MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Valerie K. Boots
Indianapolis, Indiana

Kevin Wild
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Johnthan Quarles,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 30, 2022

Court of Appeals Case No. 21A-CR-2584

Appeal from the Marion Superior Court

The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No. 49D30-2003-MR-8884

Altice, Judge.

Case Summary

[1] Following a jury trial, Johnthan Quarles was convicted of Level 2 felony robbery resulting in serious bodily injury. The robbery was of his close friend, who was shot and killed by Quarles's co-defendant while Quarles was away putting two backpacks in a car. At trial, Quarles claimed that he had purchased the marijuana that was inside the backpacks; but the State argued that he had robbed the victim of the property and that during the ongoing robbery the victim was seriously injured – that is, he died of multiple gunshot wounds.

[2] Quarles raises several issues on appeal challenging his conviction and sentence. We address only two: whether the trial court erred by admitting certain evidence and whether his conviction is supported by sufficient evidence.

[3] We reverse and remand for a new trial.

Facts & Procedural History

[4] On the afternoon of November 21, 2019, on the east side of Indianapolis, Aaron Jones was shot and killed in his basement while his live-in girlfriend's four-year-old son was upstairs. Jones operated a "shop" in his basement where he sold shoes, clothing, sunglasses, and collectibles. *Transcript Vol. 2* at 115. He actively sought customers through social media posts and "word of mouth." *Id*. at 126. Jones, however, was selective about whom he would do business with and would not "just deal with a stranger." *Id*. at 128. Jones also sold marijuana out of his basement.

[5] Nathan Hummel, a friend, came to Jones's house at 3:36 p.m. to pick up merchandise and immediately noticed that something was wrong. The gate was left open in the wrong direction and the side door, which led to the basement stairs, was open. When Jones did not answer Hummel's multiple calls, Hummel returned to his car and asked his father-in-law, who had been waiting in the car, to come inside with him. They found Jones dead in the basement and called 911.

[6] Jones had been shot nine times – five times about his head, face, and neck and once each in his right palm, his right shoulder, his abdomen, and chest. The subsequent investigation determined that all the shots came from the same .40 caliber firearm, which was never recovered. Jones's body also showed signs of a struggle, with multiple superficial contusions and abrasions.

[7] Jones had a Ring Doorbell camera at each of the two entrances to his home. Detectives recovered the Ring Doorbell recordings from the day of the shooting and shortly thereafter. From these thirty-second recordings, IMPD detectives developed Quarles and Gabriel West as suspects. Quarles and Jones were "[r]eally close friends," and Jones was also Quarles's marijuana supplier. *Id.* at 166. Quarles came to Jones's home at least weekly and regularly bought marijuana from him, which Quarles then sold to others.

[8] The first relevant thirty-second recording began at 3:07:56 p.m. and showed Quarles and West walking up the driveway and being welcomed by Jones from the side door, which was inside a fenced area. Quarles walked in front of West

and opened the gate, as Jones's dog excitedly greeted the guests. After entering the fenced area, West closed the gate and appeared, unlike Quarles, to try not to touch it with his hands. West also used his elbow to hold the side door while entering the home behind the others. In the meantime, Quarles had helped corral the dog so that Jones could put it in another room out of the way. Quarles carried two bottles of Mountain Dew and a cell phone as he arrived, and Jones had two unopened beers.

[9] The next thirty-second recording began at 3:10:43 p.m., so just over two minutes after the first one ended. It begins with Quarles exiting the fenced area through the gate, carrying two backpacks – one red and white[1] and one gray and black – and an unopened beer. He walks down the driveway out of view and then returns, about ten seconds later, carrying only the beer and with a man, not previously seen in the other recording, following behind him. The man was carrying a different bag. The video ends as Quarles nears the gate. Right before this, a sound that is believed to be gunshots can be faintly heard on the recording.

