

NO. 14-24-00323-CR

IN THE COURT OF APPEALS
FOR THE
FOURTEENTH DISTRICT OF TEXAS
HOUSTON, TEXAS

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ANGEL JOSUE VELASQUEZ-PINEDA, APPELLANT

VS.

THE STATE OF TEXAS, APPELLEE

BRIEF FOR THE APPELLANT

TRIAL COURT CAUSE NUMBER 22CR2925
IN THE 56TH DISTRICT COURT OF
GALVESTON COUNTY, TEXAS

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ORAL ARGUMENT REQUESTED

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Appellee	The State of Texas
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ANGEL JOSUE VELASQUEZ-PINEDA, Appellant

v.

THE STATE OF TEXAS, Appellee

Appealed from the 56TH District Court
of Galveston County, Texas
Cause No. 22CR2925

BRIEF FOR APPELLANT

TO THE HONORABLE COURT OF APPEALS:

Now comes Angel Josue Velasquez-Pineda, by and through his attorney of record Joel H. Bennett, of Sears, Bennett, & Gerdes, LLP, and files this brief.

STATEMENT OF THE CASE

Appellant was charged by indictment with Murder.

C.R.-7. Appellant pled not guilty to the charge and a trial by jury began on March 25, 2024. CR-88; RR2-4-5. After hearing the evidence and argument of counsel, the jury found Appellant "guilty" as alleged in the indictment. RR6-4-5, CR-120. Appellant elected to have the Jury assess punishment. CR-80. After hearing evidence and argument of counsel on the issue of punishment, the Jury sentenced Appellant to thirty-eight (38) years in the Texas Department of Criminal Justice-Institutional Division. CR-124; RR6-23-24. Judgment and Sentence was entered and signed on April 2, 2024, as well as the Trial Court's Certification of Defendant's Right to Appeal. CR-125-129, 130. Notice of Appeal was timely filed on the same day. CR-133.

APPELLANT'S FIRST ISSUE

THE CHARGE OF THE COURT ERRONEOUSLY OMITTED THE DEFINITION OF AN ACCOMPLICE WITNESS AS A MATTER OF LAW IN THE JURY CHARGE. FAILURE TO GIVE SUCH INSTRUCTION BY THE TRIAL COURT WAS ERROR AND EGREGIOUSLY HARMFUL.

STATEMENT OF FACTS

H.B. is a juvenile who testified as a witness for the State; she was also charged and convicted of the Murder of Brendan Hawkins and will be referred to in

this brief by her initials. All references to "H.B." or "H." are references to this witness.

H.B. was charged with, pled "True" to, and had been Adjudicated to have engaged in Delinquent Conduct for the Murder of Brendan Hawkins. RR4-106-107; RR11-106-107. The disposition of H.B.'s Murder Adjudication was ten (10) years probation with a condition that she cooperate with the State. RR4-107. The disposition of her case was contingent upon her testifying and cooperating with the State. RR4-108.

Officer Lara was a patrol officer for the Dickinson Police Department. RR3-11-12. On May 7, 2022, she was dispatched to someone hurt in the street in the area of Rosewood and Maple. RR3-14. She was looking for either suspects or anything out of the norm after a shooting. RR3-14. She drove down Spruce and noticed a large object in the parking lot of the civic pool; she pulled in and noticed it was a body. RR3-15. She got out and noticed casings in the area she parked her vehicle. RR3-16. There were no signs of life on the body. RR3-16.

Officer Luis Vasquez is a patrol officer for the Dickinson Police Department. RR3-24. On May 7, 2022,

he was dispatched to the area of shots fired. RR3-26. Once he arrived at the scene, he taped off the scene and help search the scene; they located some shell casings, a projectile, and a laser pointer for a gun. RR3-27.

While at the scene, they were able to identify the body. About a week before, there was a different shooting. RR3-28. During that investigation, he dealt with a subject named Brendan Hawkins; he pulled up a photograph and identified the body from that photograph. RR3-28. The only connection between the two shootings that Officer Vasquez was aware of was Brendan Hawkins. RR3-39-40.

Kristen Rizzo heard multiple gunshots in the evening of May 7, 2022 around 9:30 pm and called 911. RR3-44-45. Tommy Gillis also heard multiple gunshots and called 911; he lives about 200-300 yards from the civic pool. RR3-48-50. Hillary Randall used to live at the apartments located at 406 Deats Road, Dickinson; it used to be called Pine Forest. RR3-52-53. She was moving out of the complex but had come back to picked up a vehicle. RR3-54. She heard gunshots and called 911. RR3-54. After she heard the gunshots, she saw someone

running. RR3-56. She had pulled up to apartment # 90 when she heard the shots. RR3-57. She could not tell if the person running was a boy or a girl. RR3-59.

Mandy Hawkins Jacquet is the aunt of Brendan Hawkins. RR3-71. He was living with her in Dickinson when he died. RR3-72. Hawkins was at her house earlier that day; he was there off and on that day. RR3-73. He left about 6:45 or 7:00 pm; he had been on a tablet on social media while he was at the house. RR3-73. He was talking to a female; she could hear the voice and see dark colored hair. RR3-73-74. Hawkins told her he was going to his girl's house when he was leaving. RR3-74. The iPad was given to the police after his death and then they gave it back. RR3-79.

Patrick Ryan is a sergeant with the Galveston County Sheriff's Department crime scene unit. RR3-98. He was called out to assist Dickinson Police Department on May 7, 2022. RR3-100. He met with the primary detective, then took photographs of the scene and evidence. RR3-100-101. He recovered ten 9mm spent shell casings, a rail mounted light, and one projectile on top of the deceased left thigh. RR3-104-106. There was one other

projectile recovered underneath the deceased back. RR3-106.

