate some rounds right outside of the vehicle on the outside of the steps. They ultimately took the car in and towed it, and then obtained a search warrant in order to process the vehicle. CSU did process the vehicle, and there are a number of photos as well as items recovered from that. I only intend to introduce photos from the vehicle, along with the testimony of that CSU lab person.

(R.R. II.-3, 4, 5).

The Court explained to the appellant, Mr. Morrison, that this was not the trial, but just what the prosecutor intended to introduce at trial, and that the range of punishment for this offense, enhanced with 2 of his prior TDC felony convictions, was 25 to life. (R.R. II.-7). The State explained that 5 years was the final offer and it would be revoked that day. (R.R. II.-9).

After talking to his lawyer, the appellant, Mr. Morrison, indicated that there was no number of years he would accept before going to trial. (R.R. II.-10, 11).

Counsel for the appellant explained to the Court that the appellant would accept "12.44" but the State would not offer it. (R.R. II.-11).

Following a discussion with the Court, the State arraigned the appellant. (R.R. II.-13). To the offense of Felon in Possession of a Firearm, the appellant pled "Not guilty." (R.R.III. 13, 14). To the enhancement paragraphs, the appellant pled "Not true." (R.R. II.-14).

The Defense objected to paragraph 3 of the State's Motion in Limine, and the Court granted paragraph 3 of the State's Motion in Limine. (R.R. II.-15, 16, 17).

Following Voir Dire, a Motion to Suppress Hearing was held. (R.R.IV.-6). The rule was invoked. (R.R.IV.-6).

The Defense argued that 1) Officer Loggins did not have reasonable suspicion to detain Mr. Morrison, the appellant, and 2) the "community care certification" does not apply in this particular circumstance. (R.R.IV.-7). The Defense argued that since the defendant's detention was illegal, the subsequent seizure of the firearm was illegal and the Defense asked that the firearm and the contents of the vehicle be suppressed. (R.R.IV.-7).

The first witness called by the Defense was Officer Loggins. (R.R.IV.-8). Officer Loggins agreed that he did not have an arrest warrant to arrest the Defendant or a search warrant to search the Defendant's vehicle. (R.R.IV.-10). He agreed that he was called out to a suspicious vehicle. (R.R.IV.-10). The officer had not received a report that the vehicle was occupied and he was surprised to see Mr. Morrison in the front seat. (R.R.IV.-11). The vehicle was riddled with bullet holes and the officer shouted at Mr. Morrison, who appeared to be asleep. (R.R.IV.-12). The officer agreed that Mr. Morrison did not appear to be in pain or in distress when he ordered Mr. Morrison out of the vehicle. (R.R.IV.-12).

At this point, the officer handcuffed Mr. Morrison and he was not free to

leave, he was detained. (R.R.IV.-13). The officer agreed that Mr. Morrison tried to leave and end the interaction, and that the vehicle was in a church parking lot. (R.R.IV.-13). The officer agreed that he did not witness Mr. Morrison with a firearm when he ordered Mr. Morrison outside the vehicle, and he had not heard any reports about a shooting that had occurred. (R.R.IV.-14). He agreed that Mr. Morrison attempted to get back into the vehicle, and when he attempted to pull Mr. Morrison out of the vehicle, he saw a firearm on the seat. (R.R.IV.-15). He agreed that he would not have seen the firearm if he hadn't pulled Mr. Morrison from the vehicle. (R.R.IV.-15).

The officer agreed that Mr. Morrison attempted to flee his detention and he placed him under arrest at a certain point, and other officers seized that firearm. (R.R.IV.-15). Other officers got a wrecker to tow the vehicle. (R.R.IV.-16).

The Defense passed the Witness to the State. (R.R.IV.-16).

On cross, the officer explained that on April 10, 2024, he was dispatched to an address that was a church where there was an open parking lot. (R.R.IV.-18). He was wearing he body worn camera. (R.R.IV.-18). The State offered State's Exhibit 1, a tape from the officer's video camera, into evidence with no objection by the Defense. (R.R.IV.-19). When the officer arrived, he ran the plate of the vehicle and it came back to an E-150, like a Ford van or something, and did not match the car which was a white Suburban GMC. (R.R.IV.-21). When he approached, the officer noticed bullet marks on the vehicle. (R.R.IV.-24). He saw

a man laying back in the chair in the front seat on the driver's side. (R.R.IV.-26). The man turned on the vehicle and the officer was concerned because the man "wasn't free to leave" because the officer wanted to investigate what was going on and the bullet holes in the car. (R.R.IV.-27).

While playing the body cam, the officer explained that he was trying to detain the appellant and was going to put handcuffs on him so he could figure out what was going on. (R.R.IV.-28). The officer explained that he wanted to detain the appellant for the officer's safety. (R.R.IV.-28). The appellant tried to get back in the vehicle, then tried to turn around and go the other way, but the appellant was not reaching for anything. (R.R.IV.-29). At this point the appellant was resisting arrest. (R.R.IV.-29).

The officer never employed his taser. (R.R.IV.-30).

The Court asked the lawyers to approach, and noted that the search occurred after the appellant resisted arrest. (R.R.IV.-30). The State explained that the gun was found in the driver's seat, kind of leaned up against the right side where the appellant was sitting, and when the door was open, the gun was in plain view. (R.R.IV.-31).

The Defense argued that. to detain an individual under the Fourth Amendment for an investigative detention, the officer has to have reasonable suspicion that that particular person has engaged, is engaged, or will be engaged in criminal activity. And the officer testified essentially that he had reason to believe

Mr. Morrison was the victim of a crime. I don't believe that he has reasonable suspicion that he has committed a crime. The caller reported a suspicious vehicle that had been parked at the location. Didn't report an individual within it. The caller didn't report a criminal trespass, for example, or a shooting. Perhaps if the caller had said, There is a white Yukon in the area that's been involved in a shooting, fair. You know, that might be reasonable suspicion that that Yukon committed a crime. But the argument is that the officer didn't have reasonable suspicion that Mr. Morrison had committed, was committing, or was about to commit criminal activity. (R.R.IV.-35).

The Court responded, I heard the officer testify that he thought that the vehicle may have been involved in a shootout where both people could have been shooting at one another. I heard the officer testify that he thought that the vehicle may have been involved in a shootout where both people could have been shooting at one another. (R.R.IV.-36).

