Affirm and Opinion Filed September 23, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00644-CR

ZACCHAAEUS JA'JUAN HENDERSON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 422nd Judicial District Court
Kaufman County, Texas
Trial Court Cause No. 21-11239-422-F

MEMORANDUM OPINION

Before Justices Garcia, Breedlove, and Jackson
Opinion by Justice Jackson

Following a jury trial, Zacchaaeus Ja'Juan Henderson appeals his conviction for murder. He contends (1) the State failed to corroborate an accomplice witness's testimony, (2) the trial court erred in denying his motion to suppress, (3) the evidence is legally insufficient to support the conviction, (4) the trial court erred in admitting certain evidence, and (5) his due process rights were violated due to the presentation of false evidence.[1] For reasons that follow, we affirm the trial court's judgment.

[1] There are two motions pending in this case—appellant's motion for leave to file an amended brief and the State's third motion for an extension of time to file its brief. By this opinion and by separate order of the same date, we grant both motions.

BACKGROUND

Appellant was charged with capital murder. The indictment alleged he intentionally caused the death of Desmond Smith by shooting him with a firearm while in the course of committing or attempting to commit the offense of retaliation. TEX. PENAL CODE ANN. §§ 19.03(a)(2), 36.06(a). Prior to trial, appellant moved to suppress evidence obtained after the warrantless seizure of his cell phone. The trial court denied the motion. After hearing the evidence, the jury had a reasonable doubt about whether appellant was engaged in the commission of retaliation at the time of the shooting and found him guilty of the lesser included offense of murder. The jury assessed his punishment at 60 years confinement.

Evidence showed that Smith, age 22, was found dead outside North Forney High School on September 8, 2021. Surveillance video from cameras at the school showed that three people got out of a vehicle and shot him at 2:05 that morning. Smith had 26 gunshot wounds. Law enforcement determined the shooting was part of a feud between two rival gangs, Married to the Money (MTM) and Brothers to the End (BTE). Smith was a member of MTM.

After Smith's death, his brother accessed his Instagram account. Right before he was shot, Smith was having direct message conversations through Instagram with an account named "deekapone_." According to the messages, Smith, who lived near the high school, went there to meet the woman who owned the account. Smith's brother turned the messages over to law enforcement.

The first messages between Smith and the deekapone account were sent a few days before the murder. They discussed meeting in person. Shortly before the shooting on September 8, records showed a series of Instagram video chats beginning at 1:47 a.m. Then there was a message from the deekapone account to Smith that said, "One minute from the school." The last message between the two accounts was from deekapone, "In the parking lot."

Law enforcement knew from these Instagram communications that the person behind the deekapone account was involved in Smith's death. Bruce Sherman, a former Texas Ranger, assisted the Kaufman County Sheriff's Office with the investigation. Pursuant to a warrant, he obtained records from Instagram and attempted to identify who sent the messages from the deekapone account. The registered user of the account was a woman named Denaja Mims.

Mims agreed to a voluntary interview with law enforcement. She provided the name of a person of interest, Isaiah Johnson. Johnson and Mims had a romantic relationship.

Johnson agreed to come in for an interview with Sherman. He denied any involvement in or knowledge of Smith's murder. Law enforcement received Johnson's call detail records from his cell phone provider in response to a search warrant. Johnson was arrested after the records showed he was at North Forney High School at the time of the shooting.

Law enforcement was still trying to identify the two other shooters. The records they received from Instagram included internet protocol (IP) addresses specific to Mims's account. An IP address is an identifier assigned by a network to a specific device that can help identify who is utilizing an internet network at a specific time and from what location. Every device that accesses an Instagram account has a different IP address. Records showed that multiple IP addresses had logged into Mims's account before Smith's murder. One of the IP addresses belonged to someone at Mims's residence, and Mims was later arrested for her involvement in Smith's death.

Another IP address had logged into Mims's Instagram account about 7 minutes before the murder. Law enforcement requested records from the provider responsible for that IP address to find out what device had been using the address. Sherman received a phone number with a 214 area code in response. It was later determined that phone number belonged to appellant. Johnson had also been in communication with the 214 number leading up to the murder. Sherman provided the number to Investigator Jimmy Weisbruch with the Kaufman County Sheriff's Office.

Before he knew who the 214 number belonged to, Weisbruch examined call records for the number. There were multiple communications between the 214 number and Johnson's number before and after the murder. The 214 number had also been in communication with a 682 number. Weisbruch determined the 682

number belonged to April Henderson, who turned out to be appellant's mother. He got a search warrant for the 682 number and went to April's house in Dallas. April lived with her husband, appellant, and another son. Weisbruch wanted to speak to the sons, and April and her husband said they would bring them in for an interview.

The next day, October 23, 2021, appellant went to the sheriff's office for a voluntary interview. The interview was video recorded and played for the jury. Weisbruch also testified about it. During the interview, appellant confirmed the 214 number belonged to him and confirmed he knew Johnson. He denied knowing about the murder or Mims or the deekapone account. When asked how his phone accessed Mims's Instagram account, appellant said he lets people use his phone. Later on in the interview, appellant admitted he knew about the murder from social media and knew that BTE was responsible for the murder.

Appellant had his cell phone with him. Weisbruch asked him to type Johnson's number into his phone to see if Johnson came up as a saved contact. Based on the numerous times the two phones had communicated with each other according to phone records, the investigator expected Johnson to be a contact in appellant's phone. Appellant typed in the phone number Weisbruch provided. Johnson's number was not saved in his phone. Weisbruch was concerned appellant had deleted that contact from his phone or somehow manipulated his phone so it would not show up when searched for.