[10] There are no additional recordings until Hummel's arrival twenty-six minutes later. In other words, the Ring Doorbell did not record West, Quarles, or the third man leaving the property. This was likely due to the "reset rate or refresh

[1] Jones had arrived home with this red and white Jordan backpack about an hour and a half earlier. According to his girlfriend, Jones had owned this backpack for at least five years and currently would use it "when he would go buy marijuana." *Id.* at 159. She had never known him to lend this bag to others.

rate" built into the recording system as a battery- and memory-saving function. *Id.* at 226.

[11] On February 27, 2020, detectives located Quarles at his mother's Indianapolis apartment, where he had been staying for some time. While Quarles was being questioned by detectives, a search warrant for that apartment was obtained and executed. The warrant authorized law enforcement officers to search for and seize the following items:

1. Firearms, firearm accessories, firearm parts, paperwork relating to the purchase or sale of firearms
2. Fired cartridge casings, fired bullets, bullet fragments, live bullets
3. documents showing ownership and/or other occupants of the residence
4. cellular telephones
5. DNA, trace evidence, latent prints
6. Photographs/video of interior and exterior of the residence
7. Black wave cap or do-rag
8. Black hooded sweatshirt with white or gray fleece interior of the hood
9. Black men's cargo pants.
10. One pair of men's dark colored rounded toed boots or clog type footwear
11. One red and white Jordan retro back pack
12. One black back pack with gray on the sides and straps

Appellant's Appendix at 106.

[12] Relevant here, during the search, officers seized a pink notebook, which was found under a couch. Officers looked through the notebook and found three handwritten pages – out of many[2] – to be of particular note: two detailed the Indiana robbery statute and related penalties; the other read: "It feel like I got the weight of the world on my shoulders, my girl told me that it was over, my partna crossed the line, swear to God it got my heart way colder, now I step on problem like boulders." *Exhibits Vol. 1* at 66.

[13] On March 3, 3020, the State charged Quarles with felony murder (that is, Jones was killed during a robbery) and robbery resulting in serious bodily injury (the serious bodily injury being gunshot wounds). Prior to trial, Quarles filed a motion in limine to keep out evidence of, among other things, any evidence related to the pink notebook. He argued that the search and seizure of the notebook exceeded the scope of the search warrant and was, therefore, in violation of Article 1, § 11 of the Indiana Constitution and the Fourth Amendment to the United States Constitution. The trial court denied Quarles's motion in limine with respect to this evidence.

[14] On September 13 and 14, 2021, Quarles was tried by a jury – alongside West – and testified in his own defense. A summary of Quarles's testimony follows. Quarles went to Jones's home on the day in question to purchase marijuana. When he and Jones spoke earlier that day, Quarles was with West, who joined

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[2] Quarles "wrote a lot of things" in the notebook, including original rap lyrics. *Transcript Vol. 3* at 120.

in on the video chat and arranged to come along to look at shoes in Jones's store. Another individual, whom Quarles did not know, came along but stayed in Quarles's car upon their arrival. Once in Jones's basement, Jones directed West toward his shoe inventory. Quarles then provided Jones with $550 in cash, which Jones put in his pocket.[3] In exchange, Jones handed Quarles two backpacks that were already packed with marijuana, each containing a different strain. He noted that Jones had a gun out on the bar stand where they were doing their transaction. Quarles then went to put the bags in his car, while West shopped for shoes. As Quarles returned to the home, the man in the car followed behind him. Quarles heard what sounded like a gunshot as he walked toward the home. He proceeded into the home and, from the top of the basement steps, saw Jones and West struggling and West with the gun. Quarles heard more gunshots and ran to the car, as the other man ran down the stairs. Quarles was about to drive off when West and the other man jumped in the car. West exclaimed, "Get me away from this motherf**ker. I just (inaudible) this n**ger." *Transcript Vol. 3* at 105. Quarles felt threatened by the men and dropped them off at a location as demanded. They took the backpacks as they left.

[15] During the State's cross-examination of Quarles, the pages from the pink notebook were admitted into evidence over his objection. Quarles acknowledged that the handwriting was his. He indicated that they were

[3] The evidence established that Jones had $597 in his pocket when he was found dead.

written near the end of January 2020, after hearing that he was being accused of murder and a robbery. *Id*. at 136. The State also established on cross-examination that when asked by detectives about why he wrote down the robbery statute and not the murder statute in the notebook, Quarles responded that he "wasn't going down for no murder." *Transcript Vol. 3* at 138.