His procedure is to take photographs, then he proceeds to the collection phase, then the check phase to make sure they are not missing anything, then they collect all of their equipment and items such as gloves, crime scene tape, trash, and packaging. RR3-109-111.

Sgt. Ryan is a trained NIBIN technician; this is a database for spent shell casings. RR3-116. The system checks for matches with other casings that have been entered into the system. RR3-116. During his involvement in this case, he uploaded casing number 9 into the system and also another 9mm casing he received from Dickinson Police Department. RR3-117-119. The 9mm casings he recovered from the scene and the one 9mm given to him by Dickinson Police Department were all Winchester brand ammunition. RR3-122. All of the 9mm casings were submitted to DPS for testing. RR3-122.

Detective Claude Oliver assisted with the search warrant in this case. RR3-142. The search warrant was for 3206 Lobit, apartment # 16, Dickinson, Texas. RR3-145. The name on the search warrant is Angel Velasquez.

RR3-145. State's exhibit # 66 is a photograph of Appellant's closet. RR3-147. State's exhibit # 67 shows two empty boxes of Winchester 9mm ammunition. RR3-147. State's exhibits # 68 and 69 show two Crown Royal bags containing loose 9mm Winchester brand ammunition. RR3-148. State's exhibit # 70 shows the windowsill of the same room. RR3-148. On the windowsill, there is a spent 9mm Winchester casing on the black bandana. RR3-148. State exhibit # 72 shows a handbag on the windowsill with the name H. on it. (Note: it is the same first name of witness as H.B.). RR3-149. State exhibit # 74 is a photograph of Appellant's driver's license. RR3-150. State's exhibit # 75 is a photograph of crime scene tape similar to what they use recovered from the same closet. RR3-149-150.

Samantha Weldon was the leasing agent for Creekside Apartments (previously Pine Forest Apartments), 406 Deats Road. RR3-157-158. She heard about someone being killed not too far from the complex. RR3-159. An officer came and asked her who lived in apartment # 96; Bryan Gonzales was the leaseholder of the apartment but Hector Gonzales lived there as well. RR3-160-161. She

does not know Appellant. RR3-162. Hector was Hispanic and had a regular hair but a little ponytail in the back. RR3-162. Daphne lived in apartment # 97 with her boyfriend, but she does not know the boyfriend's name. RR3-161. The boyfriend from apartment # 97 would hang out with Hector; she saw them in each other's apartments. RR3-165.

Prior to the shooting of the person by the civic pool, there was another shooting around the end of April. RR3-166. She did not see either shooting. RR3-167. After the first shooting, Hector came into the office; he was on the phone and he said something about him shooting at somebody like it was a joke. RR3-167. Days later, Brendan passed away. RR3-168. She had also heard that Brendan attempted to go into Hector's apartment and take a gun one night. RR3-169. A few nights later, Brendan was dead. RR3-169. She had reported to the police that Brendan was running around the apartment complex with a gun scaring people. RR3-170. The night after the first shooting, Brendan was on the complex property. She called the police and had Brendan escorted off the property. RR3-170. She

personally saw Brendan with a gun on the complex property. RR3-171. Brendan would visit apartment # 21 at the complex, Crystal Kirklighter. RR3-172.

Holly Dager lived in Creekside Apartment # 100 in May of 2022; she goes by the name "Roxy". RR3-174-175. She did not know the people that lived in apartment # 96 but she saw them every day. RR3-175. One of them had short hair with a long rat tail, one had a curly afro, and one had short, short hair and wore a beanie a lot. RR3-175-176. She saw a robbery around the end of April or early May. RR3-176. She was sitting on her porch when she saw it. RR3-176. She saw two men—one at the bottom of the stairs and one ran up the stairs and kicked in the door. RR3-176. She did not know these men. RR3-176. When she first saw them, they were standing in the parking lot trying to break into her car. RR3-177. The taller one of the two was trying to break into her car. RR3-177.

She opened her door and yelled at him. RR3-177-178.

He got upset; it looked like he had a gun in his hand so she went and got her bat. RR3-178. She went and sat on her stairs. RR3-178. He threatened to shoot her and

she yelled back at him. RR3-178. The next night or two is when she saw the robbery. RR3-179.

The Hispanic male was at the bottom of the stairs and the taller, white male ran up the stairs and kicked in the door. RR3-179. Then the Hispanic male came up the stairs. RR3-179. It was the apartment where the boy with the "rattail" lived; he is a barber. RR3-179. The tall one ran inside and then ran back out a short time later. RR3-180. They both ran off. RR3-180. The tall one dropped what he had and had to pick it up. RR3-180.

About a week later, she was on her porch and her neighbor, Chastity, and the neighbor's babysitter were outside on their porch. RR3-181. The babysitter's name is H. and she is 16 years old. RR3-181. H. is on her phone and Chastity is going in and out cooking food. RR3-181. H. was on the phone with Brendan. RR3-181. Brendan is the same one that was at the car, who kicked the door in, and the one that was shot. RR3-182. He is the tall one. RR3-182. H. was also talking to someone else on a different phone. RR3-182-183. The other person she was talking with was the guy with the rattail. RR3-183.

At some point, H. leaves to go meet Brendan at the Dollar Store. RR3-183. When H. left, she was walking towards the office. (see State's exhibit # 76). That is the same direction as you would go to get to the Dollar Store. RR3-184. H. came back after about 20 minutes; she came back through the abandoned side of the apartments and over the bridge. (top right corner of State's # 76, across the bayou) RR3-185. H. was running. RR3-186. Then she heard gunshots, like 8 or 9 gunshots. RR3-186. The shots occurred about the same time that H. got back to the apartment. RR3-187. H. did not say anything when she got back. RR3-187.