Appellant told Weisbruch that he and Johnson hung out about once a week or twice a month. Appellant confirmed Johnson was a member of BTE. When asked if he was part of BTE, appellant said its members were "his brothers." He listed some of his fellow BTE members and discussed the "beef" between BTE and MTM. Appellant mentioned that someone named Shamar from his gang was arrested for a shooting in Deep Ellum in Dallas.

At the conclusion of the interview, Weisbruch told appellant he was going to seize his cell phone and apply for a warrant to search it. Appellant gave his phone to Weisbruch. After getting a warrant to search appellant's cell phone, the sheriff's office performed an extraction on the device.

Johnson was arrested for Smith's murder a short time after the date of appellant's interview. In January 2022, Johnson confessed to the crime. He confirmed to law enforcement that appellant was one of the shooters and identified the third shooter as James Dipple.

Johnson testified as an accomplice witness against appellant at trial. Johnson said he, appellant, and Dipple had known each other since middle school. The three of them set Smith up to be killed. Johnson learned that Smith was on Mims's Instagram. Johnson testified he wanted to kill Smith because he was part of MTM. In the days before the murder, Johnson had Mims contact Smith, seem friendly, and get his address. Smith ultimately gave Mims an address on the night of September 7.

Johnson drove to Forney with appellant and Dipple. The address they had was for the high school. Because he was driving, Johnson logged into Mims's Instagram account on appellant's phone and had appellant message Smith. Smith made a video call to Mims through Instagram. Johnson had Mims answer the call and tell Smith to come to the school. Smith thought he was meeting Mims.

Johnson identified the surveillance video of the murder. The video shows a car driving in the school parking lot. Johnson testified he was the driver of the car and appellant and Dipple were passengers. They each had a gun, and appellant's was a GLOCK. They each had their cell phone with them. Johnson testified they drove around the school looking for Smith and stopped the car when they saw him on foot. Johnson, Dipple, and appellant all got out of the car and fired at Smith.

Johnson testified that while they were shooting, Dipple did something called "walking them down." He walked up to Smith and stood over him and fired. While Dipple was doing this, Johnson accidentally shot him in the foot. They left the school and took Dipple to Parkland Hospital in Dallas. Dipple left one of his shoes, a slide, at the crime scene. Johnson and appellant drove back to the scene of the crime to get the shoe, but law enforcement was already present so they drove back to the hospital. Johnson told appellant to take his car and hide their guns while he waited for Dipple. Appellant returned to the hospital later to pick them up, and they all went to Dipple's house. Johnson got his gun back and left the house. After

Johnson turned against appellant, appellant told him he needed to recant and threatened that Johnson would not live long in prison.

Johnson indicated he, appellant, and Dipple were all members of BTE. He testified about the feud between BTE and MTM and said it began when an MTM member known as MTM Fat was shot and killed in Deep Ellum. Shamar Anderson and Dipple of BTE were the shooters. Anderson was arrested but Dipple was not. After that, BTE and MTM were enemies. Johnson explained that meant that if BTE members caught an MTM member out in public, they would probably shoot him. After MTM Fat was killed, MTM retaliated by shooting up Anderson's and Dipple's houses. BTE members started carrying more guns and being more alert. Someone in MTM had snitched after the shooting. Johnson did not know Smith to be the snitch. They targeted Smith because he "was just the person we came across."

Dallas Police Detective B.K. Nelson with the Dallas Gang Unit testified about current gang culture. In the last five years, hybrid gangs have emerged. They are not geographical. It is now all about tattoos and also social media. Certain gangs go against each other on social media. Music also drives a lot of gang issues. Nelson testified about "drill music," which is "a disc track" gang members make for a rival gang. The music tells you what is going on in the culture, such as who has been shot and "who's beefing with who."

Snitching is when a gang member assists law enforcement. Snitching is not looked upon favorably in the gang culture. It is life threatening for everyone

associated with the snitch. Violence is used to send a message to a snitch and can occur against snitches in rival gangs as well as against a member of one's own gang. In addition, any member of the gang can become a target if rival gang members cannot find the person they are looking for.

According to Nelson, BTE is a very small group of five to six members. Nelson was familiar with the feud between MTM and BTE. He was also familiar with an August 2020 shooting in Deep Ellum that involved the rival gangs. The gangs met up in Deep Ellum for a "street on site." That means, "When I see you, we going to fight, we going to shoot." BTE members shot and killed a member of MTM. Shamar Anderson was identified as the shooter by members of MTM. Nelson was asked hypothetically, if Dipple had participated in the Deep Ellum shooting, would he have a motive to retaliate against MTM. Nelson responded affirmatively. Nelson did not know if Dipple was present at the Deep Ellum shooting. Nor did he know anything about Smith being a snitch.

Weisbruch was called as a witness again after Johnson and Nelson testified. After Johnson told him Dipple was one of the shooters, Weisbruch worked to independently verify Dipple's involvement. He obtained Dipple's medical records from Parkland Hospital. Dipple checked into Parkland at 2:37 a.m. on September 8, 2021, about 30 minutes after the shooting. He sought treatment for a gunshot wound to his toe. DNA from the slide found at the scene was a match for Dipple. Weisbruch obtained Dipple's call detail records, and Dipple was arrested.

Next, Weisbruch testified about the cell phone data in the case. The sheriff's office uses a computer program called Nighthawk LEOVision, which it pays for and accesses through a secure website. Any digital data obtained in a case, including data received from cell phone providers and cell phone extraction can be input into the program. Weisbruch used Nighthawk to "create visualizations for the jury."