[16] Ultimately, the jury found Quarles not guilty of felony murder but did find him guilty of robbery resulting in serious bodily injury. West, on the other hand, was found guilty of murder (both intentional murder and felony murder) and robbery resulting in serious bodily injury. Thereafter, the trial court sentenced Quarles to nineteen years, executed as seventeen years in the Indiana Department of Correction followed by two years on Marion County Community Corrections starting on work release. The trial court also ordered Quarles to pay (jointly and severally with West) $5,000 in restitution to Jones's mother for funeral expenses.

[17] Quarles now appeals. Additional information will be provided below as needed.

Discussion & Decision

Admission of Evidence

[18] Quarles contends, as he did below, that the pages from his notebook were inadmissible because their seizure was unconstitutional under both the Indiana and federal constitutions. Specifically, he claims that officers exceeded the

scope of the search warrant when they paged through and read the notebook and then seized it.

[19] A trial court has broad discretion to admit evidence but will be reversed on appeal when it abuses that discretion. *Phillips v. State*, 174 N.E.3d 635, 641 (Ind. Ct. App. 2021). Such an abuse occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id*. "When the evidentiary issue rests on the court's ultimate determination of probable cause and other constitutional claims, we employ a de novo standard but afford significant deference to [its] decision." *Id*.

[20] Both the Fourth Amendment and Article 1, § 11 protect the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable" searches and seizures. These provisions require a search warrant to describe with particularity the place to be searched and the items to be seized. *See, e.g*., *Pavey v. State*, 764 N.E.2d 692, 701 (Ind. Ct. App. 2002), trans. denied. "The particularity requirement restricts the scope of the search, authorizing seizure of only those things described in the warrant; a warrant which leaves the executing officer with discretion is invalid." *Id*. at 701-02.

[21] Here, the warrant authorized police to search the apartment where Quarles was living for specific items related to the crime, such as firearm-related evidence, cell phones, backpacks as seen in the video being carried out by Quarles, and clothing and accessories that Quarles was wearing on the videos. The warrant also included what appears to be boilerplate language – "documents showing

ownership and/or other occupants of the residence" – for the seizure of documentary evidence tying Quarles to the residence and, thus, the evidence seized therein. The State acknowledges that this latter item might more commonly be understood to refer to mail, bills, notices, leases, or other "documents of an institutional origin." *Appellee's Brief* at 28. The State argues, however, that the notebook and its entries also constitute documents showing that Quarles was an occupant in the home because they were written by him. This logic is a bridge too far, and it ignores the specificity requirement, leaving executing officers with wide discretion to read through the most intimate of personal writings without any express authorization in the warrant. Further, at the time of the search and seizure, there was no indication that Quarles was the owner of the pink notebook or that he had penned the writings therein, as the notebook was found under a couch in an apartment he shared with his mother and sister.

[22] In *Ogburn v. State*, this court addressed the seizure of a vehicle key fob pursuant to a warrant that authorized officers to search for "[i]ndicia of occupancy, residency or ownership such as labels, identification cards, letters, or photographs." 53 N.E.3d 464, 468 (Ind. Ct. App. 2016), *trans. denied*. The court observed that the examples listed in the warrant "properly limited the scope … to items bearing a person's name or likeness." *Id*. at 474. Indeed, "[w]ithout this limitation, the officers could have seized virtually any item in the residence – because an examination of most, if not all, personal possessions would lead to evidence of who occupies a particular place." *Id*. Conferring

such unbridled discretion on executing officers would violate the specificity requirement. *See id*. at 473. Because the key fob was not of the same character as the examples listed in the warrant, the court held that the officers exceeded the scope of the warrant by seizing it. *Id*. at 474.

[23] In this case, although the warrant did not set out specific examples of types of documents showing ownership and/or other occupants of the residence, we do not find that it permitted unbridled search and seizure of any type of writing in the apartment. The warrant referenced only documents showing ownership or occupancy of the apartment, and the notebook did not fall within this category of documents.[4] Thus, the trial court abused its discretion by admitting the evidence obtained from the notebook.