The State cited *Derichsweiler v. State*., 348 S.W.3d, 906, Court of Criminal Appeals, 2011, as authority to rebut the Defense argument that the officer drew his conclusions from his observations that the vehicle was shot. (R.R.IV.-36).

The Defense responded that in Derichsweiler, the reportee told the police that the suspect, Derichsweiler, was acting particularly himself in a suspicious manner toward them. The suspect was leering and staring at the reportee, who suggested to the police that the reportee was worried about being robbed by the

suspect, Derichsweiler. (R.R.IV.-37). The Defense argued that in the instant case, Mr. Morrison was in the vehicle with bullet holes, and there was no indication from a caller that the vehicle was involved in a crime or that any drive by shooting even occurred in the area. (R.R.IV.-38).

The officer agreed that he had very limited information before he arrived on the scene. (R.R.IV.-40). The officer agreed that the information he had was that the vehicle was suspicious, but he didn't know the nature of why it was suspicious. (R.R.IV.-40). He testified that the license plate on the vehicle did not match the make of the vehicle. (R.R.IV.-40). He agreed that when he arrived it was fair to say that he believed that Mr. Morrison, the appellant, was probably the victim of a crime more than a perpetrator. (R.R.IV.-41).

After hearing arguments from both sides, the Court ruled that the Motion to Suppress the contents of the towed vehicle was denied, and Motion to Suppress the seized firearm was denied. (R.R.IV.-50).

Following Voir Dire, the State arraigned the appellant, and to the charge that the appellant did intentionally and knowingly possess a firearm at a location other than the premises at which he lived, after being convicted of the felony of possession with intent to deliver/manufacture, the appellant pled "Not guilty." (R.R.VII.-8).

The Defense, in Opening Statememt, told the jury that at the conclusion of the trial, they would all have unanswered questions and they should consider

theses unanswered questions to be reasonable doubt. (R.R.VII.-13). The Defense recalled that in voir dire, one of the members expected to see fingerprints as evidence in this type of case. (R.R.VII.-13). The Defense assured the jury that no one would see fingerprints in this case and that the State had every opportunity to test that firearm for fingerprints, to test that firearm for DNA, and to present some sort of proof that the appellant was guilty of the offense, but they didn't. (R.R.VII.-13, 14). The Defense noted that if there was a single reasonable doubt, the only just verdict is not guilty. (R.R.VII.-14).

The first witness called by the State was Ronnel Loggins. (R.R.VII.-14). Officer Loggins. Explained that when he received the call, he knew it was a suspicious vehicle, and when he arrived he saw a white vehicle, GMC Suburban-type, sitting at a church. (R.R.VII.-19).

A bench conference was held in which the Defense objected to statements on the officer's video made by the appellant about "not going back to jail" as to being too prejudicial.(R.R.VII.-21).

The Court sustained the Defense objection, and allowed the State and Defense to go through the officer's video, then recall the officer once the video has been fully redacted as to prejudicial statements made by the appellant in reference to going back to jail. (R.R.VII.-21-28).

Continuing on Direct, Officer Loggins explained that when he approached the vehicle, he saw bullet holes, and it's not normal for a vehicle to be sitting in a

parking lot for three to four days with bullet holes, so he requested back-up. (R.R.VII.-27, 28). The officer then approached the vehicle and saw a bullet hole in the front left window, the driver's side, and then saw the suspect laying back in the seat. (R.R.VII.-29). He then gave some command for the suspect to step out of the vehicle. (R.R.VII.-29).

The officer then identified the appellant in the court room, as Corey Dewane Morrison, sitting to the left, wearing a blue suit with a white shirt and blue tie. (R.R.VII.-30).

The officer explained that he order the appellant out of the car for his own safety, then attempted to detain him by putting him in handcuffs. (R.R.VII.-30, 31). At that point, the appellant went back into his vehicle and the officer tried to grab him by the right arm. (R.R.VII.-31). The officer explained that he detained the appellant for his own safety because he didn't know what was in the car. (R.R.VII.-31, 32). The officer explained that when the appellant was trying to flee, that was when he saw the weapon in the vehicle. (R.R.VII.-32). The officer explained that the appellant turned the vehicle on and when he pulled the appellant out of the vehicle he saw the firearm sitting in the driver's seat by the seat belt buckle. (R.R.VII.-33). The firearm was a black Smith and Wesson. (R.R.VII.-33).

The State offered State's Exhibit 2, a picture of the inside of the vehicle, into evidence, without objection by the Defense. (R.R.VII.-33, 34). The officer agreed that the appellant tried to flee, but he was able to detain him. (R.R.VII.-35, 36).

On cross, the officer agreed that the reason he was called out was for a suspicious vehicle, not for a shooting. (R.R.VII.- 37, 38). He agreed that the vehicle had been at the church for about three to four days and hadn't been moved. (R.R.VII.-38). He agreed that he didn't expect there to be an individual inside the vehicle. (R.R.VII.-38). He agreed that when he approached, the appellant was in the front seat, fast asleep, and the officer thought the appellant might be deceased. (R.R.VII.-39). The officer agreed that he shouted at the appellant, and the appellant turned on the vehicle before he exited the vehicle. (R.R.VII.-40).

The State then played the body-cam for the jury. (R.R.VII.-42).

The officer agreed that the appellant appeared confused when the officer ordered the appellant out of the vehicle. (R.R.VII.-44). The officer did not remember whether the appellant appeared homeless, was tidy, or was wearing shoes. (R.R.VII.-45). The officer agreed that he never searched the appellant and didn't find ammunition on him. (R.R.VII.-45). He agreed that the firearm was a .40 . (R.R.VII.-45). The officer agreed that they found a firearm and the magazine but no 40 millimeter shell casings. (R.R.VII.-46). The officer agreed that he didn't see Mr. Morrison ever reach for the firearm. (R.R.VII.-46).

On re-cross, the officer indicated that he had no personal knowledge of any shootings in the area, and he testified that the vehicle was there for several days. (R.R.VII.-48). He agreed that anyone could have gotten in the vehicle in that time. (R.R.VII.-49).

The next witness called by the State was Officer Kevin Galicia. (R.R.VII.-49). On April 10, 2024, he was with his partner Officer Durant, who was his trainer at the time. (R.R.VII.-52). When he arrived at the scene he observed a white SUV GMC that had bullet holes on the driver's side at the time, and a gray and black firearm in the driver's seat. (R.R.VII.-54).