Roxy and her boyfriend were walking through the woods towards the Dollar Store and smoke shop and saw Brendan's body; the were cops there. RR3-187. The cops shone their flashlight towards them and Roxy took off running back to her apartment. RR3-188. Once back at the apartment, Roxy aske H. what she did. RR3-188. H. said she did not know. RR3-189. Then the people that lived in the corner apartment all came back; this would be the barber with the rattail. RR3-189. There were three people out there until H. went down there, then

there were four. RR3-189. When asked to describe the three people, Roxy said it was the barber with the rattail, Appellant, and a third person she could not see very well but he was pretty tall. RR3-190. Once H. was down there, she sat between Appellant's legs. RR3-190. Appellant was holding her and they were talking to each other. RR3-190. H. then left and walked towards her (H.B.'s) house; they all left. RR3-190. Before they left, the three individuals were laughing. RR3-191. The tallest one was the loudest; she heard him say, "We f___ing got him." RR3-191. After H. left, the three of them got in a black SUV and left. RR3-191.

During cross-examination, Roxy said that on the day of the robbery, Brendan had a weapon when he left. RR3-194. She saw him leave with a weapon; he dropped it. RR3-194. The police were not called about the robbery but someone who lived in that apartment came up the stairs and asked her about it. RR3-197. It was a younger guy; she told him that the guy that was out here messing with the cars kicked in your door. RR3-197.

On the day of the incident, Roxy knew that H. was on the phone with Brendan because H. told Chastity that she

was on the phone with Brendan. RR3-201. She was on the phone with Brendan for about 5-10 minutes. RR3-201. Then H. got up and announced that she was going to meet Brendan at the Dollar Store. RR3-202.

There is a trail through the woods that goes to the civic pool parking lot that goes to the Dollar Store. RR3-203. It is about a minute and a half walk from the civic pool (not the apartment pool) to the Dollar Store. RR3-203. When H. came back, she seemed out of breath; she was running. RR3-204. H. came from the side of the apartments that are shut down. RR3-204. She came back from a different direction than she left. RR3-205. Roxy heard the gunshots about the same time that H.B. got back to the apartment. RR3-207.

Roxy and her boyfriend Damon walked toward the shots. RR3-209. They walked through the wooded area right beside the Dickinson pool. RR3-210. They saw the body and the police; then when the police shined their light at them, they ran back home. RR3-211. H. was still there when they got back. RR3-211. Roxy was telling Chastity what they had seen and H. was silent. RR3-212.

After about ten minutes, the three (maybe four) dudes pulled up in a dark or black SUV. RR3-213. Roxy has seen Appellant at Hector's (the barber with the rattail) apartment a lot. RR3-215. H. then went and talked to Appellant, the guy with the rattail, and the other guy. RR3-216. The tall guy is the one who said, "We f___ing got him.", it was not the rattail guy or Appellant; it was the third guy. RR3-217.

Guadalupe Vaquez is a detective with the Dickinson Police Department. RR3-221. He assisted in this investigation by accessing and downloading images from the FLOCK cameras, which is a system that scans and records license plates. RR3-225. State's exhibit # 78, 79, and 80 are images of the same vehicle/license plate from May 4, 2022. RR3-226.

Crystal Kirklighter lived at Creekside Apartments unit 21 in May, 2022. RR4-5-6. She knew Brendan Hawkins for about 5 or 6 days. RR4-6. She saw him on the day that he passed at her apartment. RR4-6. He was using her phone; he had asked to use her phone to talk to his girlfriend. RR4-6-7. After about 20-30 minutes, he told her he was leaving to go to the laundromat and meet his

girlfriend. RR4-7. After the incident, she gave her phone to law enforcement and they looked through it. RR4-12.

Dr. Erin Barnheart is the Chief Medical Examiner for Galveston County. RR4-15-16. She performed the autopsy on Brendan Hawkins. RR4-20. The cause of death was homicide by multiple gunshot wounds. RR4-22-23.

Nicole Groshon is a firearms examiner with Texas Department of Public Safety. RR4-47. She examined the 11 9mm casings that were submitted for examination. RR4-49. After her examination, she concluded that all 11 cartridge cases (casings) were fired from the same unknown firearm. RR4-55.

H.B. was fifteen years old in May of 2022. RR4-67. She knew Brendan Hawkins as a friend through Snapchat; she had known him for about a year prior to his death. RR4-67. Appellant is her boyfriend. RR4-67. She would hang out with Brendan and smoke marijuana or do Xanax. RR4-70. That was about a year before Brendan died. RR4-71. H.B. lived in Creekside Apartments, in unit 86. RR4-71. There was a point during that incident that the Xanax had an effect on her and caused her not to

remember anything. RR4-71-72. She never dated Brendan. RR4-72. H.B. would babysit for Chastity, who lived in the complex. RR4-73. H.B. also knew Chastity's neighbor, Roxy. RR4-73. Appellant also had friends at the apartment complex. RR4-73. H.B. knows Hector and Louie, who both live at the complex. RR4-74.

There was a point when Hector, Louie, and Appellant were upset with Brendan because Brendan broke into Hector's apartment. RR4-74-75. On the day that Brendan died, she started talking to Brendan about 7 pm; she was communicating with him through Snapchat. RR4-75. She was being told what to say to Brendan by Louie. RR4-75. She was being told where they wanted Brendan to go. RR4-76. She made plans with Brendan to go smoke at the apartment pool. RR4-76. The pool is the one on State's exhibit #76 that is closer to Deats Road. RR4-77, RR7-Ex. # 76. The plans were made with texts and calls via Snapchat. RR4-77.