[24] The State argues that any error in the admission of this evidence was harmless. To be harmless, and thus not reversible, the error must not have affected Quarles's substantial rights. *See Littler v. State*, 871 N.E.2d. 276, 278 (Ind. 2007). "Harmlessness is ultimately a question of the likely impact of the

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[4] We find the federal cases relied upon by the dissent to be distinguishable, as those cases addressed warrants that authorized the seizure of documentary evidence related to proof of the actual crime rather than documents simply tying the defendant to the premises being searched. *See U.S. v. Moon*, 33 F.4th 1284, 1287, 1289 (11th Cir. 2022) (warrant, authorizing search for evidence tending to prove that doctor was engaged in healthcare fraud and illegal distribution of opioids, specifically listed "digital content, [including] … tapes, DVD disks, CDROM disks, flash storage or other magnetic, optical, or mechanical storage that can be accessed by computers to store or retrieve data, including … patient records, prescription records, financial records, business records, stored electronic communications, photographs, video recordings, and audio recordings") (emphases omitted), *cert. denied*; *U.S. v. Bishop*, 910 F.3d 335, 336 (7th Cir. 2018) (upholding warrant authorizing search of cell phone for "evidence (including all photos, videos, and/or any other digital files, including removable memory cards) of suspect identity, motive, scheme/plan … of the crime*"), cert. denied*.

evidence on the jury." *Id*. (quoting *Witte v. Mundy*, 820 N.E.2d 128, 135 (Ind. 2005)).

[25] The State argues that the notebook entries were merely cumulative of Quarles's testimony at trial, but we cannot agree. Quarles testified that Jones was his friend and marijuana supplier and that he went to Jones's residence to replenish his supply of marijuana, as he did on a weekly basis. Within a few minutes of being greeted by Jones, Quarles paid Jones $550 cash for the marijuana, which Jones had packaged in two backpacks, and then walked the backpacks out to his car while Jones shopped. Shortly after this transaction, while Quarles was still outside the home and West was down in the basement with Jones, West shot Jones multiple times. In sum, Quarles testified that he was not involved in the robbery or murder of his friend, which he maintains were solely contemplated and perpetrated by West outside Quarles's presence.

[26] There was some evidence to support Quarles's account. Most notably, Jones was found with nearly $600 cash in his pocket, and the gunshots were heard after Quarles had casually left the residence, while carrying a beer, to put the backpacks in his car before walking back inside. Additionally, the shooting appeared to have begun on the side of the basement where the shoe display was and moved to the other side of the basement, which was viewable from the top of the stairs, where Quarles reentered. Finally, Quarles, West, and the third man all fled within a short time of the shooting and, thus, were not captured on the Ring Doorbell camera due to the reset delay.

[27] Contrary to Quarles's testimony, the notebook entries suggest that Quarles and West had planned to rob Jones and that their plans somehow went awry and ended in Jones's death. Indeed, the State focused the jury's attention on the notebook entries during closing argument:

> How else do you know that [robbery's] the intent? He wrote it down. He wrote the statute for robbery down in his notebook. He says it was after the fact. Oh, I heard that they were looking for me for robbery and murder. He didn't write the statute for murder down, ladies and gentlemen. He wrote the statute for robbery down, because he went to rob [Jones] that day. And while they were doing that robbery, something did tragically go wrong in the basement, and [Jones] ended up dead. He didn't write murder down, because I don't believe either of them say they went in with the intent to kill [Jones] when they said they were going to rob him. But they certainly killed him when things went south.
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> And what else does he write? You know he broke up with [his girlfriend] shortly after, and he moved out of the house. So, it felt like I got the weight of the world on my shoulder. My girl told me it's over. My partner crossed the line. Swear to God, he got my heart way colder…. He wants to say I've got a lot of raps, doesn't have anything to do with what happened to [Jones]. That is exactly what he wrote about, was Aaron Jones's murder. That his girlfriend just broke up with him, that his partner, Gabe West, crossed the line when they were in that basement together, and murdered his friend, and now he's feeling it. And he wrote it down to help him cope with those feelings.
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> It's easy for him to come here and try to explain it away to you almost two years after the murder. But that is about the murder, because he knows they're going to rob him, and Gabe West crossed a line when he killed [Jones]….