The officer explained that State's Exhibits 3 and 4 showed a firearm which is gray and black, and the Defense objected to State's 3 and 4 for reasons stated in the suppression motion, no reasonable suspicion. (R.R.VII.-56, 57). The Court overruled the Defense objection. (R.R.VII.-58). The officer testified that there was a loaded .40 caliber bullet in the chamber of the firearm and he unchambered it and took it out of the magazine. (R.R.VII.-59). The officer explained that he wore gloves to avoid leaving his fingerprints on the firearm. (R.R.VII.-60). The officer took the firearm, the bullet and the magazine, and placed them in his marked patrol vehicle, then waited for the city wrecker to tow the vehicle to the Dart lot. (R.R.VII.-60). The officer then found two fired 9 millimeter casings "on the floorboard outside that you step into the vehicle", and placed them in his patrol car with the other items. (R.R.VII.-61, 62).

The officer took the two casings, the firearm and everything else to the Houston Police property room. (R.R.VII.-62). After the officer identified the firearm tagged for evidence, State's Exhibit 5, the State offered it into evidence, and the Defense objected to State's Exhibit No. 5 for the reasons previously stated.

(R.R.VII.-67). The Court admitted State's Exhibit 5 and allowed the State to publish it. (R.R.VII.-68).

The officer explained that the floorboard was something on the outside of the vehicle and he placed marks on it depicted in State's Exhibit 8. (R.R.VII.-75).

On cross, the officer indicated that he did not see if Mr. Morrison, the appellant, had gunshot residue on his hands to see if he fired that gun as part of some sort of shootout. (R.R.VII.-81). The officer agreed that the shell casings he collected were for a .9 millimeter gun, and the gun he retrieved was not a 9-millimeter gun. (R.R.VII.-81, 82).

The next witness called by the State was Chris Durant, an officer with H.P.D.. (R.R.VII.-86). On April 10, 2024, Officer Durant was training Officer Galicia. (R.R.VII.-89). Officer Durant explained that he was instructed to get the firearm and run it, and take the vehicle to the Dart lot for examination. (R.R.VII.-92). Officer Galicia collected the gun. (R.R.VII.-93).

During a break, Defense counsel objected to the jail calls based on 39.14, the appellant's right to due process. (R.R.VII.-96). Defense counsel argued that, though it was possible for the Defense to discover the jail calls by digging through the D.A.'s websight, the Defense never received any email saying the incriminating jail calls existed. (R.R.VII.-97).

The Court asked if there if there was a discovery order, and the State responded: "There is not, Judge. There is a 39.14 request, but there is no

discovery order. (R.R.VII.-97).

The record reflects that a Request for Discovery, Notice and Disclosure of State's Experts was filed on April 22, 2024, by the Harris County Public Defender and Assistant Public Defender, (C.R. 22, 23, 24, 25), more than seven months prior to the trial setting on December 4, 2024.

The Defense cited *State v. Heath* as the basis for asking for an exclusion. (R.R.VII.-98).

The State argued that the jail calls were available on the portal 19 days prior to their bench conference.. (R.R.VII.-100).

The Defense responded that the issue was not the availability of the evidence, but it was notice, citing the Michael Morton Act. (R.R.VII.-100).

Before the jury was brought out, the Defense requested that the Rule be invoked and the Rule was invoked. (R.R.VII.-102).

The jury was brought in and State passed the witness, Officer Durant. (R.R.VII.-103).

On cross, the officer explained that when they arrived they were told that the car needed to go to the Dart lot and there was a weapon that needed to be recovered from the vehicle. (R.R.VII.-107). The officer indicated that he did not know whether the officer who retrieved the gun had gloves on, and he agreed that was important because the charge was felon in possession of a weapon, and fingerprints could be important in determining if someone possess a gun.

(R.R.VII.-109).

On redirect the officer indicated that gunshot residue was not part of proving that the appellant was in possession of a firearm. (R.R.VII.-114).

The next witness called by the State was Michael Wilson, latent print examiner for the Harris County Sheriff's Office. (R.R.VII.-116-118). He agreed that he took prints from the appellant, and the source of the State's Exhibit 12 were made by the appellant. (R.R.VII.-124, 125). He also agreed that the prints on the jail card were the appellant's prints, (R.R.VII.-127), and the appellant was arrested for possession with intent to deliver. (R.R.VII.-128, 129).

The Defense objected to State's Exhibit No. 15, a certified public document, based on the fact that the indictment was on the judgment, the legal basis for the objection being hearsay and confrontation. (R.R.VII.-131).

The Court overruled the objection. (R.R.VII.-131).

The State then recalled Officer Loggins. (R.R.VII.-151). The officer recognized State's Exhibit 25 as the videotape of his body cam, and the State officer it into evidence without objection. (R.R.VII.-152).

The next witness called by the State was Officer Gardner-Barker. (R.R.VII.-160).

At a bench conference, the Defense objected based on lack of notice that the State intended to call the custodian of the records as a witness, and the Defense cited common law noting that the Defense shouldn't be surprised, and the

evidence, i.e., jail calls, were very inculpatory. (R.R.VII.-162).

The State responded that the custodian of the records was on the witness list provided :"today" and this witness was not an expert. (R.R.VII.-162).

On cross, the officer agreed that he did not come up with anything conclusive as to whether there was a shooting. (R.R.VII.-169).

After the jury was released, the Court found that the Defense was surprised that a jail call was being used in the trial, and gave the Defense an opportunity to review the jail call. (R.R.VII.-171).

The next witness called was Sarah Lambert, a crime scene investigator at Houston Forensic Science Center. (R.R.VII.-173).

On cross, Ms. Lambert agreed that she found four identification cards that belonged to Ronnie Williams, but none that belonged to the appellant. (R.R.VII.-185). She agreed that she took contact DNA swabs from the vehicle but she was not "tasked" with doing a contact DNA swab on a firearm. (R.R.VII.-187). She also process the vehicle for latent prints but was unsuccessful. (R.R.VII.-188). She agreed that she took a latent print successfully from the ID holder and one from the passenger side door interior. (R.R.VII.-190). She didn't perform any tests on the firearm. (R.R.VII.-190).

