NO.14-24-00464-CR

IN THE FOURTEENTH COURT OF APPEALS
HOUSTON, TEXAS

DEMETRIO RODRIGUEZ
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

APPELLANT'S BRIEF

On Appeal from Cause No. 96977-CR
300th Judicial District Court of Brazoria County, Texas

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. Rule 38.1(a), appellant certifies that the following is a complete list of the parties to the final judgment and the names and addresses of counsel in the trial and on appeal:

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TRIAL JUDGE: The Honorable Chad D. Bradshaw
Presiding Judge 300th District Court
Brazoria County, Texas

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STATEMENT OF THE CASE

On November 17, 2022, Demetrio Rodriguez, Appellant, was indicted for the felony offense of Two Counts of Indecency with a Child. (CR 1 at 10). Count One of the offenses was alleged to have been committed on or about November 24, 2019. (CR 1 at 10). Count Two of the offenses was alleged to have been committed on or about May 11, 2020. (CR 1 at 10). On June 11, 2024, Appellant plead not guilty to both counts on the indictment. (RR 3 at 20 & 21). On June 14, 2024, the Appellant was found guilty by the Jury on both Counts One and Two. (RR 7 at 5). On June 14, 2024, Appellant was assessed a thirteen-year (13) sentence for each count, in the Texas Department of Criminal Justice-Institutional Division, by the Jury. (RR 7 at 7). The Court ordered and found that the two sentences were to run consecutively. (RR 7 at 7).

On June 19, 2024, Appellant timely filed his notice of appeal. (CR 1 at 154).

ISSUES PRESENTED

Point of Error 1: *The Trial Court Abused Its Discretion By Allowing Prejudicial Evidence Of Phone Searches Against The Appellant Which Was Clearly Harmful.*

Point of Error 2: *The Evidence Was Legally Insufficient To Support The Appellant's Conviction As To Count One.*

STATEMENT OF FACTS

On May 16, 2020, Patricia Pineda took her twelve (12) year old daughter, Diana Penaloza ("Diana"), to Legacy Community Health ("Clinic") in Houston. (RR 3 at 45 & 82-83). Her daughter Diana was complaining of a stomachache. (RR 3 at

45 & 82-83). Jong Han ("Dr. Han"), a pediatrician at the Clinic, asked Ms. Pineda to step out of the room while he spoke with Diana. (RR 3 at 30 & 35). Diana disclosed to Dr. Han and his medical assistant that her father, the Appellant, had touched her inappropriately on two occasions, the first-time occurred on Thanksgiving Day 2019, and the second time was when her uncle had passed away in May of 2020. (RR 3 at 36-37). Dr. Han is not trained to give sexual assault exams, so he did not give Diana a sexual assault exam. (RR 3 at 44). After Diana's disclosure, Dr. Han contacted Child Protective Services who in turn informed Ms. Pineda of Diana's statement. (RR 3 at 38).

Leslie Burton ("Burton"), an investigator with Child Protective Services ("CPS"), received the intake of sexual abuse allegations and went to Diana's home that day to conduct an interview with Diana, but the family was not there. (RR 4 at 127-128). While Burton waited for the family to come home, she called Ms. Pineda a couple of times, but there was no answer, so she called for a welfare check and left. (RR 4 at 128-129). A Sherriff's officer went to Diana's house to conduct a welfare check and left the home. (RR 4 at 56, 59, & 128). Burton went back to the home around 4:30 p.m. and she heard yelling coming from inside the home, and the Appellant was outside. (RR 4 at 129). When Diana saw Burton driving into their driveway, she told her mother that the Appellant had touched her inappropriately, and she did not like the way he touched her. (RR 3 at 89, RR 4 at 59 & 128-129).