When asked how Louie was talking to her and telling her what to say, H.B. said he was in front of her, over her phone, watching everything. RR4-77. Hector was also around at that time. RR4-78. She was in Hector's

apartment when this was happening. RR4-78. State's exhibit # 119 are Snapchat messages between her and Brendan. RR4-79. In the messages, they are talking about smoking. RR4-81. Brendan asked her if she had a cigarillo and she did not; when asked if she could get one, she said if you give me a dollar. RR4-81-82; RR11-98-99. In the last part of the messages, they are talking about meeting at the pool. RR4-83. In the messages, H.B. asked him what pool? RR11-100. During this time, she is also talking to Brendan over the phone. RR4-83.

She was going to walk to go meet Brendan. RR4-83. At some point, she got into a grey SUV; Hector, Louie, and Appellant were all inside the vehicle. RR4-84. They took her closer to the front pool and dropped her off. RR4-84. She was in front of Charity's apartment when she got into the vehicle and they dropped her off in front of apartment 31 or 29. RR4-84-85, RR7-60. She met up with Brendan in front of apartment 29; it was just the two of them. RR4-85. They then walked to the store, which is on the other side of the community pool. RR4-86. From where they were, you would go down a trail that

leads past the community pool and the driveway to the pool. RR4-86. They walked to the smoke shop. RR4-86. They did not buy anything at the smoke shop because Brendan did not have any money, he left it at the apartment. RR4-86-87. Brendan said he was going to go back to the apartment to get it and she walked back a different way than she came. RR4-87. The way she came back would have taken her to the top right corner of State's exhibit # 76. RR4-87. She crossed over the bridge to get over the bayou. RR4-87-88. She went back to Chastity's apartment. RR4-88. H.B. testified that she walked back to the apartment. RR4-88. Brendan walked toward the community pool, a different direction than she walked. RR4-88. She walked a different direction because Chastity called her and asked her to come back to the apartments. RR4-88-89. H.B. denied ever hearing any gunshots. RR4-89. H.B. further testified that the next time she saw Hector, Louie, or Appellant was the next day. RR4-89. H.B. said she found out that same night the Brendan had died from Chastity's neighbor (Roxy) who went to the community pool to see what happened and there was someone in the parking lot. RR4-

89.

Appellant talked to her about how Brendan died. RR4-90. H. B. testified they both had guns. RR4-90. H.B. testified that Appellant told her that Louie shot him in the leg and Appellant shot him in the face. RR4-90.

H.B. knows Sheana, who was a neighbor of Appellant's. RR4-91. H.B. went to Sheana's because she was waiting for Appellant but her phone was about to die and she was told to go to her house to charge her phone and have somewhere to be. RR4-91. She had met Sheana one or two other times. RR4-91. Sheana let her in the apartment. RR4-91. H.B. saw Appellant the next day. RR4-91-92. Appellant came to Sheana's apartment to get her. RR4-92. H.B. testified that Appellant told Sheana about the incident, but she does not remember what Appellant said other than he shot Brendan. RR4-92. There were multiple conversations with Sheana, her, and Appellant. RR4-92. State's exhibit # 101 is a video recording made by Sheana; in the recording, Appellant, H.B., and Sheana are participating in video/conversation. RR4-94. H.B. was not aware they were being recorded. RR4-25. Appellant is seen at 1:53 into

the video. RR4-105.

H.B. was taken into custody on the charge of Murder in this case about four months prior to the trial. RR4-106-107. She pled guilty/true to the charge of Murder. RR4-107. She was sentenced to probation with conditions that she cooperates with the State in this case. RR4-107.

H.B. was sentenced as a juvenile and pled "True" in juvenile court. RR4-107. H.B. is currently in custody and has been for about a month. RR4-108. H.B. did babysit for Chastity. RR4-109. Chastity lived in apartment # 102, Roxy lived in # 100, and Hector lived # 96. RR4-110-111. Hector was a barber. RR4-111. H.B. said she lived in # 87. RR4-112. Louie lived underneath Hector and to the right. RR4-112. Brendan stayed in an apartment toward the front, around apartment # 15. RR4-113.

H.B. remembers meeting with Hector and Louie to set up Brendan. RR4-115. It was within a week of Brendan's death. RR4-115. Appellant was never there when she met with Hector and Louie to set up Brendan. RR4-115. H.B. could not remember how many times Hector, Louie, and she

met to discuss setting him up. RR4-116. H.B. testified that she was never told the plan, but Louie told her, "I need you to do this for me." RR4-116. Louie wanted her to meet with Brendan. RR4-116. She was supposed to meet with him in front of the pool at the apartment complex closest to Deats Road. RR4-116. Her job was to lure Brendan over to the pool and then leave. RR4-117. She was not told where to go but just to leave; Louie told her that. RR4-117. These meetings were in front of Louie's or Hector's apartment. RR4-118.

Her job was to go with him to the store and leave; she did not have another job. RR4-118-119. She testified that she called Brendan from her apartment. RR4-119. She switched from text to phone call because Brendan called her. RR4-119. Hector and Louie were with her when Brendan called. RR4-119-120. She does not remember what she told Brendan nor does she remember what Hector or Louie told her to tell Brendan. RR4-120.