The Defense approached the witness with Defense Exhibits 1 through 14 and she described them as photographs she took of the vehicle on the day she searched the vehicle. (R.R.VII.-191). The Defense explained to the Court that the

images were relevant to show the messy state of the vehicle and would demonstrate, in combination with the testimony, that the vehicle was abandoned. (R.R.VII.-192). The Defense explained that it would suggest that there was not [sic] reasonable doubt that an individual would not [sic] notice the gun was there. (R.R.VII.-192).

The Court admitted Defense Exhibits 1 through 14 over objection. (R.R.VII.-192).

Ms. Lambert agreed that the car was a mess. (R.R.VII.-193).

The court then took objections to the court's charge (R.R.VIII.-6).

The State asked that the Court take out premises and the definition of it, citing *Nesbit v. State*, 720 S.W.2d, 888 and *Sharif v. State*, 640 S.W. 3d 636. (R.R.VIII.-8).

The Defense responded that the State has to prove beyond a reasonable doubt that the firearm was possessed in a location other than the premises at which the person lives and that premises is useful as a definition. (R.R.VIII.-10).

The State argued that the definition in the charge includes all the vehicles and appurtenances pertaining to the grounds and would be confusing and misleading because the State is telling the jury that a premises in which he lives does not include vehicle, but the definition in the jury charge says it does. (R.R.VIII.-11).

The State argued that if they were going to use the UCW statute definition,

then the State would request that recreational vehicle be defined under 46.02.. (R.R.VIII.-15).

The Court ruled that the recreational vehicle definition would be included at the top of Page 2. (R.R.VIII.-17).

The next witness called by the State was Sergeant Mark Schmidt, administrator for the inmate phone system and custodian of the records for jail calls with the Harris County Sheriff's Office. (R.R.VIII.-29, 30). The Sergeant found the calls by Corey Morrison, the appellant, and identified the appellant, in the court room wearing a white shirt, striped tie and glasses, as the inmate with the SPN number 00796329. (R.R.VIII.-32). He explained that State's Exhibit 24 was a DVD that contains a redacted phone call by the appellant. (R.R.VIII.-34).

The Defense objected to the introduction of State's Exhibit 24 because 1) the appellant identified himself by a nickname Fresh, which is prejudicial, not probative, and makes him sound like a gangster, and 2) the identification within the recording by an individual on the other end of the line violates the confrontation clause and is hearsay. (R.R.VIII.-35).

The Court overruled the Defense objections. (R.R.VIII.-35).

On cross, the Sergeant stated that Aunt Brenda, when she asked if the appellant was attacked and had to defend himself, the appellant said yeah, it was like a little road rage incident. (R.R.VIII.-45). The Sergeant agreed that the appellant said it was self-defense. (R.R.VIII.-46). The Sergeant agreed that there

was only one jail call that the State agreed to use out of the 86 calls that the appellant made. (R.R.VIII.-47).

The jury was excused and the Defense made a motion for a directed verdict based on the State's failure to provide even a scintilla of evidence that Mr. Morrison has been convicted of the felony offense of possession with intent to deliver or manufacture a controlled substance, in a particular court, with a particular cause number. (R.R.VIII.-48).

The. Court denied the motion. (R.R.VIII.-49).

After the jury was brought back in, the Defense called Ms. Shanaihi Patel, a certified latent print examiner and a latent print processor employed by the Houston Forensic Science Center. (R.R.VIII.-51-53). She agreed that the State called her initially, but the Defense called her as a witness. (R.R.VIII.-57, 58). She agreed that she was provided with two latent prints cards, one of the latent print cards taken from a passenger side door interior of a white Yukon and the other from the exterior of an ID holder found on the dashboard of the vehicle. (R.R.VIII.-60). She explained that there was only analysis done because there was no print found of value. (R.R.VIII.-60).

Ms. Patel indicated that no firearm was submitted to the Houston Forensic Science Center for fingerprint analysis in this case. (R.R.VIII.-61).

In Closing, the Defense argued that the State failed to prove that the appellant had been convicted of a felony offense beyond a reasonable doubt,

because the State's expert testified that he could not tell the jury was a judgment is. (R.R.VIII.-80). He argued that the fingerprints were cut in half and the expert testified that he would be more certain if the fingerprint was complete. (R.R.VIII.-80). Further, the Defense argued that the State failed to prove that the appellant had knowledge of the firearm because the State brought the jury a redacted call, but they didn't know the context of that call. (R.R.VIII.-81).

The Defense argued that the State failed to bring forensic evidence, the State failed to prove ownership of the vehicle, and Officer Loggins testified that anybody could have gotten in that vehicle at any moment. (R.R.VIII.-82). Further, no property belonging to Mr Morrison was found inside that vehicle, but four IDs belonging to somebody else were found in the vehicle. (R.R.VIII.-83). The gun was never fingerprinted. (R.R.VIII.-84). The State decided not to call the fingerprint examiner to testify because her testimony would raise reasonable doubt. (R.R.VIII.-84).

The Defense asked the jury to hold the State to its burden and find the appellant not guilty. (R.R.VIII.-84).

Following deliberations, the jury returned with a verdict of "guilty." (R.R.VIII.-92).

After hearing the punishment evidence, the jury found Enhancement Paragraphs 1 and 2 to be true, and sentenced the appellant to twenty-five years in the Institutional Division of the Texas Department of Criminal Justice. (R.R.

I.X. 72).

SUMMARY OF THE ARGUMENT

Appellant contends that 1 & 2) the trial court abused its discretion in overruling the appellant's motions to suppress, 3) the trial court abused its discretion in failing to exclude the jail call (R.R.VII.-96, 97), where the record reflects that the State failed to notify the Defense of its intended use of the one jail call at trial, 4) the trial court abused its discretion by allowing the custodian of the records to testify, where the record reflects that the State provided "notice" on the day of trial that the custodian of the records as a witness would be called as a witness, 5) the evidence is legally insufficient to support the appellant's conviction where the State failed to prove the appellant committed the offense of Unlawful Possession of a Firearm by a Felon beyond a reasonable doubt, and 6) the appellant's Motion for Directed Verdict should have been granted.