According to Ms. Pineda, Diana told her that when her stomach had been hurting and she felt sick, the Appellant touched her stomach, and that he had done this before. (RR 3 at 89). The Appellant unlocked the door for Burton and she entered the home. (RR 4 at 129-130). Burton spent about an hour with Diana and was able to conduct a recorded interview with her in which Diana made disclosures to Burton consistent with what Dr. Han had written down in his notes regarding Diana's disclosures. (RR 4 at 130-134). Later, Burton and another detective observed an interview that Maggie O'Conner ("O'Conner"), a former employee of Brazoria County Children's Alliance, conducted with Diana at the Child Advocacy Center. (RR 4 at 116 & 146). Diana discussed these two incidents with O'Conner which were consistent with the information she gave Dr. Han. (RR 4 at 116 & 146-147). The disclosures that Diana gave in the interview which Burton observed were consistent with the disclosures that Diana gave in Burton's initial interview with her. (RR 4 at 148). Christina Cortinas, a licensed professional counselor for Angleton ISD, who met with Diana several times after September 2020 also stated that Dr. Han's notes of Diana's disclosure were consistent with the information Diana gave to her. (RR 4 at 149 & 154).

Diana does not remember many details about the allegations made against the Appellant. (RR 4 at 69-70). She stated the bathroom was the first place where the Appellant had touched her. (RR 4 at 66, 69-70). She described the bathroom as small

and difficult for two people to be in there at one time. (RR 4 at 66, 69-70). Diana did not remember where Appellant had touched her or where they were standing when he first touched her on Thanksgiving Day. (RR 4 at 66, 69-70, & 91). From the restroom, Diana went to her bedroom where she began to fold clothes. (RR 4 at 71-74). She does not know how much time had elapsed after the restroom incident, to when the Appellant goes into her bedroom. (RR 4 at 71-74). Diana could not remember what she was wearing or what the Appellant was wearing. (RR 4 at 74-75). She remembers the Appellant talking to her about having a boyfriend, which was normal for them to do. (RR 4 at 76-77). They had talked about boyfriend relationships since 5th grade, and she told the Appellant that she had a boyfriend knowing he did not want her to have one. (RR 4 at 76-77). Diana does not remember whether her and the Appellant were standing up or on the bed when the Appellant started to touch her. (RR 4 at 78-79). Diana's aunt walked into the house which made him stop by calling out Appellant's name; however, Maria Pineda testified that she never yelled out Appellant's name or saw him walk out of Diana's room with Diana. (RR 4 at 78-79 & 170-171). Diana did not tell anybody about this incident occurring except for two boys from her school. (RR 4 at 80). Although Diana was left at home several times with the Appellant between November and May 11, there was nothing he did to her. (RR 4 at 80-81).

The next incident that Diana reported occurred on May 11 while she, her sister, and her dad were home. (RR 4 at 81-82). It was nighttime, when Diana was laying on the couch watching TV, and told the Appellant that her stomach was hurting. (RR 4 at 83-84). Appellant started to rub her stomach because she had told him that Ms. Pineda had felt a ball in her stomach. (RR 4 at 85-86). He then moved his hands down to her pants and unzipped them, then started to touch her over her underwear. (RR 4 at 87-88). He stopped when she got up to go to the restroom. (RR 4 at 87-88). Diana states that she can't pronounce where he touched her but spelled out V-A-G-I-N-A. (RR 4 at 100). Ana Penaloza, Diana's younger sister, stated that she was in the house on May 11, 2020 and remembered seeing Appellant rub Diana's stomach because Diana was having cramps. (RR 4 at 160 & 165-166).

On April 27, 2020, the phone dump showed that Appellant's phone had an Autofill of "ejaculating inside young girls." (RR 4 at 105). Between May 10, 2020 and May 12, 2020, the Appellant's phone showed that the following searches had been made in Spanish:

- "searching to ejaculate inside a young girl. Porn videos xxx";
- "father ejaculates inside his 18 year-old daughter. Free girls.";
- "father ejaculates inside his young 18-year-old daughter"
- "www.younggirls.free. Fornicating in the bathroom by spying"
- "nightlightpediatrics.us" (RR 4 at 103-105).