When asked if she was on the balcony with Roxy and Chastity talking to Brendan, H.B. testified she could not remember. RR4-120. H.B. said the agreement was to meet with Brendan and then go to the store. RR4-121.

She met Brendan near the apartment marked "DW" on Defense exhibit # 2. RR4-121, RR11-101. She went and met Brendan and then they went through the trail in the woods to go to the store. RR4-121. They were going to get cigarillos. RR4-121. They did not go into the store because they did not have any money. RR4-122. Brendan then left to go get some money from the apartment. RR4-122. H.B. stood there and then walked around the store and went back to Chastity's apartment. RR4-122. She denied running back to the apartment; she testified she walked casually. RR4-122.

Louie is the one who told her to contact Brendan and to get him to meet her. RR4-123. Louie had a gun; she saw the gun. RR4-123-124. It was a tan gun; she had seen it before in Louie's pocket. RR4-124. H.B. denied volunteering to be part of the plan to set up Brendan, but she also denied being forced or threatened. RR4-124-125.

H.B. does remember being with Brendan sometime the week before the incident where she passed out on Xanax. RR4-125. She was in front of apartment # 15 and then woke up the next morning on Chastity's couch. RR4-126.

H.B. never asked Brendan what happened or how she ended up on Chastity's couch. RR4-126-127. She did tell somebody that she thought Brendan sexually assaulted her. RR4-127. H.B. admitted she does not know if he sexually assaulted her. RR4-127. She denied know who she told that she had suspicions of being sexually assaulted. RR4-127.

H.B. said the plan was for her to meet Brendan and go to the store; Hector and Louie would get in the car. RR4-128. Then she denied knowing what the plan was. RR4-128. H.B. was presented her prior statement given to the State in which she said that Hector and Louie would get in a car and go park and watch the store. RR4-129. The plan was they were going to follow Brendan. RR4-129. H.B. testified that she did not know what Hector and Louie were going to do after Brendan left the store; she thought they might rob or jump him. RR4-130. They were after Brendan because Brendan had stolen from them. RR4-130. She thinks that Brendan stole an "AR" from them. RR4-130.

H.B. denied seeing Hector, Louie, or Appellant get into the car. RR4-131. It was Hector's vehicle. RR4-

131. When Brendan left the store, he walked toward the community pool. RR4-135. H.B. testified that she left the store before Brendan got back because she got a call from Chastity. RR4-135. After the call, H.B. walked back to Chastity's apartment. RR4-135. H.B. said she was sure she was not running. RR4-136. When confronted with Roxy's contrary testimony, H.B. changed her testimony and said she did not know what she was doing. RR4-136. When asked why she went back if she was supposed to be waiting for Brendan to come back, H.B. said she did not know. RR4-136.

Once she got back to Chastity's, H.B. was told there were shots that went off on her way back that she did not hear. RR4-137. H.B. denied ever hearing even one shot. RR4-137.

H.B. testified that Appellant was never part of the plan to set up Brendan. RR4-137. She did see Appellant with a gun before everything happened. RR4-138. Appellant was in the car with Hector and Louie when she got into the car. RR4-138. They dropped her off to meet with Brendan. RR4-139. H.B. told the prosecutors during their meeting that she did not know why Appellant was

there. RR4-140.

H.B. was told by Chastity that Brendan had come to Chastity's apartment with the stolen AR looking for Appellant and her. RR4-141. Brendan had also chased Appellant and Appellant's younger brother through the apartments. RR4-140.

H.B. changed clothes when she got back to the apartments; she was told by Roxy and Chastity that the cops were looking for her. RR4-145. After she changed clothes, she just sat outside on the porch and texted and called Appellant. RR4-147-148. At the end of the night, she and Appellant went back to Appellant's apartment. RR4-148.

H.B. accepted the responsibility and guilt for the murder of Brendan because she is the one that set him up. RR4-150. Appellant was in no way involved in the planning of either beating up Brendan or shooting Brendan. RR4-151. She did not warn Appellant about Hector and Louie's plan. RR4-151. She admitted letting Appellant get in a car with two guys with guns who are planning to mess Brendan up. RR4-152.

She was present and saw when Brendan chased

Appellant and his little brother. RR4-154. This was the same night she was doing Xanax with Brendan. RR4-154.

State's exhibit # 101 played and contained the following statements (listed time is time into the video):

- Sheana stated you did what you did and he deserved to die...Sheana asked Appellant to please tell her he would never do that again. Appellant said I will never do that again like I told myself right after that. I got live with what I have to live with. (2:10-2:34)
- Sheana asked him if he can live with himself that he killed somebody? Appellant said yeah. (4:29-4:40).

Fidencio Gonzalez is a detective with the Dickinson Police Department. RR4-162. Initially, he was the backup detective but eventually he became the lead detective RR4-164. He did respond to the scene that night. RR4-165. Two days after the incident, he collected a tablet that Brendan used and Gonzalez was able to get Brendan's social media user names. RR4-170.

During his interviews with witnesses, Hector Gonzalez became a person of interest in the investigation. RR4-172. They also reviewed some FLOCK camera images and located a Acura SUV, with LP LMK3882. RR4-173. The registered owner of that vehicle was related to Hector Gonzalez. RR4-174. Louis Galvan also became a person of interest; he was the boyfriend of Hector's neighbor Daphne. RR4-174. He further learned that Hector was driving an Acura SUV. RR4-176.

Detective Gonzalez determined what phone Brendan was using the night he died and he obtained the phone records during his investigation. RR4-177. Through the Snapchat records, he found out that Brendan and H.B. were communicating with each other and they were supposed to meet up that night. RR4-180. In June of 2022, he received a call from Sheana Bartlett. RR4-181. He spoke to her for about an hour. RR4-182. During that call, sometimes she would be talking to him and sometimes talking to other people. RR4-182. He heard other voices during that call. RR4-183. He met with Sheana shortly after that phone call. RR4-183.