State's Exhibit 27 was the output or product Weisbruch created using Nighthawk. It was a PowerPoint presentation shown to the jury that included maps of the location of the shooters' mobile devices at different times and timelines showing their phone usage. Weisbruch testified about the data sets he entered into the Nighthawk program. He input cell phone extraction and call detail records for both appellant and Johnson. For Dipple, he input only call detail records because Dipple no longer possessed his phone at the time of his arrest. The records Weisbruch input into the Nighthawk program were also admitted into evidence as individual exhibits.

Weisbruch used Nighthawk to plot where the data from the shooters' mobile devices showed they were during one-hour increments starting at midnight on September 8. The data showed appellant's phone was at North Forney High School at the time of the murder. Before the murder, appellant's phone was in the South Dallas, Duncanville area. Between 1:00 and 2:00 a.m., the three shooters began to travel east together toward Forney. At about 1:28 a.m., appellant's phone was not using data, which indicates it was turned off. It came back on at 1:52 a.m. near the

high school. At the time of the murder, appellant's phone was the only one of the three devices accessing a cellular network. After the murder, appellant's phone traveled west out of Kaufman County to Parkland Hospital. Dipple's device powered on at about 2:28 a.m. approaching Parkland. Shortly after appellant's phone arrived at the hospital, it left and went to Dipple's residence. Dipple's device remained at Parkland. Johnson's device was off until about 3:27 a.m. He was at Parkland at that time. Weisbruch said the data was consistent with Johnson's testimony that Johnson stayed with Dipple at the hospital while appellant went to ditch the guns. At about 3:40 a.m., appellant's phone began to travel back to Parkland. After 4:00 a.m., Johnson's and appellant's phones returned to Dipple's house and then traveled east to the crime scene for a brief time. Between 5:00 a.m. and 6:00 a.m., appellant's device traveled back west toward Parkland. Appellant's phone remained at Parkland between 6:00 and 7:00 a.m. At about 7:00 a.m., all three devices traveled away from Parkland.

Weisbruch also looked at the data for communication between the three shooters before, during, and after the crime. At about 7:00 p.m. on September 7, Johnson called appellant. At the time of the offense, there were no texts or calls between any of the three. They communicated with each other in the days following the shooting.

Appellant's cell phone extraction showed that four days before the murder he searched the internet for a "31-clip GLOCK 9," which is a firearm with an extended

magazine like one shown in a social media post appellant made after the murder. Appellant deleted that search from his phone. He had also searched for and deleted "hospitals near me" on his phone. In addition, there had been multiple searches on appellant's phone after the crime for "Forney High School shooting." The first such search occurred at 11:41 a.m. on September 8, 2021, and they continued until the evening of September 13, 2021.

Appellant testified in his defense. He was 19 years old at the time of the offense and was living at a motel. On the evening of September 7, 2021, Johnson called him. They had gone to middle school together, but really formed a friendship when they both became part of BTE. Dipple was also a member of BTE. Johnson asked appellant if he had a burner phone he could borrow. Appellant had one and told Johnson he could come get it. He described the burner phone as a phone with no subscriber or name, kind of like a "ghost phone." The number of the phone was the 214 number. Johnson got the phone from appellant that night. He said he needed it to handle some business. Johnson brought the phone back to appellant at about 7:00 the next morning.

Appellant said his friends and family know he has two phones. He testified he always gives people his phone. Appellant denied searching for information about the shooting at the school on his phone. He testified he clears his search history because he watches porn and does not want people who use his phone to know that.

ACCOMPLICE WITNESS CORROBORATION

In his first issue, appellant contends the State failed to present sufficient evidence to corroborate the accomplice witness testimony from Johnson. We disagree.

Before a conviction can be obtained based upon the testimony of an accomplice witness, there must be some corroborating 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. TEX. CODE CRIM. PROC. ANN. art. 38.14. The accomplice witness rule is a statutorily imposed sufficiency review and is not derived from federal or state constitutional principles that define legal sufficiency standards. *Cathey v. State*, 992 S.W.2d 460, 462–63 (Tex. Crim. App. 1999). To test the sufficiency of the corroborating evidence, the reviewing court must eliminate from consideration the testimony of the accomplice witness and then examine the other evidence to ascertain if it is of an incriminating character which tends to connect the defendant with the commission of the offense. *Castaneda v. State*, 682 S.W.2d 535, 537 (Tex. Crim. App. 1984). If there is such evidence, the corroboration is sufficient. *Id.* The corroborating evidence may be direct or circumstantial and need not directly link the accused to the crime or be sufficient in itself to establish guilt. *Brown v. State*, 672 S.W.2d 487, 488 (Tex. 1984). A conviction cannot stand, however, if the corroborative evidence does no more than point the finger of suspicion towards an accused. *Castaneda*, 682 S.W.2d at 538. If

the non-accomplice evidence fails to connect the defendant to the offense, the evidence is insufficient to support the conviction and an acquittal results. *Munoz v. State*, 853 S.W.2d 558, 560 (Tex. Crim. App. 1993); *see* TEX. CODE CRIM. PROC. ANN. art. 38.14.

Appellant acknowledges the data extracted from his cell phone shows his phone was at the crime scene and traveled with Johnson before and after the murder. He suggests this Court cannot consider the cell phone extraction evidence in reviewing whether Johnson's testimony was corroborated. He contends it was inadmissible because his phone was seized without a warrant, an issue we review below. But contrary to appellant's argument, even improperly admitted evidence is considered in a legal sufficiency review, and a challenge to the sufficiency of the evidence to corroborate the testimony of an accomplice is a challenge to the sufficiency of the evidence to support the verdict on guilt. *Medrano v. State*, 421 S.W.3d 869, 882–83 (Tex. App.—Dallas 2014, pet. ref'd); *Hernandez v. State*, 585 S.W.3d 537, 551 (Tex. App.—San Antonio 2019, pet. ref'd); *Castillo v. State*, 517 S.W.3d 363, 377 n.4 (Tex. App.—Eastland 2017, pet. ref'd). Further, not all of the corroborating evidence came from the extraction performed on appellant's phone.