Transcript Vol. 3 at 150-51.

[28] On this record, we cannot conclude that the improper admission into evidence of the notebook pages did not affect Quarles's substantial rights. Accordingly, we reverse his convictions.

Sufficiency

[29] We briefly address the sufficiency of the evidence to determine whether Quarles may be retried. "Where a new trial is required due to trial error, and a defendant presents a claim of insufficient evidence, an acquittal instead of a new trial will be required if the proof of the defendant's guilt is found to be insufficient *in light of the evidence actually presented*." *Littler*, 871 N.E.2d at 279-80 (emphasis supplied); *see also Bowman v. State*, 577 N.E.2d 569, 571 (Ind. 1991) ("This involves determining whether, considering all the trial evidence, including that erroneously admitted, sufficient evidence exists to support each conviction.").

[30] Our standard of review for sufficiency claims is well established.

> We do not reweigh evidence or reassess the credibility of witnesses when reviewing a conviction for the sufficiency of the evidence. We view all evidence and reasonable inferences drawn therefrom in a light most favorable to the conviction, and will affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.

Walker v. State, 998 N.E.2d 724, 726 (Ind. 2013) (internal citations and quotations omitted).

[31] Quarles was convicted of robbery resulting in serious bodily injury. Specifically, he was alleged to have taken the backpacks from Jones by force or threat of force. The serious bodily injury was the shooting by West, which took Jones's life.

[32] The evidence most favorable to the verdict reveals that Quarles left with two backpacks, one being a red and white Jordan backpack that Jones had had for years and was not known to lend to others. After placing the backpacks containing drugs in his car, Quarles walked back toward the house with a third man, who had been waiting in the car and was carrying yet another bag. As they approached, the shooting in the basement occurred.

[33] On appeal, Quarles relies on his own testimony that he paid for the marijuana and was just borrowing the backpacks to transport the drugs. He argues, "It is entirely within reason and common experience that [Jones] would have let Quarles temporarily use his Jordan backpack to carry marijuana, and Quarles carrying the bag is no evidence of robbery." *Appellant's Brief* at 26. We do not disagree that someone might loan a backpack to a friend, but this had not been Jones's practice in the past and Quarles's own words in his notebook suggest that he and his "partna" went there intending to rob Jones but West "crossed the line" when he shot and killed Jones. *Exhibits Vol. 1* at 66. Other incriminating evidence of a potential plan to rob Jones included that West

appeared to avoid touching surfaces as he entered the home and that Quarles returned with another man, who was carrying a bag. This man, whose identity Quarles claimed not to have known, had been waiting in Quarles's car.

[34] We cannot reweigh the evidence or judge Quarles's credibility. The jury considered the evidence presented and determined that Quarles was guilty of robbery resulting in serious bodily injury. The evidence, considered in a light most favorable to the conviction, was sufficient to support this verdict. Thus, Quarles is subject to retrial on the robbery charge. *See Littler*, 871 N.E.2d at 280.

[35] Judgment reversed and remanded.

Brown, J., concurs.

Tavitas, J., dissents with opinion.

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Tavitas, Judge, dissenting.

[36] I respectfully dissent from the majority's conclusion that the trial court erred by admitting three pages of Quarles' notebook, which was found during a search of his mother's residence pursuant to a search warrant.

[37] Quarles does not challenge the validity of the search warrant. Rather, Quarles claims that, pursuant to the Fourth Amendment, the officers exceeded the

scope of the warrant when they seized the pages from the notebook.[5] The search warrant at issue here authorized the officers to search for the following documents, among other things, "[f]irearms, firearm accessories, firearm parts, paperwork relating to the purchase or sale of firearms" and "documents showing ownership and/or occupants of the residence." Appellant's App. Vol. II p. 106. The officers discovered a notebook underneath a couch when they searched the residence of Quarles' mother. Three pages of the notebook were admitted at trial during the State's cross-examination of Quarles. Those handwritten pages contained the robbery statute and penalties. The notebook also contained handwritten rap lyrics that stated: "It feel like I got the weight of the world on my shoulders, my girl told me that It was over, my partna crossed the line, swear to God it got my heart way colder, now I step on problem like boulders." Ex. Vol. II p. 66 (errors in original). Quarles admitted during his testimony that the notebook belonged to him.