He asked Sheana to take a recording device with her

to record her conversation. RR4-183. It was a watch that records audio and video. RR4-183. Sheana agreed. RR4-184. After receiving some recordings, he identified the persons in the video as Sheana, H.B., and Appellant. RR4-184. Hector Gonzalez never called to report that Brendan stole his gun. RR4-194. After Hector was arrested, he denied knowing anything about a stolen gun. RR4-195. Daisy, the owner of the Acura SUV, is Hector's mother. RR4-197. Charges were only approved on Appellant and Hector Gonzalez. RR4-201. No charges were approved on Louis Gavlan. RR4-201.

He was present when H.B. was interviewed by members of the District Attorney's office. RR4-204. During the interview, H.B. told them that she was used to bring Brendan out to meet with her. RR4-204. During the interview, the only two people that used her to lure Brendan out were Hector and Louie. RR4-205.

The State argued that Appellant was in the car, H.B. said so, and Appellant was there when Brendan got shot. RR5-31. The State also argued that Appellant kept the crime scene tape as a trophy. RR5-39.

Neither the State nor Defense had any objections to

the Charge of the Court. RR4-219.

SUMMARY OF ARGUMENT

The trial court committed egregious error in failing to define an accomplice witness as a matter of law in the Charge of the Court. Witness H.B. was an accomplice as a matter of law. Failure to give such instruction-definition caused egregious harm to Appellant by permitting the jury to convict him without the benefit of the proper limiting instructions. This error and related harm were greatly compounded by the trial court's additional failure to give the *Tex. Code Crim. Proc.* § 38.14 instruction.

ARGUMENT AND AUTHORITIES

The Charge of the Court at guilt-innocence erred by failing to instruct the jury that the State's witness H.B. was an accomplice witness as a matter of law. When a witness called by the State meets the definition of an accomplice witness as a matter of law, as compared to as a matter of fact, then the trial court shall so instruct the jury.

H.B. was called by the State to testify as a witness against Appellant. She was charged with the

same murder of Brendan Hawkins. H.B. admitted she was charged with the same offense. Additionally, the Adjudication Order against H.B. was entered into evidence. H.B. was an accomplice witness as a matter of law. See Ash v. State, 533 S.W.3d 878, 886 (Tex. Crim. App. 2017) (“[A] witness is an accomplice as a matter of law in the following situations: If the witness has been charged with the same offense as the defendant or a lesser-included offense;...”); See also DeBlanc v. State, 799 S.W.2d 701, 708 (Tex. Crim. App. 1990) (“A State's witness who has been indicted for the same offense as the defendant is considered to be an ‘accomplice as a matter of law.’”).

It cannot be questioned that H. B. was an accomplice witness as a matter of law. As such, the trial court was required to instruct the jury as to this fact. No such instruction was given to the jury. The failure of the trial court to properly instruct the jury to this fact was error.

“If a State witness is an accomplice as a matter of law, the trial court has a duty to include a proper accomplice-witness instruction in its jury charge, and

failure to do so is error. Herron v. State, 86 S.W.3d 621, 631 (Tex. Crim. App. 2002). In this case, although the trial court instructed the jury regarding the requirements of Article 38.14, it failed to include the definition of an accomplice and identify Sanford as an accomplice as a matter of law. Therefore, the trial court erred in failing to give a proper accomplice-witness instruction." Rhymes v. State, 536 S.W.3d 85, (Tex. App.-Texarkana 2017).

The Court of Criminal Appeals has also held that the trial court is required to instruct the jury as to whether a particular witness is an accomplice as a matter of law or as a matter of fact. "A proper accomplice-witness instruction informs the jury either that a witness is an accomplice as a matter of law or that he is an accomplice as a matter of fact. Cocke v. State, 201 S.W.3d 744, 747 (Tex. Crim. App. 2006). The evidence in each case will dictate the type of accomplice-witness instruction that needs to be given, if any." Zamora v. State, 411 S.W.3d 504, 510 (Tex. Crim. App. 2013).

H.B. was not only charged with the same murder as

Appellant, she had been adjudicated guilty/true to have committed the murder. It cannot be questioned that she was an accomplice as a matter of law and therefore, the trial court was required to so instruct the jury. Its failure to do so was error.

Counsel for Appellant failed to object to this omission and therefore, Appellant must show egregious harm. "Where the evidence clearly shows a witness is an accomplice as a matter of law, the trial court must so instruct the jury, but if the appellant fails to object to the omission of the instruction, as in [Rhymes'] case, he or she must prove egregious harm to prevail on appeal." Hall, 161 S.W.3d at 149." Rhymes v. State, 536 S.W.3d at 92.

"The purpose of this instruction is to inform 'the jury that it cannot use the accomplice witness testimony unless there is also some non-accomplice witness evidence connecting the defendant to the offense.' Herron, 86 S.W.3d at 632. Generally, in an egregious harm analysis, 'non-accomplice evidence can render harmless a failure to submit an accomplice witness instruction by fulfilling the purpose an

accomplice witness instruction is designed to serve.' *Id.* However, there may be harm if 'the corroborating (nonaccomplice) evidence is 'so unconvincing in fact as to render the State's overall case for conviction clearly and significantly less persuasive.' ' *Hall*, 161 S.W.3d at 150 (quoting *Herron*, 86 S.W.3d at 632)." *Rhymes v. State*, 536 S.W.3d at 92.