The corroborative evidence in this case tends to connect appellant to the commission of Smith's murder. The surveillance video corroborated Johnson's testimony that there were three shooters. Instagram records showed that 7 minutes before the murder, appellant's phone was logged into the Instagram account used to

lure Smith to the school. At that exact time, messages were sent from Mims's Instagram account to Smith. Appellant's cell phone was at the location of the murder at the time of the murder, and afterwards it was at Parkland Hospital, where Dipple went for treatment, and then back in Forney where Dipple lost a shoe. The search history on appellant's phone, which included searches for a GLOCK, "hospitals near me," and information about the shooting, also tended to connect appellant to the murder. In addition, appellant gave inconsistent statements to Weisbruch. He first denied knowing anything about the murder, but later admitted he knew about it and knew his gang BTE was good for it.

Some of Johnson's testimony about events before and after the murder was inconsistent with the cell phone evidence. Johnson testified he picked appellant and Dipple up at the same location to drive to Forney. The cell phone data showed appellant and Johnson were together and Dipple went to their location before they drove to Forney. Also, Johnson testified he used navigation services on his phone to get to Forney and used his phone after the shooting to find a hospital. The cell phone data showed no activity from Johnson's phone at those times. Appellant's counsel brought these discrepancies to the attention of the jury in cross-examination and in closing argument. Any conflicts in the evidence were for the jury to resolve and do not mean that Johnson's testimony about appellant's commission of the offense was not adequately corroborated. *See Delacruz v. State*, 278 S.W.3d 483, 487 (Tex. App.—Houston [14th Dist.] 2009, pet. ref'd) (even if accomplice's

testimony contradicted his prior statements to investigators, it was jury's responsibility to resolve any conflicts in evidence). We overrule appellant's first issue.

MOTION TO SUPPRESS

In his second issue, appellant contends the trial court erred in denying his pretrial motion to suppress evidence obtained from his cell phone. Appellant asserted Weisbruch's warrantless seizure of his phone during their interview violated the United States and Texas Constitutions and the Texas Code of Criminal Procedure. At the hearing on the motion, the State argued exigent circumstances existed for seizure of the phone, and the trial court agreed.

An appellate court reviews the trial court's ruling on a motion to suppress for an abuse of discretion under a bifurcated standard of review. *State v. Torres*, 666 S.W.3d 735, 740 (Tex. Crim. App. 2023). We give almost total deference to the trial court's determination of historical facts and its rulings on mixed questions of law and fact, especially when those determinations are based on an assessment of credibility and demeanor. *Id.* We review pure questions of law, as well as mixed questions of law and fact that do not involve an evaluation of credibility and demeanor, on a de novo basis. *Id.* at 740–41. We view the record in the light most favorable to the trial court's ruling and uphold the ruling if it is supported by the record and is correct under any theory of law applicable to the case. *Consuelo v. State*, 613 S.W.3d 330, 332 (Tex. App.—Dallas 2020, no pet.).

The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. This generally means that searches and seizures must be accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized. *Igboji v. State*, 666 S.W.3d 607, 613 (Tex. Crim. App. 2023). A warrantless seizure is *per se* unreasonable under the Fourth Amendment unless it falls within a recognized exception to the warrant requirement. *Id.*

One such exception is based upon the existence of exigent circumstances. *Id.* The exigent-circumstances exception applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless seizure is objectively reasonable under the Fourth Amendment. *See id.* The exception enables law enforcement officers to handle emergencies—situations presenting a compelling need for official action and no time to secure a warrant. *Id.* Under this exception, law enforcement may be justified in conducting a warrantless seizure to prevent the imminent destruction of evidence. *See id.* Whether law enforcement faced an emergency that justified acting without a warrant calls for a case-by-case determination based on the totality of the circumstances existing at the time of the seizure. *Id.*

The principle that a warrantless seizure of personal property is *per se* unreasonable applies even though a Fourth Amendment challenge may ultimately

focus on the subsequent search of a container rather than its initial seizure. *Id.* at 614. When law enforcement has probable cause to believe that a container holds evidence of a crime, but has not secured a warrant, law enforcement may seize the property, pending the issuance of a warrant to examine its contents, if the exigencies of the circumstances demand it or if some other recognized exception to the warrant requirement is present. *Id.* For exigent circumstances to justify a warrantless seizure of a cell phone, the record must show that law enforcement officers reasonably believed that evidence would be imminently destroyed if they waited to obtain a warrant to seize the property. *Id.* at 616–17. Affirmative conduct by the suspect is not required, but is one way the record may show that potential destruction was imminent. *Id.* at 617.

At the hearing on the motion to suppress, Investigator Weisbruch testified that his office responded to the crime scene at North Forney High School. From the surveillance video, investigators knew three people shot Smith. Based on Smith's tattoos, and with assistance from the Dallas Police Department gang unit, investigators learned the shooting was gang related.

Investigators accessed Smith's cell phone. They learned Smith had been in contact with someone through Instagram, who he planned to meet at the school. Law enforcement obtained data from Instagram that showed Mims was the owner of the Instagram account and had primary access to it. Multiple IP addresses had logged

into her Instagram account in the hours and minutes before the murder. Records showed the phone numbers connected to those IP addresses.