The searches on the phone throughout those days dealt with father and daughter or brother and daughter. (RR 4 at 104). The vast majority of the searches were dealing with young girls. (RR 4 at 105). The Appellant had a bookmark title "Orgasms cute blond teen with pussy let's older man cum inside her cream pie." (RR 4 at 105).

SUMMARY OF THE ARGUMENT

The State concedes that the phone dump was used to prove the essential element of gratification. The State gives no other evidence to show that the Appellant had the intent to gratify, other than the phone dump searches. The admittance of the phone dump was prejudicial to the Appellant. The phone dump searches that the State used were limited to the days before and after May 11, 2020; Count one was for an incident occurring prior five months prior to May 11, 2020.

Furthermore, the complainant could not remember the incident that allegedly occurred in November; thus, the trial court abused its discretion by allowing prejudicial evidence of the phone searches against the Appellant which were clearly harmful, and the evidence was legally insufficient to support the Appellant's conviction as to Count One.

ARGUMENT AND AUTHORITIES

I. ARGUMENT

POINT OF ERROR ONE: THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING PREJUDICIAL EVIDENCE OF PHONE SEARCHES AGAINST THE APPELLANT WHICH WAS CLEARLY HARMFUL.

a. **Tex. R. Evid. 401.** Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

b. **Tex. R. Evid. 402.** Relevant evidence is admissible unless any of the following provides otherwise:

• the United States or Texas Constitution;

• a statute

• these rules; or

• other rules prescribed under statutory authority.

Irrelevant evidence is not admissible.

c. **Tex. R. Evid. 403.** The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.

d. **Tex. R. Evid. 404 Character Evidence; Crimes or Other Acts**

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On timely request by a defendant in a criminal case, the prosecutor must provide reasonable notice before trial that the prosecution intends to introduce such evidence—other than that arising in the same transaction—in its case-in-chief.

Over the Appellant's objections, the State introduced the following evidence of searches on his cell phone allegedly made by the Appellant:

TAMEZ: Q. And as it pertains to this case, were you asked to download or analyze two cellular devices? NIELSEN: Yes, I was.

TAMEZ: Q. Okay. Do you remember what type of cellular devices they were? NIELSEN: When I look at my notes, I can tell you. One was a Samsung cell phone, and one was an iPhone.

MR. TAMEZ: Your Honor, may I approach the witness?

THE COURT: Yes.

Q. (BY MR. TAMEZ) I'm going to show you what's been admitted as State's Exhibit 2 and 3. When you downloaded these phones, did you download them with any authority? NIELSEN: A. Yes, I did.

TAMEZ: Q. Okay. What kind of authority was that? NIELSEN A. We call them a signed consent form.

TAMEZ: Q. Okay. Now, the data that you put [sic] on those phones, did you put them on a thumb drive? NIELSEN: A. Yes, the data is on a thumb drive.

TAMEZ: Q. I'm going to show you what's been marked as State's Exhibit 5. Do you recognize this item? NIELSEN: A. Yes, I do.

TAMEZ: Q. And does this contain the extraction of those two devices that were obtained in connection with this case? A. Yes, it contains both extractions.

MR. TAMEZ: Your Honor, we'll tender to defense and offer into evidence State's Exhibit 5. MR. WASSERSTEIN: Your Honor, defense objects to State's Exhibit Number 5. I don't know if you want me to make the objection here or approach the Bench.

THE COURT: Y'all can approach. (Discussion at the Bench, off the record.) (Open court, defendant and jury present.)

THE COURT: What's the exhibit number? MR. TAMEZ: Exhibit Number 5.

THE COURT: All right. Objections from the defense?

MR. WASSERSTEIN: *Your Honor, we object under Texas Rules of Evidence 403. We believe the probative value of this drive would be so prejudicial that it would substantially outweigh any effect -- relevant evidence -- the probative value would substantially outweigh -- be unfairly -- this would be unfairly prejudicial to my client.*

THE COURT: All right. I'm going to overrule that objection. Any other objections?