The evidence against Appellant is squarely hinged solely upon the testimony of H.B. and is all tied to her involvement and believability. Without the greatly inconsistent and inaccurate testimony of H.B., the only evidence tying Appellant to the crime is his presence with Hector and one other person (presumably Louie) after the gunshots were heard.

The only evidence placing Appellant in the vehicle with Hector and Louie prior to the shooting was H.B.'s testimony. The only evidence placing Appellant in the Acura SUV is the testimony of H.B. The only evidence that Appellant shot Brendan Hawkins is the testimony of H.B. In fact, her testimony was that Appellant told her that Louie shot him in the leg and Appellant shot him in the face. Dr. Barnhart testified that Brendan was NOT

shot in the face. The autopsy photographs confirm this fact. The only evidence tying the statements made during the covert recording by Sheana to this incident is the testimony of H.B. There is nothing said in the video that ties the conversation to this event. The evidence that the conversation was related to this crime was the testimony of H.B. Her testimony is the evidence that had the video admitted into evidence.

The only other remaining shred of evidence connecting Appellant to this crime is the 9mm shell casing from the windowsill. The casing was mere inches away from a handbag belonging to H.B. The State's witness testified that he presumed that the handbag belonged to H. Why then is it a necessary conclusion that all the items except the handbag on the windowsill belong to Appellant? It is not.

The State obviously knew the weakness of their evidence. The final argument of the State asked the jury to make several improper and unsupported conclusions. First, the State argued in its closing that Appellant kept the crime scene tape as trophy. There is no evidence to support such statement. In fact, the

evidence presented by the State is that the crime scene investigator picked up the crime scene tape and left with it. There was no crime scene tape to come back and collect as "trophy".

Secondly, the State argued that Appellant was in the car because H.B. said he was and he was present when Brendan was killed. This argument contradicts the instruction in the charge that "Mere presence alone will not constitute one a party to an offense" and "A Defendant's mere knowledge of a crime or failure to disclose a crime, standing alone, is not sufficient to support a guilty verdict.". CR-92. The State asked the jury to make improper conclusions and to find him guilty because of his presence. And his presence was only based upon the testimony of H.B.

The jury was not properly instructed that H.B. was an accomplice as a matter of law. This error coupled with the error from Appellant's Second Issue, namely, to given the required 38.14 Code of Criminal Procedure instruction that H.B.'s testimony must be corroborated. The jury was never given the opportunity to fairly evaluate the evidence as applied to the correct legal

standard.

The vast majority of the evidence that ties Appellant to this crime is based solely upon the testimony of H.B. The jury was never provided the correct legal requirements of the findings they must make to find Appellant guilty or not guilty. The only shreds of evidence that connect Appellant to this crime, which is not based upon the testimony of H.B., are that Appellant was seen with Hector and an unknown third male after the gunshots and the shell casing that is located on the windowsill along with H.B. handbag. The entire rest of the State's case is based upon the accomplice witness' testimony. The failure to give the required instruction that H.B. was an accomplice witness as a matter of law caused Appellant egregious harm. This harm was exacerbated by the trial court's failure to give the required 38.14 instruction as discussed in the next issue.

As described in the appellate cases cited above, the nonaccomplice evidence is "so unconvincing in fact as to render the State's overall case for conviction clearly and significantly less persuasive". The nonaccomplice

evidence is comprised of Appellant being seen with Hector after the fact and a single casing that is equally tied to H.B. as it is Appellant. Appellant was egregiously harmed.

For all the foregoing reasons, Appellant's First Issue should be sustained, the case be reversed, and the case remanded for further proceedings consistent with this Court's opinion.

APPELLANT'S SECOND ISSUE

THE CHARGE OF THE COURT ERRONEOUSLY FAILED TO INSTRUCT THE JURY ON ACCOMPLICE WITNESS TESTIMONY. THE STATE PRESENTED A CO-ACTOR AS A WITNESS IN THE CASE BUT THE CHARGE FAILED TO CORRECTLY INSTRUCT THE JURY ON THE NECESSARY LAW REGARDING SUCH TESTIMONY.

STATEMENT OF FACTS

No additional statement of facts is necessary. The factual recitation for the First Issue is incorporated for this issue for all purposes.

SUMMARY OF ARGUMENT

The trial court committed egregious error in failing to properly instruct the jury on the legal requirement that the testimony of an accomplice witness must be corroborated. Failure to give this necessary instruction

lowered the State's required burden of proof and caused Appellant egregious harm. The jury was never given the proper legal standard to which it had to weigh the evidence to convict Appellant.

ARGUMENT AND AUTHORITIES

The Charge of the Court at guilt-innocence erred by failing to instruct the jury on the accomplice witness rule as required under *Tex. Code Crim. Proc. § 38.14*. The State called a co-actor to testify against Appellant under the promise of leniency pursuant to a plea agreement and conditions of juvenile probation which required cooperation and testimony against Appellant. As discussed in Appellant's First Issue, H. B. was an accomplice witness as a matter of law. Failure to instruct the jury that the witness' testimony must be corroborated was clearly error.

Since H.B. was an accomplice as a matter of law, the trial court was required to instruct the jury that her testimony must be corroborated. The Court of Criminal Appeals has repeatedly required such instruction by a trial court. See *Cocke v. State*, 201 S.W.3d 744, 748 (*Tex. Crim. App.* 2006) ('If a witness is an accomplice

as a matter of law, the trial court is required to provide an accomplice-witness instruction to the jury.") and DeBlanc v. State, 799 S.W.2d 701, 708 (Tex. Crim. App. 1990) ("Where, however, there exists no doubt or the evidence clearly shows that a witness is an accomplice witness as a matter of law 'the court is under a duty to so instruct the jury.'").