APPELLANT'S FIRST POINT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING THE APPELLANT'S MOTION TO SUPPRESS THE SEIZED FIREARM WHERE THE RECORD REFLECTS THE TOTALITY OF THE CIRCUMSTANCES WAS NOT SUFFICIENT TO SUPPORT AN OFFICER'S REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

APPELLANT'S SECOND POINT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING THE APPELLANT'S MOTION TO SUPPRESS THE CONTENTS OF THE TOWED VEHICLE WHERE THE RECORD REFLECTS THE TOTALITY OF THE CIRCUMSTANCES WAS NOT SUFFICIENT TO SUPPORT AN OFFICER'S REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures at the hands of government officials. Articulable facts must amount to "more than a mere inarticulate hunch, suspicion, or good faith suspicion that a crime was in progress." *Williams v. State,* 621 S.W.2d 609, 612 (Tex.Crim.App.1981). In deciding whether reasonable suspicion existed, we look at the facts available to the officer at the time of the detention. See *Davis v. State*, 947 S.W.2d 240, 243 (Tex. Crim.App.1997).

Neither time of day nor level of criminal activity in an area are suspicious in and of themselves; the two are merely factors to be considered in making a determination of reasonable suspicion. *Scott v. State,* 549 S.W.2d 170, 172-73 (Tex.Crim.App. 1976); *Klare v. State,* S.W.3d 68, 73-74 (Tex.App.-Houston 14th Dist. 2002, pet. ref'd.). Neither fact proves that the suspect is engaged in any sort

of criminal offense. *Klare,* 76 S.W.3d at 73-75. In order for these facts to affect the assessment of the suspect's actions, the surroundings must raise a suspicion that the particular person is engaged in illegal behavior. Id. at 75.

In the instant case, the Defense filed a Motion to Suppress the seized firearm, (C.R.-101) and a Motion to Suppress the contents of the towed vehicle, (C.R. -105) arguing that:-

> "the defendant was unlawfully detained without reasonable suspicion of criminal activity and that any seized evidence was the result of the fruit of a poisonous tree. Moreover, the evidence seized and obtained was the result of a search of a vehicle without a valid search warrant and without probable cause in violation of the Defendant's constitutional rights under the Fourth and Fourteenth Amendments to the *United States Constitution,* Art I,.Section 9, of the Texas Constitution, and Tex. Code Crim. Pro. Art. 38.23. Said search was not the result of a valid consent by the Defendant. Further, the scope of said search exceeded that authorized by law."
>
> (C.R.-101-106).

After hearing testimony and arguments from both sides, the Court ruled that the Motion to Suppress the contents of the towed vehicle was denied, and the Motion to Suppress the seized firearm was denied. (R.R.IV.-50).

In the instant case, Officer Loggins did not have reasonable suspicion to detain the appellant, Mr. Morrison, for the following reasons:

1) Officer Loggins agreed that he did not have an arrest warrant to arrest the Defendant or a search warrant to search the Defendant's vehicle. (R.R.IV.-10).

2)The officer agreed that he was called out to a suspicious vehicle. (R.R.IV.-10).

3) The officer had not received a report that the vehicle was occupied and he was surprised to see Mr. Morrison in the front seat. (R.R.IV.-11).

4) The vehicle was riddled with bullet holes and the officer shouted at Mr. Morrison, who appeared to be asleep. (R.R.IV.-12).

5) The officer agreed that when he approached, the appellant was in the front seat, fast asleep, and the officer thought the appellant might be deceased. (R.R.VII.-39).

6) The officer agreed that Mr. Morrison did not appear to be in pain or in distress when he ordered Mr. Morrison out of the vehicle. (R.R.IV.-12).

7) The appellant turned on the vehicle and the officer was concerned because the appellant "wasn't free to leave". The officer wanted to investigate what was going on and the bullet holes in the car. (R.R.IV.-27). The officer did not base his investigation on reports of the appellant having committed a crime.

8) There was no testimony from Officer Loggins that the appellant had engaged, was engaged, or would be engaged in criminal activity.

9) Officer Loggins essentially testified that he had reason to believe the appellant was the victim of a crime. He agreed that when he arrived it was fair to say that he believed that Mr. Morrison, the appellant, was probably the victim of a crime more that a perpetrator. (R.R.IV.-41).

10) The officer agreed that he would not have seen the firearm if he hadn't pulled Mr. Morrison from the vehicle. (R.R.IV.-15).

Under the Fourth Amendment for an investigative detention, the officer has to have reasonable suspicion that the particular person has engaged, is engaged, or will be engaged in criminal activity. The caller reported a suspicious vehicle that had been parked at the location but didn't report an individual within it. The caller didn't report that the appellant had committed a crime, was in the process of committing a crime, or was about to commit a crime, such as a criminal trespass, or a shooting.

In the instant case, the record reflects that the State cited *Derichsweiler v. State*., 348 S.W.3d, 906, Court of Criminal Appeals, 2011, as authority to rebut the Defense argument that the officer drew his conclusions from his observations that the vehicle was shot. (R.R.IV.-36).

The Defense responded that in *Derichsweiler*, the reportee told the police that the suspect, Derichsweiler, was acting particularly himself in a suspicious manner toward them. The suspect was leering and staring at the reportee, who suggested to the police that the reportee was worried about being robbed by the

suspect, Derichsweiler. (R.R.IV.-37). The Defense argued that in the instant case, Mr. Morrison was in the vehicle with bullet holes, and there was no indication from a caller that the vehicle was involved in a crime or that any drive by shooting even occurred in the area. (R.R.IV.-38).

The Officer Drew His Conclusions From the Fact that the Vehicle Had Been Shot, Not From the Appellant

As previously noted, Officer Logan agreed that when he arrived it was fair to say that he believed that Mr. Morrison, the appellant, was probably the victim of a crime more that a perpetrator. (R.R.IV.-41).

The trial court abused its discretion in denying the appellant's Motion to Suppress the seized firearm and the appellant's Motion to Suppress the contents of the towed vehicle. The record reflects that Officer Loggins lacked reasonable suspicion that the appellant had committed, was committing, or was about to engage in criminal activity. Officer Loggins admitted that he believed that Mr. Morrison might be deceased when he approached the vehicle, (R.R.VII.-39), and was probably the victim of a crime more than a perpetrator. (R.R.IV.-41).

This Court should reverse the trial court's judgment and remand for further proceedings. Tex. R. App. P. 43.2(d) (Vernon Pamph. 2025); Tex. R. App. P. 44.2 (a) (Vernon Pamph. 2025); *Tibbs v. Florida,* 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 653 (1982); *Meraz v. State*, 785 S.W.2d 146 (Tex. Crim. App. 1990).