MR. WASSERSTEIN: *We would also argue under 404 this is -- we had talked about in my motion in limine that this is an attempted evidence of a bad act.*

THE COURT: I'll overrule that objection. Any others?

MR. WASSERSTEIN: No, Your Honor.

THE COURT: It's admitted. (RR 4 at 64-66).

Q. (BY MS. ABERNATHY) I'm going to do from May 8th to May 13th of 2020. So, I'm going to start here at May 10th, 2020, at 10:45 p.m. Do you see that date where I've highlighted? ORTEGA: A. Yes.

ABERNATHY: Q. Okay. Over on the right-hand side where there is the title, can you please translate that to English for us? ORTEGA: A. Yes. It says I'm searching to ejaculate inside a young girl -- or "searching to ejaculate inside a young girl. Porn videos XXX."

ABERNATHY: Q. And then here on May 10th, 2020, at 10:51 p.m., the title, can you please translate that title? ORTEGA: A. "Father ejaculates inside his 18-year-old daughter. Free girls."

ABERNATHY: Q. And then, again, on May 10th at 10:56 p.m.? ORTEGA: A. The same, "Father ejaculates inside his young 18-year-old daughter."

ABERNATHY: Q. Here at the website, the URL code, what is -- it's to www dot – ORTEGA: A. "Younggirls.free. Fornicating in the bathroom by spying."

ABERNATHY: Q. Did you say "by spying"? ORTEGA: A. Yeah. Spying.

ABERNATHY: Q. And here -- I'm sorry, May 11th, we see a bunch of searches without titles. What is -- what are those searches to, just generally? ORTEGA: A. Nightlightpediatrics.us.

ABERNATHY: Q. Is that NightLight Pediatrics? ORTEGA: A. Yes.

ABERNATHY: Do you know if that's a pediatric urgent care? ORTEGA: A. I don't know.

ABERNATHY: Q. And then here on 5/12 at 1:57 a.m. and 47 seconds, what is the title of that search? ORTEGA: A. The same thing, "Father ejaculates inside his 18-year-old daughter. Younggirls.free."

ABERNATHY: Q. And going through -- when you reviewed the web history on this phone extraction on State's Exhibit 5, did you find many search results that were similar in nature? ORTEGA: A. Yes.

ABERNATHY: Q. And did all of them deal with father and daughter? ORTEGA: A. Father and daughter or brother and daughter.

ABERNATHY: Q. Were the vast majority of them that you saw dealing with young girls -ORTEGA: - A. Yes.

ABERNATHY: Q. -- as well? ORTEGA: A. Young girls.

ABERNATHY: Q. What is the Spanish translation for young girls? ORTEGA: A. Jovencitas.

ABERNATHY: Q. And is that the "jovencitas.gratis" that we with see here as a URL? ORTEGA: A. Yes.

ABERNATHY: Q. Yes? And I also want to go to web bookmark. On his web bookmark, what is one of the bookmarks that he has? The title? ORTEGA: A. "Orgasms cute blond teen with pussy let's older man cum inside her cream pie."

ABERNATHY: Q. And then the AutoFill. On the AutoFill that was set on April 27th of 2020, what is the value of that AutoFill? ORTEGA: A. It says ejaculating inside -- "ejaculating inside young girls." (RR 4 at 103-105).

Although the Appellant objected under Texas Rules of Evidence 403 and 404, the evidence was admitted by the Judge, and had a harmful effect on the Appellant.

HARM ANALYSIS

MR. WASSERSTEIN: Yes, Your Honor. At this time defense would ask for a directed verdict. We don't believe the State has proven each and every element beyond a reasonable doubt. Specifically, the intent to gratify the -- specifically, the intent to arouse or gratify the sexual desire of my client.

THE COURT: Okay. Response?