The trial court was required to provide the instruction as set forth in *Tex. Code Crim. Proc. § 38.14*. This statute states, "A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense."

No such instruction was given to the jury. The Charge of the Court contained additional and related error, as discussed in Appellant's First Issue. Counsel for Appellant failed to request this instruction and therefore must show egregious harm.

The harm analysis is the same or substantially similar to the harm analysis from the First Issue. The

nonaccomplice evidence against Appellant is minimal at best. Certainly, the nonaccomplice evidence this case meets the standard set forth in Herron, Hall, and Rhymes. Such evidence is 'so unconvincing in fact as to render the State's overall case for conviction clearly and significantly less persuasive.' Supra.

But the crux of this error for the failure to give the *Tex. Code Crim. Proc. § 38.14* is that the jury—the true fact finder—was never given the correct legal instructions on how they must judge and evaluate the evidence. The egregious harm caused to Appellant is that the fact finder was never given the opportunity to determine whether there was sufficient corroboration of H.B.'s testimony.

Without H.B.'s testimony, the case against Appellant is legally insufficient. The State could place Appellant with Hector and a third party after the fact (mere presence). And there is a single casing that is equally tied to H.B. as it is to Appellant. All of the evidence tying Appellant to this incident is based upon the testimony of the accomplice witness as a matter of law. The failure to give the required instruction prevented

the jury from correctly considering the correct legal standard.

The only evidence placing Appellant in the vehicle with Hector and Louie prior to the shooting was H.B.'s testimony. The only evidence placing Appellant in the Acura SUV is the testimony of H.B. The only evidence that Appellant shot Brendan Hawkins is the testimony of H.B. In fact, her testimony was that Appellant told her that Louie shot him in the leg and Appellant shot him in the face. Dr. Barnhart testified that Brendan was NOT shot in the face. The autopsy photographs confirm this fact. The only evidence tying the statements made during the covert recording by Sheana to this incident is the testimony of H.B. Without the testimony of H.B., the recording would not have been admitted. There is nothing said in the video that ties the conversation to this event. The evidence that the conversation was related to this crime was the testimony of H.B.

The 9mm shell casing from the windowsill is equally tied to H.B. as it was Appellant. The casing was mere inches away from a handbag belonging to H.B. The State's witness testified that he presumed that the handbag

belonged to H. Why then is it a necessary conclusion that all the items except the handbag on the windowsill belong to Appellant? It is not.

The State attempted to improperly bolster their case by asking the jury to make improper conclusions. First, the State argued in its closing that Appellant kept the crime scene tape as trophy. There is no evidence to support such statement. The evidence was the crime scene investigator picked up the crime scene tape and left with it. There was no crime scene tape to come back and collect as "trophy".

The State further argued that Appellant was in the car because H.B. said he was and he was present when Brendan was killed. This argument contradicts the instruction in the charge that "Mere presence alone will not constitute one a party to an offense" and "A Defendant' s mere knowledge of a crime or failure to disclose a crime, standing alone, is not sufficient to support a guilty verdict.". CR-92. The State asked the jury to make improper conclusions and to find him guilty because of his presence. And his presence was only based upon the testimony of H.B. The lack of the proper

instruction prevented the jury from making a proper evaluation of the evidence.

The jury was not properly instructed that a conviction against Appellant cannot be had upon the testimony of H.B. unless her testimony is sufficiently corroborated by other evidence connecting the defendant with the offense committed. This error coupled with the error from Appellant's First Issue, namely, to instruct the jury that H.B. was an accomplice witness as a matter of law, deprived Appellant of having the jury apply the correct legal analysis to the evidence in this case. The jury was never given the opportunity to fairly evaluate the evidence as applied to the correct legal standard.

The vast majority of the evidence tying Appellant to this crime is based solely upon the testimony of H.B. The jury was never provided the correct legal requirements of the findings they must make to find Appellant guilty or not guilty. The only shreds of evidence that connect Appellant to this crime, which is not based upon the testimony of H.B., are that Appellant was seen with Hector and an unknown third male after the gunshots and the shell casing that is located on the

windowsill along with H.B. handbag. All of the remaining evidence is based upon the accomplice witness' testimony. The trial court's failure to give the required 38.14 instruction caused Appellant egregious harm. This harm was exacerbated by the trial court's failure to give the required instruction that H.B. was an accomplice as a matter of law as discussed in the First issue.

As described in the appellate cases cited above, the nonaccomplice evidence is "so unconvincing in fact as to render the State's overall case for conviction clearly and significantly less persuasive". The nonaccomplice evidence is comprised of Appellant being seen with Hector after the fact and a single casing that is equally tied to H.B. as it is Appellant. Appellant was egregiously harmed.

For all the foregoing reasons, Appellant's Second Issue should be sustained, the case be reversed, and the case remanded for further proceedings consistent with this Court's opinion.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the Appellant, Angel

Josue Velasquez-Pineda, prays that the Judgment of the Trial Court be reversed and remanded for further proceedings consistent with this Court's opinion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that Appellant's Brief has been served upon the Galveston County Criminal District Attorney's Office on this the 5th day of December, 2024 by email to heather.gruben@co.galveston.tx.us.

/s/ Joel H. Bennett

Joel H. Bennett

Certificate of Compliance

In compliance with TRAP 9.4(i), I certify that the word count in this reply brief is approximately 8832 words.

/s/ Joel H. Bennett

Joel H. Bennett