Investigators then identified Johnson as a person of interest and conducted a noncustodial interview with him. They linked Johnson to the gang that was the rival of Smith's gang. Investigators got a search warrant and obtained records from Johnson's cell phone provider about his calls. Around the time of the homicide, Johnson had communicated with a phone number associated with the cell phone account of appellant's mother.

Investigators got a warrant to seize and search April Henderson's cell phone. They spoke to her at her house when they went to seize the phone. They asked her about a certain phone number that had logged into Mims's Instagram account. At the time, investigators did not know who the number belonged to. April confirmed it belonged to appellant.

Appellant came to the sheriff's office for a voluntary interview. Weisbruch told him he was not under arrest and was free to leave at any time. The video recording of the interview was offered at the motion to suppress hearing.

At the time of the interview, Weisbruch was still attempting to learn what appellant's involvement was. Appellant confirmed that he was associated with one of the phone numbers being investigated and confirmed he knew Johnson. Appellant denied knowing about the Instagram account and knowing Mims.

Weisbruch knew from Johnson's call detail records that Johnson and appellant communicated by phone before and after the murder. Weisbruch asked appellant to search his phone for Johnson's phone number. Appellant got his phone out of his pants pocket and typed in a number Weisbruch provided. Weisbruch expected to find Johnson as a saved contact in appellant's phone, but no contact information for Johnson was saved. Appellant put his phone back into his pocket. Because the investigator knew appellant had been in frequent contact with Johnson, he felt appellant had deleted Johnson's contact information from his phone after Weisbruch met with his parents the previous day. He feared appellant had already manipulated his cell phone to distance himself from a known suspect in the investigation.

Weisbruch told appellant he was pretty sure Johnson was good for the shooting. They had the whole thing on video and knew there were other shooters. He told appellant his phone number had logged into the Instagram account right before the murder. Appellant said he was scared and asked if the investigator knew whether his phone was at the murder scene. The investigator explained that technology is available to determine a cell phone's location and made it clear appellant's phone would be crucial evidence in whether he is tied to the murder of Smith. Appellant reconfirmed he was not at the murder scene and had never been to Forney. Weisbruch asked appellant if cell phone data would show his phone was at the crime scene, and appellant said he did not know.

The investigator also confirmed that appellant was affiliated with Johnson's gang. The two of them talked about other members of the gang and appellant was able to lay out the known rivalry between his gang and its rival MTM.

At the end of the interview, Weisbruch told appellant that he was going to have to seize his cell phone and apply for a search warrant to search it. Appellant handed over his phone. Weisbruch applied for a warrant to search appellant's phone and obtained one.

The trial court denied the motion to suppress based on the court of criminal appeals' decision in *Igboji*. In *Igboji*, the defendant was charged with the aggravated robbery of a fast food restaurant where he worked. *Igboji*, 666 S.W.3d at 609–10. Two armed men entered the restaurant shortly after it closed for the night through an unsecured back door. *Id.* at 609. Police learned the defendant left the door unsecured when he took out the trash. *Id.* The defendant told police his manager asked him to take out the trash. But the manager told police the defendant offered to take out the trash and also took the trash out the back door, against restaurant policy. *Id.* The next day, another employee told a detective the defendant had posted videos of the initial police response to the robbery on Snapchat. The detective watched the videos on that employee's phone. *Id.* Three days later, the detective met with the defendant and asked to see the Snapchat videos. *Id.* at 610. The defendant explained that Snapchat automatically deleted the videos after 24 hours. The detective seized the phone and obtained a warrant to search it. *Id.*

The defendant challenged the warrantless seizure of his phone. The trial court denied his motion to suppress, but the intermediate court of appeals disagreed. Relying on *Turrubiate v. State*, 399 S.W.3d 147 (Tex. Crim. App. 2013), the court of appeals concluded the exigent-circumstances exception required a showing of some affirmative conduct by the defendant indicating a danger of imminent destruction of evidence. *Igboji*, 666 S.W.3d at 614. The court of appeals found no evidence the defendant took affirmative steps to destroy evidence on his phone.

The court of criminal appeals reversed. It clarified that in the context of a warrantless seizure pursuant to exigent circumstances, there is no requirement that the record show affirmative conduct on the part of the suspect. *Id*. The critical thing the record must show is facts suggesting an imminent destruction of evidence. *Id.* at 615. Affirmative conduct by a suspect suggesting he will soon destroy evidence or is in the process of destroying evidence is one way to show that an exigency exists. *Id.* But affirmative conduct is not the only way that a record may affirmatively show that evidence was in danger of being imminently destroyed. *Id*. The court of criminal appeals remanded to the court of appeals to reconsider the existence of exigent circumstances. *Id.* at 617.[2]

[2] On remand, the court of appeals concluded the detective believed there was a risk of imminent destruction of evidence if he allowed the defendant to keep his phone and the warrantless seizure of the defendant's phone was justified to maintain the status quo. *See Igboji v. State*, No. 14-17-00838-CR, 2025 WL 556460, at *6 (Tex. App.—Houston [14th Dist.] Feb. 20, 2025, no pet.) (mem. op., not designated for publication).

Appellant does not contend Weisbruch lacked probable cause to believe his phone was associated with criminal activity. He challenges the existence of exigent circumstances. Appellant argues Weisbruch had time to get a warrant to seize his phone. He notes that law enforcement obtained warrants to seize his mother's phone and Johnson's phone. The investigator knew before he went to appellant's house that the 214 number had logged into the Instagram account and communicated with Johnson. At the house, he learned who the phone belonged to. Appellant argues, "It simply makes no sense that police had time to apply for warrants for those phones, had similar information on Henderson's phone, yet made no attempt to obtain a warrant for Henderson's phone prior to seizing it."