APPELLANT'S THIRD POINT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO EXCLUDE THE JAIL CALL, STATE'S EXHIBIT 24, (R.R.VII.-96, 97), WHERE THE RECORD REFLECTS THAT THE STATE VIOLATED ITS DUTY UNDER ARTICLE 39.14 OF THE CODE OF CRIMINAL PROCEDURE BY FAILING TO NOTIFY THE DEFENSE OF ITS INTENDED USE OF AN INCRIMINATING JAIL CALL AT TRIAL.

APPELLANT'S FOURTH POINT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE CUSTODIAN OF THE RECORDS TO TESTIFY, WHERE THE RECORD REFLECTS THAT THE STATE VIOLATED ITS DUTY UNDER ARTICLE 39.14 OF THE CODE OF CRIMINAL PROCEDURE BY FAILING TO PROVIDE TIMELY "NOTICE" THAT THE CUSTODIAN OF THE RECORDS WOULD BE CALLED AS A WITNESS. (R.R.VII.-162).

In *State v. Heath*, the Court of Criminal Appeals held that "the State violated its duty under Article 39.14 of the Texas Code of Criminal Procedure by failing to disclose evidence of a 911 call made by the complainant's mother on the date of the alleged offense. Though the prosecutor was unaware of the recording when [D] made his discovery request . . . , the State was obligated to find out what evidence was available to it. Under these circumstances, the trial court acted within its discretion to exclude the 911 call based on a violation of the discovery statute." See *State v. Heath,* ___ S.W. 3D ___, 2024 WL 2952387 (Tex. Crim. App. 2024) (No. PD-0156-22; 6-12-24).

In the instant case, during a break, Defense counsel objected to the jail calls based on Article 39.14 of the Code of Criminal Procedure and the appellant's

right to due process. (R.R.VII.-96). Defense counsel argued that, though it was possible for the Defense to discover the [one incriminating jail call out 86] jail calls by digging through the D.A.'s websight, the Defense never received notice from the State that one incriminating jail call existed or that the State intended to use it. (R.R.VII.-97).

The Court asked if there if there was a discovery order, and the State responded: "There is not, Judge. There is a 39.14 request, but there is no discovery order. (R.R.VII.-97).

The record reflects that a Request for Discovery, Notice and Disclosure of State's Experts was filed on April 22, 2024, by the Harris County Public Defender and Assistant Public Defender, (C.R. 22, 23, 24, 25), more than 7 months prior to the trial setting on December 4, 2024.

The Defense cited *State v. Heath* as the basis for asking for an exclusion. (R.R.VII.-98).

The State argued that the jail calls were available on the portal 19 days prior to their bench conference.. (R.R.VII.-100). However, the State made no effort 1) to notify the Defense of the incriminating jail call the State intended to use 2) to provide the Defense with a copy of the incriminating jail call or 3) to identify to the Defense the one incriminating jail call out of the 86 jail calls on the web sight the State intended to use.

The Defense responded that the issue was not the availability of the

evidence, but it was notice, citing the Michael Morton Act. (R.R.VII.-100).

Appellant would note, that in *State v. Heath*, "Six days before the fourth jury trial setting, the prosecutor learned of the existence of a 911 call placed by the complainant's mother on the date of the alleged offense. The prosecutor emailed Appellee's counsel that additional discovery was available. Two days later, Appellee filed a pre-trial application for a writ of habeas corpus and motion to suppress the 911 call alleging that the evidence was improperly withheld in violation of Article 39.14 of the Code of Criminal Procedure and various constitutional provisions." See *State v. Heath,* ___ S.W. 3D ___, 2024 WL 2952387 (Tex. Crim. App. 2024) (No. PD-0156-22; 6-12-24).

Further, in *State v. Heath,* in a Suppression hearing, the prosecutor explained that she requested a copy of the recording a few days after speaking with the complainant's mother and provided it to Appellee's counsel as soon as she received it. *Id.* at 4.

The State's Violation of Article 39.14 of the Code of Criminal Procedure was Even More Egregious in the Instant Case Than in Heath

In the instant case, as previously noted. the record reflects that the prosecutor made no attempt to notify the appellant of the State's intention to use one of the 86 jail calls at trial and no copy of the recording of the incriminating jail call was provided to Defense counsel as it was in *Heath*.

The Defense Was Not Notified That The State Intended to Call the Custodian of the Records Until the Day of Trial

At a bench conference, the Defense objected based on lack of notice that the State intended to call the custodian of the records as a witness, and the Defense cited common law noting that the Defense shouldn't be surprised, and the evidence, i.e., the jail call, was very inculpatory. (R.R.VII.-162).

The State responded that the custodian of the records was on the witness list provided "today" and this witness was not an expert. (R.R.VII.-162). As previously noted, the Defense objection was "lack of notice".

The Court Found that the Defense was Surprised But 1) Did Not Exclude the Jail Call and 2) Did Not Hold the State Accountable For The State's Duty To Disclose The Evidence "As Soon As Practicable" And The State's Violation Of Article 39.14(a).

After the jury was released, the Court found that the Defense was surprised that a jail call was being used in the trial, but rather than exclude the evidence as requested by the Defense, based on the State's violation of Article 39.14, and supported by the Court of Criminal Appeals holding in *Heath,* the Court gave the Defense an opportunity to review the jail call during the trial, (R.R.VII.-171),

The record reflects that the jail call was incriminating. On cross, the Sergeant, (Custodian of the Records), stated that Aunt Brenda, when she asked if the appellant was attacked and had to defend himself, the appellant said yeah, it was like a little road rage incident. (R.R.VIII.-45). The Sergeant agreed that the appellant said it was self-defense. (R.R.VIII.-46). The Sergeant agreed that there was only one jail call that the State agreed to use out of the 86 calls that the

appellant made. (R.R.VIII.-47).

The Proper Remedy Was to Exclude the Jail Call Based on a Violation of the Discovery Statute Article 39.14 of the Texas Code of Criminal Procedure

As previously noted, in *State v. Heath*, the Court of Criminal Appeals held that the State violated its duty under Article 39.14 by failing to disclose evidence of a 911 call made by the complainant's mother on the date of the alleged offense and the trial court acted within its discretion to exclude the 911 call based on a violation of the discovery statute. See *State v. Heath,* ___ S.W. 3D ___, 2024 WL 2952387 (Tex. Crim. App. 2024) (No. PD-0156-22; 6-12-24).

