No. 01-24-00962-CR

IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS
AT HOUSTON

ANDREW WILLIAMS
Appellant

v.

THE STATE OF TEXAS
Appellee

On Appeal from Cause Number 1742533
From the 248th District Court of Harris County, Texas

APPELLANT'S BRIEF

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ORAL ARGUMENT NOT REQUESTED

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PRESIDING JUDGE:	Hon. Denise Collins Visiting Judge 248th District Court Harris County, Texas 1201 Franklin Street, 16th Floor Houston, Texas 77002

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STATEMENT OF THE CASE

On December 16, 2021, a Harris County grand jury returned an indictment charging Appellant with the offense of capital murder alleged to have occurred on or about September 23, 2021. (C.R. (2023) at 35).[1] On April 3, 2023, a jury found Appellant guilty as charged in the indictment and he was assessed an automatic sentence of life without the possibility of parole. (6 R.R. at 44-47). The trial court certified Appellant's right of appeal, but Appellant's notice of appeal was untimely filed on June 8, 2023. (C.R. (2023) at 337, 345-346). On December 14, 2023, this Court dismissed Appellant's initial appeal for want of jurisdiction due to the untimely notice of appeal. See *Williams v. State*, No. 01-23-00439-CR, 2023 Tex. App. LEXIS 9332 (Tex. App.—Houston [1st Dist.] Dec. 13, 2023, no pet.) (per curiam) (mem. op., not designated for publication).

On October 23, 2024, the Court of Criminal Appeals granted Appellant the opportunity to file an out-of-time appeal. See *Ex parte*

[1] On January 9, 2025, this Court granted Appellant's motion to transfer the appellate record previously filed in Cause No. 01-23-00962-CR into this cause. An original and a supplemental clerk's record were filed as part of Appellant's original appeal in 2023. For purposes of citing to the Clerk's Record, Appellant will cite to the clerk's record and supplemental clerk's record filed in the previous appeal as (C.R. (2023) at __) and (S.C.R. (2023) at __) respectively. In addition, Appellant will cite to the clerk's record filed in this appeal as (C.R. (2024) at __).

Williams, No. WR-96,043-01, 2024 Tex. Crim. App. Unpub. LEXIS 395 (Tex. Crim. App. Oct. 23, 2024) (per curiam) (not designated for publication). After the Court of Criminal Appeals issued its mandate on November 18, 2024, Appellant timely filed his notice of appeal on December 2, 2024. (C.R. (2024) at 9-13).

STATEMENT REGARDING ORAL ARGUMENT

Undersigned counsel does not request oral argument. However, should the State of Texas or the Court request oral argument, Appellant requests the opportunity to participate in oral argument.

ISSUE PRESENTED

Whether the evidence is legally insufficient to support Appellant's conviction for Capital Murder, as there is insufficient evidence of Appellant's specific intent to kill the Complainant?

STATEMENT OF FACTS

Deputy David Crain of the Harris County Sheriff's Office was assigned to an incident that occurred at Uvalde Road in September 2021. (5 R.R. at 61). He testified the information that had been developed at the scene never suggested that the incident was accidental in nature. (5 R.R. at 63). A vehicle was involved and the Complainant's purse was never recovered. (5 R.R. at 64). Over the course of his investigation multiple surveillance videos

were obtained from numerous locations and when Appellant was developed as a suspect, Deputy Crain obtained GPS monitor location information associated with him. (5 R.R. at 70-71). Surveillance video footage from Appellant's apartment complex showed the arrival of a vehicle at the complex on the night of September 22. (5 R.R. at 73, 75; 7 R.R. State's Ex. 63). Appellant's GPS records also indicated that he was at his apartment complex for a very long period of time the night before the incident and the. (5 R.R. at 73, 75). The data from the GPS and the surveillance video connected the arrival of Appellant at the apartment complex around 7:21 p.m. on September 22 to this same vehicle. (5 R.R. at 74-75). A license plate was captured from this surveillance video. (5 R.R. at 78; 7 R.R. State's Ex. 82 and 84). The car was identified as a Chevrolet Malibu from the VIN number associated with the license plate and this same vehicle was seized by law enforcement in this case. (5 R.R. at 80-81).[2] Surveillance video from the apartment complex indicated Appellant left the complex at around 6:42:55 a.m. on September 23, which was consistent with the Appellant's GPS records. (4 R.R. at 75; 5 R.R. at 83-84; 7 R.R. State's Ex. 70 at 213).