MR. TAMEZ: *State has provided some evidence on each and every element of the offense, including the intent to -- the element of intent to arouse or gratify the*

sexual -- defendant's sexual desire. We point specifically to the evidence contained in the phone dump and the rational conclusion that can be made by the jury on the places where the victim named in the indictment says that she -- the defendant touched her. There was no other reason for that.

THE COURT: All right. The motion for directed verdict will be overruled. (RR 4 at 158-159).

When the Appellant asked for a directed verdict, the State's response was focused on the phone dump, specifically the evidence contained in the phone dump. Clearly the State's evidence on the element of gratification, was the use of the phone dump searches. However, the dates of the evidence in the phone dump, which were obviously necessary to prove the element of gratification, according to their response were all in May. This evidence of the Appellant's phone searches clearly prejudiced the Appellant after Appellant objected coupled with the State conceding that the searches were necessary to prove the gratification of the Appellant.

II. ARGUMENT

POINT OF ERROR TWO: THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT THE APPELLANT'S CONVICTION AS TO COUNT ONE.

SUFFICIENCY

Appellant challenges the legal sufficiency of the evidence to support his conviction. The Court of Criminal Appeals has held that only one standard should be used in a criminal case to evaluate the sufficiency of the evidence to support

findings that must be established beyond a reasonable doubt: legal sufficiency. *Brooks v. State*, 323 S.W.3d 893,894-95 (Tex. Crim. App. 2010). Accordingly, the review of the sufficiency of the evidence in this case is under a rigorous and proper application of the legal sufficiency standard of *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks*, 323 S.W.3d at 906. When reviewing the sufficiency of the evidence, it is proper to view all of the evidence in the light most favorable to the verdict to determine whether the fact finder was rationally justified in finding guilt beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 899; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This Court will defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *Brooks*, 323 S.W.3d at 902 n.19, 907. Appellant argues the evidence is legally insufficient to support his conviction.

STANDARD OF REVIEW

When reviewing the sufficiency of the evidence, this Court views all of the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *Brooks*, at 898. *Dewberry v. State*, 4 S.W.3d 735,740 (Tex. Crim. App.1999); see also *Sharp v. State,* 707 S.W.2d 611,614 (Tex. Crim. App.1986) (stating the jury may choose to believe or disbelieve any portion of the testimony at trial). The duty as a reviewing court is to ensure that the evidence presented actually supports a conclusion that the

defendant committed the crime. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App.2007).

Sec. 21.11. INDECENCY WITH A CHILD.

(a) A person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex and regardless of whether the person knows the age of the child at the time of the offense, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person: (A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or (B) causes the child to expose the child's anus or any part of the child's genitals.

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than three years older than the victim and of the opposite sex;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense: (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or (B) was

not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the child at the time of the offense.

(c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

Although a child victim's uncorroborated testimony alone is sufficient to support a conviction for a sexual offense, the jury are the exclusive judges of the credibility of the witnesses. *Gonzalez v. State*, 522 S.W.3d 48, 57 (Tex. App.—Houston [1st Dist.] 2017, no pet.); see also TEX. CODE CRIM. PROC. art. 38.07(b)(1). Therefore, the jury must still believe a witness. Diane was not credible, even on direct testimony as evidenced by the following dialogue with the prosecutor:

TAMEZ: Q. So, Thanksgiving, is it early hours when you were cleaning the restroom or is it in the middle of the afternoon? Do you remember what time of day it was? *A. I don't remember.*

TAMEZ: Q. Okay. Do you remember what your sister was doing while you were cleaning the restroom? *A. No.*

TAMEZ: Q. Okay. Where is your dad when you're cleaning the restroom? *A. I don't remember either.*

TAMEZ: Q. Okay. Tell me what you remember about being in the bathroom at Thanksgiving. What happened then? *A. I was cleaning the restroom, and that's all.*

TAMEZ: Q. Okay. And was there a point in time during that day that your dad did something to you? *A. No.* Q. No? *A. Huh-uh.* (RR 3 at 150).