At the hearing, Weisbruch testified he did not draft a warrant after speaking to appellant's mother because appellant could have had an explanation for why he was logged into the Instagram account or could have consented to a search of his phone. The investigator did not feel he had enough information associated with the cell phone for a warrant. Weisbruch testified his interest in the phone increased during his interview with appellant because appellant said he knew Johnson and they were in a gang together. Appellant also knew of the conflict between BTE and MTM. During the interview, Weisbruch learned appellant's phone did not contain saved contact information for Johnson. Weisbruch believed appellant had deleted Johnson's information from his cell phone prior to coming to the sheriff's office. By the end of the interview, Weisbruch believed appellant was either a party to the

offense or had information in his phone about who the shooters were. According to Weisbruch, given the complex nature of the case, drafting a search warrant would have taken some time. At the time he decided he to seize the cell phone, he believed imminent destruction of critical evidence was possible.

As the *Igboji* opinion recognized, there are differences between searches and seizures. *Id.* at 616. In holding that affirmative conduct by the suspect is not required to show exigent circumstances in the context of a warrantless seizure, the court of criminal appeals noted that *Turrubiate*, relied on by the intermediate appellate court, dealt with a warrantless entry into a person's home to conduct a search rather than the warrantless seizure of personal property in order to secure a warrant. *Id.* A search interferes with a person's privacy interests. *Sanchez v. State*, 365 S.W.3d 681, 686 (Tex. Crim. App. 2012). A seizure only affects a person's possessory interest in his property and is generally less intrusive than a search. *Id.* (citing *Segura v. United States*, 468 U.S. 796, 806 (1984)); *see Rafiq v. State*, 661 S.W.3d 827, 840 (Tex. App.—Beaumont 2022, pet. ref'd). A warrantless seizure to maintain the status quo during the time necessary to secure a warrant can be reasonable even if a warrantless search would have been impermissible. *Igboji*, 666 S.W.3d at 616.

With this and our standard of review in mind, we conclude the trial court did not abuse its discretion in denying appellant's motion to suppress. The trial judge is the sole judge of the credibility of the witnesses at a hearing on a motion to suppress.

Weisbruch said he believed imminent destruction of critical evidence was possible when he made the decision to take appellant's phone. Weisbruch testified that during the interview, he came to believe appellant had already deleted information from his phone. This gave him reason to believe more evidence would be deleted or the phone would be destroyed if he let appellant leave with his phone. He could obtain a record of who appellant called or texted from his phone service provider, but the actual content of the text messages or the duration of the calls could not be obtained without the physical device. The investigator feared if appellant left with his phone that day, appellant could have destroyed the phone, thrown it away, or performed a factory reset before he was able to get a warrant. Our analysis focuses on whether Weisbruch reasonably believed exigent circumstances justified the seizure, not whether he could or should have gotten a warrant earlier. Giving proper deference to the trial court's resolution of the facts, the trial court could have found Weisbruch reasonably believed exigent circumstances justified the seizure.

In addition, even if the seizure of appellant's phone violated his possessory rights in the phone, exclusion of the data extracted from his phone was not required. *See State v. Powell*, 306 S.W.3d 761, 769 (Tex. Crim. App. 2010) (citing *Hudson v. Mich.*, 547 U.S. 586, 594 (2006)). The evidence obtained resulted from the search of appellant's phone, which was conducted pursuant to a warrant. Appellant has not challenged the validity of the search warrant. In the absence of any causal connection between a prior instance of unlawful police conduct and a subsequent

seizure of evidence pursuant to a valid search warrant, the statutory exclusionary rule does not require suppression. *Wehrenberg v. State*, 416 S.W3d 458, 470 (Tex. Crim. App. 2013). Even if the seizure of appellant's cell phone was erroneous, the denial of the motion to suppress may be upheld because any taint was attenuated by the fact that the contents of the phone were not searched until after a warrant was executed authorizing it. *See Igboji*, 666 S.W.3d at 617 n.2 (Yeary, J., dissenting). The trial court did not abuse its discretion by denying appellant's motion to suppress. We overrule appellant's second issue.

LEGAL SUFFICIENCY OF THE EVIDENCE

In his third issue, appellant raises another challenge to the sufficiency of the evidence. He argues that if we disregard the accomplice witness testimony and the evidence from his cell phone, the remaining evidence is legally insufficient to support the conviction and he should be acquitted. Appellant relies on *Adams v. State*, 643 S.W.2d 423 (Tex. App.—Houston [14th Dist.]), *rev'd in part*, 639 S.W.2d 942 (Tex. Crim. App. 1982), in support of his argument. In that case, the court of appeals determined that certain evidence should have been suppressed. The court remanded for entry of an acquittal because the admissible evidence was insufficient to support a finding of guilt. 643 S.W.2d at 426. The court of criminal appeals, however, reversed in part because the admission of unlawfully seized evidence was trial error for which the proper remedy was to reverse and remand for a new trial. 639 S.W.2d at 943.

Appellant's argument about the sufficiency of the evidence is premised on a determination that his motion to suppress should have been granted. But he is incorrect about the remedy for the erroneous denial of a motion to suppress, and unlike *Adams*, we have upheld the trial court's denial of the motion to suppress. Because we have not found in appellant's favor on his first two issues, his argument fails.