[2] Appellant's driver license, social security card, and a work ID were found in the Malibu. (5 R.R. at 82; 7 R.R. State's Ex. 56, 57, and 58).

According to Deputy Crain, Appellant traveled to the Queen Saver Grocery Store at 5546 Cavalcade. (5 R.R. at 84). Surveillance video from the exterior of the Queen Saver showed a vehicle at around 7:15 a.m. consistent with the one from the apartment complex and consistent with the Appellant's GPS location showing him arriving at this location around the same time. (4 R.R. at 75-76; 5 R.R. at 88; 7 R.R. State's Ex. 70 at 214).[3] The surveillance video also showed an individual exiting this vehicle and going inside of the Queen Saver that Deputy Crain identified as the Appellant. (5 R.R. at 89-91; 7 R.R. State's Ex. 88 and 89). Appellant was wearing a zip-up hoodie. (5 R.R. at 89-91; 7 R.R. State's Ex. 90 and 91). At 7:50 a.m., the surveillance video showed another vehicle pull up with the occupant of this vehicle, who Deputy Crain identified as Lawrence Thomas. (5 R.R. at 92-94; 7 R.R. State's Ex. 90 and 91). The videos also showed Mr. Thomas changing out of his shoes and into a hoodie. (5 R.R. at 95). About an hour after Mr. Thomas arrived, an individual whom Deputy Crain identified as Felton Ford, arrived in a black Chevrolet Impala and was greeted by the Appellant at the

[3] Deputy Crain testified that the surveillance video from the Queen Saver Grocery Store was one hour fast. (5 R.R. at 88).

door of the Queen Saver. (5 R.R. at 97-99; 7 R.R. State's Ex. 92-94).[4] Deputy Crain testified that Mr. Ford was wearing bright yellow tennis shoes, a lanyard around his neck with unknown either medallions or cards, and a Pittsburgh cap. (5 R.R. at 100-101). Mr. Ford left shortly after arriving inside of the Queen Saver, putting a mask on and grabbing a pair of gloves when he returned to his car. (5 R.R. at 101).[5] In the parking lot, Mr. Ford walked around with the mask on in the direction of Mr. Thomas and the Appellant and had a conversation with the Appellant by the Malibu. (5 R.R. at 102, 108; 7 R.R. State's Ex. 120). At approximately 8:58 a.m., Mr. Ford left in the Impala, followed by Appellant and Mr. Thomas in the Malibu. (5 R.R. at 109).[6] Appellant's GPS records were consistent with him leaving the Queen Saver around this time, as the device was last pinged at the Queen

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[4] Appellant's GPS records indicated that his device was there from 7:17 a.m. until 8:52 a.m. (4 R.R. at 76; 7 R.R. State's Ex. 70 at 215-217).

[5] Phone records from the Appellant and Mr. Ford showed that Appellant made an outing phone call to Mr. Ford at 8:59 a.m. on September 23 that lasted 1 hour 40 minutes. (5 R.R. at 212-213). This was consistent with the time both the Malibu and Impala were at the Queen Saver. (5 R.R. at 213).

[6] Deputy Crain agreed that throughout the videos, it appeared you could not see who was inside and what position they might be in the Malibu. (5 R.R. at 182). Deputy Crain also agreed that the vehicle had very dark tint. (5 R.R. at 181).

Saver location at 8:52 a.m. (4 R.R. 76; 5 R.R. at 110; 7 R.R. State's Ex. 70 at 217). [7]

After departing the Queen Saver, Appellant's GPS device made two stops at banks. (5 R.R. at 110-112). The first was a Bank of America from approximately 9:10 a.m. to 9:22 a.m. (4 R.R. at 76-77; 5 R.R. at 111; 7 R.R. State's Ex. 70 at 217-218). The second was a BBVA bank branch. (4 R.R. at 77; 5 R.R. at 111; 7 R.R. State's Ex. 70 at 217-218). The next location where Appellant's device was stationary was at the vicinity of 13750 Interstate 10, a shopping center that includes Walmart, Sam's, Home Depot and a Chase Bank. (4 R.R. at 77-79; 5 R.R. at 112; 7 R.R. State's Ex. 70 at 219). Deputy Crain also reviewed GPS records related to Mr. Ford's vehicle and those records lined up with the locations at or near the same time with Appellant's GPS monitor. (5 R.R. at 115; 7 R.R. State's Ex. 67). Surveillance video from the Chase Bank showed Mr. Ford arriving at the bank and entering the ATM vestibule where he appeared to try and transact some business, while at the same time he was scouting the patrons coming in and