In the instant case, the trial court erred in failing to exclude the jail call after finding that the Defense was "surprised" as a result of the State's failure to disclose its intent to use the evidence, i.e., 1 incriminating jail call out of 86 jail calls, at trial. The fact that the trial court gave the Defense an opportunity to review the jail call during trial (R.R.VII.-171) in no way remedied the lack of notice given to the Defense or the fact that the State violated its duty under Article 39.14.

Even if the State was aware of the incriminating jail call only 19 days prior to the bench conference, the State still had a duty to notify the Defense of the State's intention to use that jail call as "soon as practicable" rather than to willfully withhold it from disclosure. In *Heath*, the Court noted that . . . "Once discovery of an item is requested, the State now has an affirmative duty to search for the item

and produce it to the defendant in a timely manner." *Id.* at 5.

It has long been the law that "evidence willfully withheld from disclosure under a discovery order should be excluded from evidence." *See Hollowell v. State*, 571 S.W.2d 179, 180 (Tex. Crim. App. 1978). Since that time, however, the rules regarding criminal discovery have been changed with the enactment of the Michael Morton Act in article 39.14(a), which requires that "as soon as practicable after receiving a timely request from the defendant the state shall produce" certain categories of items in discovery. See TEX. CODE CRIM. PROC. ANN. art. 39.14(a). The statute now requires only a request, rather than a court order, to trigger the State's duty to produce discovery.

The trial court abused its discretion in failing to exclude the incriminating jail call and allowing the custodian of the records to testify for the following reasons:

1) the State knew about the incriminating jail call at least 19 days before trial, (R.R.VII.-100), but did notify the appellant of the State's intention to use of the jail call at trial,

2) the Defense timely filed a Request for Discovery, Notice and Disclosure of State's Experts on April 22, 2024, by the Harris County Public Defender and Assistant Public Defender, (C.R. 22, 23, 24, 25), more than 7 months prior to the trial setting on December 4, 2024,

3) the State had a duty to notify the Defense of the State's intention to use

that jail call as "soon as practicable" rather than to willfully withhold it from disclosure, in violation of Article 39.14 of the Texas Code of Criminal Procedure. See *State v. Heath,* ___ S.W. 3D ___, 2024 WL 2952387 (Tex. Crim. App. 2024) (No. PD-0156-22; 6-12-24).

This Court should reverse the trial court's judgment and remand for further proceedings. Tex. R. App. P. 43.2(d) (Vernon Pamph. 2025); Tex. R. App. P. 44.2 (a) (Vernon Pamph. 2025); *Tibbs v. Florida,* 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 653 (1982); *Meraz v. State*, 785 S.W.2d 146 (Tex. Crim. App. 1990).

APPELLANT'S FIFTH POINT OF ERROR

THE EVIDENCE IS INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION WHERE THE STATE FAILED TO PROVE THE APPELLANT COMMITTED UNLAWFUL POSSESSION OF A FIREARM BY A FELON BEYOND A REASONABLE DOUBT.

The standard of review for legal insufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed. 2d 560 (1979); *Griffin v. State*, 614 S.W.2d 155, 159 (Tex. Crim. App. 1981).

The burden of proof is on the State to establish beyond a reasonable doubt that the appellant committed the offense alleged. *Hightower v. State,* 389 S.W.2d 674 (Tex. Crim. App. 1965); *McCullen v. State*, 372 S.W.2d 693 (Tex. Crim. App.1964). The evidence is legally insufficient to support appellant's conviction for Unlawful Possession of a Firearm by a Felon, where the State failed to prove the appellant intentionally and knowingly committed the offense beyond a reasonable doubt.

Appellant was charged with Unlawful Possession of a Firearm by a Felon. Tex. Pen.Code Sec. 46.04. (Vernon Pamph. 2025). It was necessary for the State to show, *inter alia*, that, in Harris County, Texas, COREY DEWANE MORRISON, hereafter styled the defendant, on or about April 10, 2024**,** did then there

unlawfully, intentionally and knowingly possess a firearm at a location other than the premises at which the Defendant lived, after being convicted of the felony offense of Possession With Intent to Deliver/Manufacture/Deliver in the 351st District Court of Harris County, Texas, in Cause Number 0901102, on August 27th, 2002. (C.R.- 32).

I.

The Evidence is Insufficient to Prove the Appellant Committed Unlawful Possession of a Firearm by a Felon

Appellant contends that the State failed to prove the appellant committed the offense of Unlawful Possession of a Firearm by a Felon beyond a reasonable doubt. The evidence is insufficient for the following reasons:

1) The record reflects that the State failed to prove that the appellant had been convicted of a felony offense beyond a reasonable doubt, because 1) State's Exhibits 13 & 14, had incomplete fingerprints, i.e., the prints were cut in half, (C.R.VII.-126 & 141), and 2) the State's expert testified that he was not familiar with indictments and judgments and did not want to mislead the jury. (R.R.VII.-144).

2) The State failed to prove that the appellant had knowledge of the firearm. The State brought the jury a redacted jail call in which the appellant made some statements, but the jury didn't know the context of that call. (R.R.VIII.-34). There was only one jail call that the State agreed to use out of the 86 calls that the

appellant made. (R.R.VIII.-47).

3) The officer agreed that he did not witness Mr. Morrison with a firearm when he ordered Mr. Morrison outside the vehicle, and he had not heard any reports about a shooting that had occurred. (R.R.IV.-14).

4). The State failed to prove ownership of the vehicle. There was no evidence that the vehicle belonged to the appellant.

5) No property belonging to Mr Morrison, the appellant, was found inside that vehicle, but four IDs belonging to a Ronnie Williams were found in the vehicle. (R.R.VII.-185).

6) Officer Loggins testified that anybody could have gotten in that vehicle at any moment. (R.R.VII.-49).

7) Defense Exhibits 1 through 14 showed the messy state of the vehicle, demonstrating that there was reasonable doubt as to whether an individual would notice the gun was there. (R.R.VII.-192).

8) The gun was never fingerprinted. (R.R.VII.-190). The State decided not to call the fingerprint examiner to testify because testimony that the appellant's prints were not found on the gun would raise reasonable doubt as to whether the appellant knew the gun was there. Ms. Lambert processed the vehicle for latent prints but was unsuccessful. (R.R.VII.-188).