[38] The Fourth Amendment to the United States Constitution requires that a search warrant describe with specificity the place to be searched and the items sought. *State v. Lucas*, 112 N.E.3d 726, 729 (Ind. Ct. App. 2018). "If a search exceeds the scope of the warrant, it is unconstitutional." *Id.* "'The overriding function of the Fourth Amendment is to protect personal privacy and dignity

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[5] Quarles mentions Article 1, Section 11 of the Indiana Constitution, but he fails to develop a separate argument. Accordingly, I would find that Quarles waived any argument under the Indiana Constitution. *See, e.g., Wilkins v. State*, 946 N.E.2d 1144, 1147 (Ind. 2011) ("Because he provides no authority or independent analysis supporting a separate standard under the state constitution, any state constitutional claim is waived.").

against unwarranted intrusion by the State.'" *Carr v. State*, 728 N.E.2d 125, 128 (Ind. 2000) (quoting *Schmerber v. California*, 384 U.S. 757, 767, 86 S. Ct. 1826, 1834 (1966)). "Its 'proper function is to constrain, not against all intrusions as such, but against intrusions which are not justified in the circumstances, or which are made in an improper manner.'" *Id.* (quoting *Schmerber*, 384 U.S. at 768, 86 S. Ct. at 1834).

[39] The officers here did not engage in a "general, exploratory rummaging in a person's belongings." *Levenduski v. State*, 876 N.E.2d 798, 802 (Ind. Ct. App. 2007 (quoting *Andresen v. Maryland*, 427 U.S. 463, 480, 96 S. Ct. 2737, 2748 (1976)). The officers were authorized to look for documents related to the purchase or sale of firearms and documents indicating ownership and/or occupancy of the residence. Federal courts interpreting the scope of a search warrant for documents have held:

[40] When a warrant authorizes the seizure of documents, "an officer acting pursuant to such a warrant is entitled to examine any document he discovers," in order "to perceive the relevance of the documents to the crime." *United States v. Slocum*, 708 F.2d 587, 604 (11th Cir. 1983) (quotation marks omitted). "[T]he perusal must cease at the point of which the warrant's inapplicability to each document is clear." *Id*. (emphasis added) (quotation marks omitted).

[41] *United States v. Moon*, 33 F.4th 1284, 1297 (11th Cir. 2022), *cert. denied*. "[A] warrant authorizing a search for documents that will prove a crime may authorize a search of every document the suspect has, because any of them

might supply evidence." *United States v. Bishop*, 910 F.3d 335, 337 (7th Cir. 2018)*, cert. denied*. "[A]n executing officer must interpret a warrant's terms reasonably, but the officer need not give them the narrowest possible reasonable interpretation." *United States v. Aljabari*, 626 F.3d 940, 947 (7th Cir. 2010)*, cert. denied*.

[42] The officers here were entitled to examine any document they discovered to determine whether the document fell within the list of documents authorized for seizure by the search warrant. The notebook, written in Quarles' handwriting and found under the couch, was evidence of Quarles' occupancy of the residence. *Cf. Ogburn v. State*, 53 N.E.3d 464, 473-74 (Ind. Ct. App. 2016) (holding that the seizure of a vehicle's key fob exceeded the scope of the warrant where the warrant listed "indicia of occupancy, residency or ownership" and specifically defined such indicia in a manner that did not include the key fob), *trans. denied*.

[43] Accordingly, I conclude that, under Fourth Amendment precedent, the seizure of the notebook did not exceed the scope of the warrant, and the trial court properly admitted the three pages of the notebook. For this reason, I respectfully dissent, and I would affirm Quarles' conviction.