[7] For ease of reference, Appellant cites the specific page from the .pdf file for Volume 7 of the Reporter's Record when citing Appellant's GPS records.

out of the bank. (5 R.R. at 116).[8] Mr. Ford was wearing the yellow shoes and lanyard from the Queen Saver that Deputy Crain testified to earlier, and in addition, a green work vest. (5 R.R. at 116-117). Eventually, Mr. Ford left the ATM and departed from his parking spot, traveling in a direction consistent with traveling around the bank and entering the ATM drive-through. (5 R.R. at 117-118, 123-124). The surveillance video showed the Complainant's vehicle pulling into the ATM after she had left the nearby Home Depot. (5 R.R. at 118-120). Deputy Crain believed Mr. Ford's Impala pulled up to the right of the Complainant given the presence of sun roof and the presence of a bright green reflective work short. (5 R.R. at 123-125). The Impala eventually pulled away towards the Hayden Street area, consistent with the vehicle's GPS records. (5 R.R. at 125-126). Complainant also followed in the same general direction. (5 R.R. at 127). A still image from the surveillance video from a nearby Home Deport showed Appellant's Malibu and Mr. Ford's Impala following behind the Complainant. (4 R.R. at

[8] Deputy Crain interviewed the Complainant's family regarding the Complainant's activities that day. (5 R.R. at 68). This led Deputy Crain to the Chase Bank at the corner of Uvalde and Interstate 10. (5 R.R. at 68).

79-80; 5 R.R. at 137-139; 7 R.R. State's Ex. 103).[9] The Malibu and Impala split up and other surveillance video showed the Malibu traversing the south side of the parking lot, traveling westbound parallel to the Complainant's vehicle. (5 R.R. at 134). Other surveillance videos showed the Complainant's vehicle being tailed by both the Malibu and Impala while she was driving northbound on Uvalde. (4 R.R. at 79-80; 5 R.R. at 139-140). Deputy Crain noted that the McDonald's on Uvalde was a little over a mile away. (5 R.R. at 139).

GPS records from Mr. Ford's Impala and surveillance video from inside of the McDonald's placed him there prior to the struggle. (5 R.R. at 149-150; 7 R.R. State's Ex. 117).[10] Surveillance video from inside the McDonald's showed the Complainant entering and exiting with her purse. (7 R.R. State's Ex. 63 9/23/2021 11:31:25-11:39:46).[11] Mr. Ford was also in the lobby, scouting, according to Deputy Crain and eventually exited in

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[9] Surveillance video from a nearby Sam's Club also showed Appellant's Malibu and Mr. Ford's Impala following behind the Complainant. (5 R.R. at 130-132). Appellant's GPS data also coincided from a time-wise perspective the Malibu passing in front of the Home Depot. (5 R.R. at 137).

[10] Deputy Crain testified that the timestamp on the McDonald's surveillance videos was 1 hour and 15 minutes fast. (5 R.R. at 143).

[11] Appellant cites to the timestamp on the surveillance video itself. The specific video file Appellant cites is entitled "Camera 1 1300.mp4"

the direction of where his vehicle was. (5 R.R. at 152). The Impala was in the handicap space two spaces north of where the Complainant parked. (5 R.R. at 144).[12] Complainant left the lobby and approached her vehicle that was parked near the front entrance from the driver's side door. (5 R.R. at 160-161; (7 R.R. State's Ex. 63 9/23/2021 11:39:46). Just prior, surveillance video showed a vehicle moving from the bottom right-hand corner of the video and park next to the Complainant's SUV. (5 R.R. at 161).[13] Deputy Crain identified this vehicle as the Malibu. (5 R.R. at 161; 7 R.R. State's Ex. 63 at 9/23/2021 11:39:34-40).[14] The video then freezes after the Complainant walks toward the driver's side of her SVU and the initial contact between the suspect and the Complainant are not seen. (5 R.R. at 161; 7 R.R. State's Ex. 63 at 09/23/2021 11:39:50). However, Deputy Crain testified that he believed the initial contact and resulting struggle started by the driver's door of the Complainant's vehicle, as the door remained open. (5 R.R. at 161-162). In the next sequential video clip

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[12] GPS data from Mr. Ford's car placed him in this parking spot. (5 R.R. at 158; 7 R.R. State's Ex. 113).

[13] Appellant's GPS monitoring records were consistent with the location of the vehicle being in the McDonald's parking lot. (5 R.R. at 173; 7 R.R. State's Ex. 78).