TAMEZ: Q. Sometimes? Was there ever any -- was there ever a time that your dad did something you didn't like? *A. I don't remember either. (RR 3 at 151).*

TAMEZ: Q. Okay. When he put the phone away, did he do anything else? *A. Yes.*

TAMEZ: Q. What? *A. He started touching me.*

TAMEZ: Q. Okay. Can you tell us how? *A. I don't remember that much.*

TAMEZ: Q. You don't remember that much? *A. Huh-uh. No.*

TAMEZ: Q. Do you remember where he touched you? *A. No, that either.* (RR 3 at 152-153).

TAMEZ: Q. Okay. Back on Thanksgiving the year before, did your dad touch you in the same place that day? *A. I don't remember either.* (RR 3 at 156).

WASSERSTEIN: Q. Okay. And you testified under direct that at some point in the bathroom he -- he touches you. Right? *A. Yes.*

WASSERSTEIN: Q. Okay. And did he just walk into your bathroom and -- and touch you? *A. I don't remember.*

WASSERSTEIN: Q. You don't remember? Okay. Fair enough. Do you -- do you -- do you remember where he was standing in the bathroom when he touched you? *A. I think he was beside the door.*

WASSERSTEIN: Q. Beside the door? *A. Uh-huh.*

WASERSTEIN: Q. Like, in the doorway or -- *A. I don't remember.*

WASSERSTEIN: Q. You don't remember? Do you remember where you were standing? *A. No.* (RR 4 at 69-70).

WASSERSTEIN: Q. And you had testified yesterday that he touches you again in your -- in your bedroom? *A. Uh-huh.*

WASSERSTEIN: Q. Okay. Was it while you were standing, or were you on your bed? *A. I don't remember.* (RR 4 at 78).

Based upon Diana's testimony, she is not credible. She cannot remember any details of the alleged November incident. In addition, there was no testimony from any witness who could prove the intent to arouse or gratify the sexual desire of the Appellant, which is an essential element of the State's case. There was nothing to corroborate Diane's testimony in this case. The State, in its response to the

Appellant's motion for directed verdict, concedes that the phone searches from the Appellant's phone go to his intent to arouse or gratify his sexual desire. The State responded to the Motion for Directed Verdict as follows:

"MR. TAMEZ: *State has provided some evidence on each and every element of the offense, including the intent to -- the element of intent to arouse or gratify the sexual -- defendant's sexual desire.* ***We point specifically to the evidence contained in the phone dump*** *and the rational conclusion that can be made by the jury on the places where the victim named in the indictment says that she -- the defendant touched her."*

The States response supports the Appellant's argument that there was insufficient evidence to support the Appellant's conviction as to Count I. The State was not able to prove the November incident based upon the evidence presented. The essential element of "intent to gratify" could not be proven by the State with the evidence presented at trial. The phone dump searches were conducted after the November incident, so as to this element, and Count One being based on an indecent occurring on or about November 24, 2019, the State only had Diana's testimony which no rational juror could have found the Appellant guilty of Count I. Therefore, the evidence is legally insufficient to prove that on or about November 24, 2019, the Appellant committed the act of Indecency with a Child.

CONCLUSION AND PRAYER

WHEREFORE PREMISES CONSIDERED, Appellant, Demitrio Rodriguez, respectfully asks that the judgment of the trial court be reversed and that a judgment

of acquittal be entered or in the alternative that Appellant's sentence be set aside and for such other and further relief to which Appellant may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Brief is computer-generated, with those portions required to be counted containing 4,187 words according to the word-count function of the application used to create it and complies with the word-count requirements of Rule 9.4, Texas Rules of Appellate Procedure. It is printed in 14-point typeface, except for the footnotes, which are printed in 12-point typeface.

/s/ Michael C. Diaz
MICHAEL C. DIAZ

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been served on the opposing counsel of record listed below by electronic service on Monday, February 24, 2025.

Brazoria County District Attorney's Office
Email: bcdaeservice@brazoriacountytx.gov

/s/ Michael C. Diaz
MICHAEL C. DIAZ

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