To the extent appellant raises a legal sufficiency challenge under *Jackson v. Virginia*, it also fails. When conducting a legal sufficiency review, this Court considers all evidence in the record of the trial, whether it was admissible or inadmissible. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). We examine the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Dewberry*, 4 S.W.3d at 740. Here the evidence, which included Johnson's testimony that appellant was one of the shooters and evidence that appellant's cell phone logged into Mims's Instagram 7 minutes before the murder and was at North Forney High School at the time of the shooting, is legally sufficient to support the conviction. We overrule appellant's third issue.

ADMISSION OF EVIDENCE

In his fourth issue, appellant complains about the admission of certain evidence. He first complains about the admission of testimony about the shooting

in Deep Ellum. He argues the evidence was irrelevant because he did not commit that crime. He also argues that even if the evidence was relevant, its probative value was substantially outweighed by the danger of unfair prejudice.

Appellant objected to Detective Nelson's testimony about the incident in Deep Ellum. Prior to Nelson's testimony, however, evidence of the murder in Deep Ellum came in without objection. Appellant himself mentioned Deep Ellum in his interview with Weisbruch, and Johnson testified about the incident in greater detail. Nelson's testimony about the shooting in Deep Ellum was substantially similar to Johnson's, although Nelson did not know if Dipple was present for the incident. To preserve error regarding the admission of evidence, the defendant must object and get a ruling on the objection. *Lane v. State*, 151 S.W.3d 188, 193 (Tex. Crim. App. 2004); *see* TEX. R. APP. P. 33.1(a)(1)(A). In addition, he must object each time the allegedly inadmissible evidence is offered or make a running objection. *Lane*, 151 S.W.3d at 193. Any error in the admission of evidence is cured where the same evidence comes in elsewhere without objection. *Id.* By the time appellant raised an objection to evidence of the Deep Ellum shooting, evidence about the incident had already come in without objection. Appellant failed to preserve this complaint for appellate review.

Appellant also argues the trial court erred in admitting three of the State's exhibits. He first argues that State's Exhibit 17, the surveillance video from North Forney High School, was not properly authenticated. The exhibit was offered into

evidence through Johnson. Appellant objected that Johnson was not the proper witness through which to admit the evidence because the video was not under his control.

To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is. TEX. R. EVID. 901(a). One way authenticity can be established is through the testimony of a witness with knowledge that an item is what it is claimed to be. *Id.* 901(b)(1). Authenticity may also be established with evidence of distinctive characteristics, such as its contents, taken together with all the circumstances. *Id.* 901(b)(4). Conclusive proof of authenticity is not required before allowing admission of disputed evidence. *Fowler v. State*, 544 S.W.3d 844, 848 (Tex. Crim. App. 2018). Rule 901 merely requires some evidence sufficient to support a finding that the evidence in question is what the proponent claims. *Id.*

A trial judge is given considerable latitude with regard to evidentiary rulings. *Id.* Appellate review of a trial court's ruling on authentication is done under an abuse of discretion standard. *Id.* This deferential standard requires an appellate court to uphold a trial court's admissibility decision when it is within the zone of reasonable disagreement. *Id.*

Johnson identified Exhibit 17 as a video clip showing the murder. He had watched the video and said it fairly and accurately depicted the events of that night.

It did not appear to have been altered in any way. In addition, there is a date and timestamp on the video, and in one corner, the video says, "NFHS – Exterior – South Parking." Johnson's testimony about the video coupled with the contents of the video support a reasonable determination that the videotape was authentic. *See id.* at 850. The trial court did not abuse its discretion in admitting the video exhibit.

Appellant raises a similar complaint about the admission of State's Exhibit 28, a screengrab taken from the surveillance video at the 2:05 a.m. mark when Smith was shot. The exhibit was admitted through Ranger Sherman. Appellant argues Sherman did not properly authenticate the photograph because he had no personal knowledge of the events it depicted.

Sherman described the exhibit as a screengrab from the surveillance camera from North Forney High School that pointed to the location where Smith was found. He testified that he watched all of the footage "in the room there." Further, like the video, the screengrab has a date and timestamp and says "NFHS – Exterior – South Parking." Again, the content of the screengrab coupled with Sherman's testimony that the exhibit was a screengrab from a video he watched in its entirety at the school support a reasonable determination that the exhibit was authentic. The trial court did not abuse its discretion in admitting the exhibit. Even if it did, any error was harmless because the full video from which the screengrab was taken was properly in evidence.

Finally, appellant complains about the admission of State's Exhibit 29, a picture of an Instagram post he made on November 3, 2021, about two months after the murder and shortly before his arrest. In the post, appellant is pictured holding a pistol with an extended magazine. Along with the photo, appellant wrote, "'Sama Freestyle.' He ain't die we gone double back. Get out da car, hawk em down like some fuckin track." After some emojis, appellant wrote, "DROPPING ON ALL PLATFORMS DECEMBER 1st!! SHOOTING MY FIRST MUSIC VIDEO." He also wrote "#Bte #freemoe" and "#freeslime." There was evidence that Moe and Slime were street names for Shamar Anderson and Johnson, respectively. Appellant contends the trial court erred in overruling his relevance and Rule 403 objections to the exhibit.