[14] The specific video file Appellant cites is entitled "Camera 13 1300.mp4"

from the same camera angle, Deputy Crain identified what he later learned to be a struggle taking place behind the car, although the footage is unclear as to what is specifically occurring. (5 R.R. at 161-162; 7 R.R. State's Ex. 63 at 9/23/2021 11:40:01).[15] Deputy Crain testified that you could not make out exactly what's behind the car from video quality and he was unable to tell the positioning of anybody over the course of the next several seconds. (5 R.R. at 162). The Impala, still two spots north, appeared to have backed out some. (5 R.R. at 163). Deputy Crain testified that he believed the outside video showed the driver's side rear door open, but that the inside surveillance video showed this door opening twice. (5 R.R. at 163). The person struggling with the Complainant got back into the vehicle. (5 R.R. at 165). According to Deputy Crain, Complainant was visible on the passenger's side of the vehicle. (5 R.R. at 169). Afterwards, the vehicle came to a sudden stop and kind of rocked back and forward. (5 R.R. at 165-166). Based on the investigation, Deputy Crain identified the Complainant as being underneath that vehicle. (5 R.R. at 166). The vehicle then drove forward and exited. (5 R.R. at 171). When asked if someone inside the vehicle looking backwards could see the struggle, Deputy Crain did not

[15] The specific video file Appellant cites is entitled "Camera 13 1400.mp4"

know what the view was from inside of the vehicle and did not know what would be visible from the inside to out. (5 R.R. at 192). He also characterized such an attempt as speculation. (5 R.R. at 192). He also noted that if the Complainant was on the ground, it was not likely one would see her from the inside perspective of the vehicle. (5 R.R. at 192-193). Finally, Deputy Crain could not say whether the driver of the Malibu knew the Complainant was behind the car. (5 R.R. at 194).

According to Appellant's GPS monitoring records, Appellant's device traveled east to Uvalde and then south on Uvalde towards Interstate 10, where he then went in a westward direction. (4 R.R. at 81, 83, 85-86; 5 R.R. at 174). The Impala exited the McDonald's westbound through the parking lot out to the street, basically behind McDonald's. (5 R.R. at 174). Surveillance video from the Queen Saver showed Appellant, Mr. Ford, and Mr. Thomas returning. (5 R.R. at 175). The Malibu was not seen, but the three of them returned in the Impala. (5 R.R. at 176). Surveillance video showed Appellant with Mr. Thomas who removed his hoodie. (5 R.R. at 179).

Deputy Crain testified that Appellant and the other individuals were engaged in a practice called jugging. (5 R.R. at 113). Jugging details a

criminal event wherein an individual or multiple individuals case or surveil financial institutions to identify potential victims in order to steal money from them that would be withdrawn from that institution. (5 R.R. at 113). The thefts can be anything from burglaries of a motor vehicle to theft from a person to robbery to aggravated robbery, but they generally do not occur at the financial institutions. (5 R.R. at 113). These events usually occur wherever the victim goes and they feel the opportunity is the best, where the victim would be the softest. (5 R.R. at 113-114).

On September 23, 2021, Chase Christian, along with Adam Owens, Isiah Gibson, and Daniel Rodriguez, were driving towards a McDonald's on 430 Uvalde after attending a class at San Jacinto College. (4 R.R. at 7-8, 25, 37, 53). Mr. Christian was in the front passenger seat and Mr. Owens was driving. (4 R.R. at 8-9). While pulling into the driveway, something big under a car caught Mr. Christian's attention. (4 R.R. at 9-10). This particular car was stopped at the time with the front facing Uvalde Road as Mr. Christian and his friends were pulling into the McDonald's driveway. (4 R.R. at 10, 12). The vehicle then started moving forward towards Uvalde and something bounced under the car. (4 R.R. at 10-12). When Mr. Christian noticed that there was a person on the ground, he started banging on the

window of Mr. Owen's car to try and get the car to stop. (4 R.R. at 12-13). While banging on the window, he was thinking that the person did not know what he hit, so just say stop, you know, you hit something. (4 R.R. at 13). He was under the impression that the driver of the car did not realize that somebody was under their car because maybe they did not see it, might have thought it was a bump, but they should have felt something. (4 R.R. at 20-21). He did not recall the car move in reaction to running over or from rolling over something. (4 R.R. at 13). Mr. Christian described the car as being black, having really dark tint on the side windows, and a lower than normal brow on the front windshield. (4 R.R. at 16). In addition, he described the driver as a black male, but he did not get a good enough look to where he could identify someone. (4 R.R. at 23). Afterwards, Mr. Christian ran towards the Complainant who was breathing, hurting, and trying to move. (4 R.R. at 14). Based on what he saw, Mr. Christian indicated that there was no way he would personally know whether the driver intended to run over the Complainant or not. (4 R.R. at 23).