9) There was no confession from the appellant.

The State Failed To Prove the Appellant Committed the Offense Beyond a Reasonable Doubt

The State failed to prove the appellant committed Unlawful Possession of a Firearm by a Felon, beyond a reasonable doubt. Officer Logan testified that when he arrived at the scene to investigate a suspicious vehicle he found the appellant sleeping in a vehicle, however, ownership of the vehicle was not proven. Ms. Lambert, a crime scene investigator at Houston Forensic Science Center, agreed that she found four identification cards that belonged to Ronnie Williams, but none that belonged to the appellant. (R.R.VII.-185). She agreed that she took contact DNA swabs from the vehicle but she was not "tasked" with doing a contact DNA swab on a firearm. (R.R.VII.-187). She also processed the vehicle for latent prints but was unsuccessful. (R.R.VII.-188). She agreed that she took a latent print successfully from the ID holder and one from the passenger side door interior. (R.R.VII.-190). She didn't perform any tests on the firearm. (R.R.VII.-190).

Based on the evidence presented by the State, it is very likely that the firearm *that was intentionally not tested for prints,* (R.R.VII.-190), belonged to Ronnie Williams, along with the four identification cards he left behind. (R.R.VII.-185).

The burden of proof is on the State to prove each and every element of the offense beyond a reasonable doubt. *Mullaney v. Wilbur*, 421 U.S. 684, 95 S.Ct.

1881, 44 L.Ed.2d ~08 (1975); *In re Winship,* 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *Wright v. State,* 603 S.W.2d 838 (Tex. Crim. App. 1980). Tex. Penal Code Ann. Sec. 2.01 (Vernon 2025). The standard of review on appeal is whether a rational trier of fact could have found each element of the offense beyond a reasonable doubt. *Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *McGoldrick v. State,* 682 S.W.2d 573 (Tex. Crim. App. 1985); *Jackson v. State,* 672 S.W.2d 80, (Tex. App. – Houston [14th Dist.] 1993, pet. ref'd.) .

If the evidence is legally insufficient, the appellate court must order an acquittal. *Tibbs v. Florida*, 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982). Where the evidence is insufficient to sustain a conviction on appeal, double jeopardy bars a retrial. *Burks v. United States,* 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978); *Greene v. Massey,* 437 U.S. 19, 98 S.Ct. 2151, 57 L.Ed.2d 15 (1978).

This Court should reverse appellant's conviction, and order a judgment of acquittal. Tex. R. App. P. 43.2(c) (Vernon Pamph. 2025); *Burkholder v. State,* 660 S.W.2d 540 (Tex. Crim. App. 1983); *Ortiz v. State,* 577 S.W.2d 246 (Tex. Crim. App. 1979).

APPELLANT'S SIXTH POINT OF ERROR

THE TRIAL COURT ERRED IN OVERRULING THE APPELLANT'S MOTION FOR DIRECTED VERDICT.

The law is well settled that a challenge to the denial of a motion for directed verdict is a challenge to the legal sufficiency of the evidence. *Gabriel v. State*, 290 S.W.3d 426, 435 (Tex. App.—Houston [14th Dist.] 2009, no pet.); *Lewis v. State,* 193 S.W.3d 137 (Tex.App.—Houston [1st Dist.] 2006, no pet.). *Canales v. State*, 98 S.W.3d 690 (Tex. Crim. App. 2003).

At the close of the State's evidence, defense counsel moved for a directed verdict.(R.R.VIII.-48). This motion was overruled. (R.R.VIII.-49).

The Motion should have been Granted. Reference is made to Point of Error No. 5, which is incorporated herein. There was evidence that there was a firearm in the vehicle in which the appellant was sleeping.

There was also evidence that someone named Ronnie Williams had previously occupied the vehicle. Ms. Lambert, a crime scene investigator at Houston Forensic Science Center, agreed that she found four identification cards that belonged to Ronnie Williams but none that belonged to the appellant. (R.R.VII.-185). Ms. Lambert also processed the vehicle for latent prints but was unsuccessful. (R.R.VII.-188). She agreed that she took a latent print successfully from the ID holder and one from the passenger side door interior.

(R.R.VII.-190). However, Ms. Lambert didn't perform any tests on the firearm. (R.R.VII.-190).

Further, there was evidence, i.e., Defense Exhibits 1 through 14, (R.R.VII.-191), that the vehicle was so messy that the firearm could have gone unnoticed by someone who did not own the vehicle and was looking for a place to sleep. There was no evidence the Appellant owned the vehicle, there were no prints or DNA evidence taken from the firearm, and no evidence that the appellant owned the firearm.

Officer Loggins agreed that he didn't see Mr. Morrison, the appellant, ever reach for the firearm. (R.R.VII.-46). Officer Loggins indicated that he had no personal knowledge of any shootings in the area, and he testified that the vehicle was there for several days. (R.R.VII.-48). He agreed that anyone could have gotten in the vehicle in that time. (R.R.VII.-49).

The evidence was legally insufficient to prove the appellant committed the offense of Unlawful Possession of a Firearm by a Felon. Tex. Pen.Code Sec. 46.04. (Vernon Pamph. 2025), and the Motion for Directed Verdict was proper. It was error to overrule it.

This Court should reverse and order acquittal. *Tibbs v. Florida*, 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982).

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Appellant prays this Honorable Court to consider each and every point of error raised herein, to reverse Appellant's conviction, and to order a judgment of acquittal of the Appellant.

Respectfully submitted,

/s/ Sharon E. Slopis

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of MAY, 2025, a true and correct copy of the forgoing brief was electronically served to the Harris County District Attorney's Office, at da@dao.hctx.net, and to Daniel C. McCrory, Assistant District Attorney, at McCrory_Daniel@dao.hctx.net.

/s/ Sharon E. Slopis

SHARON E. SLOPIS

CERTIFICATE OF COMPLIANCE

I hereby certify that on the 15th day of MAY, 2025, I filed a Certificate of Compliance as required by Texas Rule of Appellate Procedure 9.4(i)2(B) & (3), (15,000 words, not including: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance and appendix) stating the word count of 11,716 for the brief filed for the Appellant.

/s/ Sharon E. Slopis

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Dan McCrory		MCCRORY_DANIEL@dao.hctx.net	5/15/2025 4:49:32 PM	ERROR