Evidence is relevant if it has any tendency to make the existence of any fact of consequence to the determination of the action more probable or less probable than it would be without the evidence. TEX. R. EVID. 401. The admission of relevant evidence is largely left to the discretion of the trial court. *Moreno v. State*, 858 S.W.2d 453, 463 (Tex. Crim. App. 1993). Absent an abuse of discretion, the trial court's decision will not be reversed on appeal. *Id.*

As Weisbruch pointed out, there are similarities between appellant's Instagram post and what happened to Smith at the high school. As seen in the video of the murder, the shooters drove around the school to find Smith, but did not find him right away. When they saw him, they got out of the car to approach him and

kill him. The song lyrics, written by appellant, seem to describe a similar event, especially in light of Detective Nelson's testimony about the importance of the use of music in current gang culture to "tell you what is going on." Further, the accompanying picture shows appellant holding a gun with an extended tan magazine. The gun in the picture matched Johnson's description of the gun appellant used on the night of the murder. The trial court did not abuse its discretion in concluding the exhibit was relevant.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. TEX. R. EVID. 403. A Rule 403 analysis includes, but is not limited to, four factors: (1) the probative value of the evidence; (2) the potential to impress the jury in some irrational yet indelible way; (3) the time needed to develop the evidence; and (4) the proponent's need for the evidence. *State v. Mechler*, 153 S.W.3d 435, 440 (Tex. Crim. App. 2005). A photograph showing appellant with a firearm like the one Johnson said he used to shoot Smith had great probative value for the State as it helped corroborate Johnson's testimony and refute appellant's defense. Appellant denied that he was one of the shooters and claimed his phone was at the scene because he loaned it to Johnson. While it was definitely prejudicial, we cannot conclude it was unfairly prejudicial. The record does not reflect the post would have impressed the jury in an irrational way. The trial court did not abuse its discretion in overruling appellant's Rule 403 objection. We overrule appellant's fourth issue.

ALLEGEDLY FALSE EVIDENCE

Finally, in issue five, appellant contends he was denied due process because false evidence was used against him at trial. The allegedly false evidence is State's Exhibit 27, the Nighthawk PowerPoint. Appellant argues the exhibit is inaccurate on its face. He points to one slide that contains information about the interactions between appellant's, Dipple's, and Johnson's phones between September 7 and September 11, 2021. Appellant argues there are "multiple phone calls from the same cell phone occurring at the exact same time." For example, the exhibit shows three calls from Johnson to appellant on the night of September 7, all between 7:04 or 7:05 p.m. to 7:06 to 7:07 p.m.

A defendant is denied due process if false, material testimony or evidence is used against him to procure his conviction or at the punishment phase of trial. *Ex parte Ghahremani*, 332 S.W.3d 470, 477–78 (Tex. Crim. App. 2011). Due process is violated if the State elicits false testimony or fails to correct testimony it knows is false. *Id.* at 477. The State does not have to have actual knowledge of the falsity of the evidence. *Id.* Due process is violated if the prosecutor should have recognized the misleading nature of the evidence. *Id.* False evidence is material if there is a reasonable likelihood the testimony affected the outcome. *Id.* at 478.

Again, to preserve a complaint for appellate review, a defendant must show that he made his complaint to the trial court by a timely and specific request, objection, or motion, and the trial court either ruled on his request, objection, or

motion, or refused to rule, and he objected to that refusal. TEX. R. APP. P. 33.1(a). Even errors of constitutional dimension can be forfeited on appeal absent an objection. *Dobbs v. State*, 699 S.W.3d 799, 805 (Tex. App.—Dallas 2024, no pet.). Appellant has not directed us to where in the record he raised his due process complaint about false evidence to the trial judge, and we have not found any such complaint. Appellant's only objection to the Nighthawk exhibit was based on the fact that it contained information extracted from his phone. This is not a case where appellant had no opportunity to present his false evidence claim on direct appeal. *See, e.g.*, *Ghahremani*, 332 S.W.3d at 482 (State concealed information suggesting certain testimony was misleading). The basis for appellant's false evidence claim was known to him at trial. During closing argument, appellant's counsel argued the multiple calls from one number at the same time did not make sense. Appellant had a duty to object at trial to preserve error. *Cf. Estrada v. State*, 313 S.W.3d 274, 288 (Tex. Crim. App. 2010). By failing to raise his due process complaint about the alleged falsity of the Nighthawk evidence to the trial judge, appellant has failed to preserve the complaint for appellate review. *See Davis v. State*, 276 S.W.3d 491, 499–500 (Tex. App.—Waco 2008, pet. ref'd).

Even if this issue was properly before us, in this direct appeal, where appellant's claim that the evidence was false was not developed in the trial court, we cannot conclude there is merit to it. Weisbruch testified about his education and training in using Nighthawk, which included a week-long program, and described

how the software had been designed to eliminate user error. He created the PowerPoint by inputting digital data into the program. Once the data was input, he could pick and choose the data sets to look at, but could not change the data. This Court has found similar mapping software to be sufficiently reliable to be admissible at trial. *See Wells v. State*, 675 S.W.3d 814, 828–30 (Tex. App.—Dallas 2023), *aff'd*, 714 S.W.3d 614 (Tex. Crim. App. 2025). There is a possible logical explanation for the appearance of multiple calls by the same caller at the same time. The data Weisbruch put into the Nighthawk program included appellant's cell phone extraction, appellant's call detail records from his cell phone provider, Dipple's call detail records for his cell phone, Johnson's cell phone extraction, and Johnson's call detail records. This information would have overlapped. For example, a call from Johnson to appellant would have appeared in Johnson's phone records and in appellant's phone records. We cannot conclude the Nighthawk exhibit was false evidence. We overrule appellant's fifth issue.

We affirm the trial court's judgment.

/Earl N. Jackson/
EARL N. JACKSON
JUSTICE

Do Not Publish.
TEX. R. APP. P. 47.2(b).

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ZACCHAAEUS JA'JUAN HENDERSON, Appellant	On Appeal from the 422nd Judicial District Court, Kaufman County, Texas
No. 05-24-00644-CR V.	Trial Court Cause No. 21-11239-422-F.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Jackson. Justices Garcia and Breedlove participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 23rd day of September, 2025.