Isiah Gibson was seated in the driver's side back seat. (4 R.R. at 26). He testified that they noticed a black car backing out of a parking space and they happened to notice there was something under the car. (4 R.R. at 27).

He knew something was underneath the car based upon the color, as it just did not seem like concrete. (4 R.R. at 27). The black vehicle was already in motion when they were pulling into the driveway. (4 R.R. at 27-28). Mr. Gibson did not see the vehicle's doors open or close and he did not see anyone getting in or out of that vehicle. (4 R.R. at 28). While backing out, the other vehicle only stopped to switch gears (i.e. go into drive). (4 R.R. at 28). Mr. Gibson described the vehicle as being kind of in a rush, the driver sped backwards and then he threw it in gear and then kind of went forward. (4 R.R. at 33). After the vehicle pulled forward towards them and after it had driven off, Mr. Gibson noticed it was a person underneath that car. (4 R.R. at 29, 34). He had not seen the Complainant standing. (4 R.R. at 34). The black car then exited the McDonald's on Uvalde road. (4 R.R. at 29). Mr. Gibson did not notice the black vehicle react to the Complainant being underneath the car. (4 R.R. at 31).

Daniel Rodriguez was sitting in the rear passenger seat. (4 R.R. at 58). He testified that when they pulled into the McDonald's parking lot, the first thing he saw was a vehicle in the middle of the parking lot and he noticed something was underneath the vehicle. (4 R.R. at 53-54). The vehicle was in reverse when Mr. Rodriguez saw it. (4 R.R. at 54). The vehicle was also

kind of angled towards him, from the front and left side. (4 R.R. at 55). After the vehicle backed up, it drove forward and pulled off. (4 R.R. at 55). Mr. Rodriguez described the vehicle as flying by them. (4 R.R. at 57). He saw the back end of that vehicle come up, like the car was going over a speed bump. (4 R.R. at 57-58).

Adam Owens testified that he was driving. (4 R.R. at 38). As he was about to make a right turn into the McDonalds, he was alerted to something by his passengers. (4 R.R. at 39). Mr. Owens saw a black Chevy sedan over a body underneath the middle portion of the car, between the wheels. (4 R.R. at 40-41, 50). When he stopped, the black Chevy was not moving. (4 R.R. at 41). However, a few seconds later, there was probably a switching of the gears and the car briefly just moved back a hair. (4 R.R. at 41). Then it continued forward back over the body, and then it turned his way. (4 R.R. at 41). According to Mr. Owens, the vehicle could not have gone forward or backwards and avoid driving over the person. (4 R.R. at 50-51). The back wheels went over the body and the car rose on the back end. (4 R.R. at 45). The black Chevy was actually traveling against kind of the arrows of traffic flow. (4 R.R. at 43). Mr. Owens did not see the initial incident and did not know how the body ended up underneath the vehicle. (4 R.R. at 42). He did

not get a good enough look at the driver to identify who it was, but testified the driver was an African American male. (4 R.R. at 46). In addition, he did not see anyone get in or out and he did not see the vehicle's doors open or close. (4 R.R. at 47).

Dr. Tabitha Ward performed the autopsy on the Complainant. (5 R.R. at 35, 39, 42). At the time she performed the autopsy, Dr. Ward was aware that the Complainant had purportedly been struck by a vehicle. (5 R.R. at 45). A patterned abrasion that could have been consistent with a tire mark was on the Complainant's right arm. (5 R.R. at 52-53; 7 R.R. State's Ex. 130). There were a large number contusions, abrasions, and cuts to the Complainant's head and neck. (5 R.R. at 46). Underneath the scalp skin, Dr. Ward could see a hemorrhage there as well. (5 R.R. at 47). There were no skull fractures. (5 R.R. at 47-48). However, the Complainant had a fracture of her left clavicle, her left scapula, her right clavicle, sternum, and very extensive rib fractures as well as some bleeding into the chest cavities and into the abdomen. (5 R.R. at 49). She had injuries to her liver, quite a bit of bleeding into the soft tissues of the posterior torso, and a bladder laceration. (5 R.R. at 49). None of the Complainant's ribs were intact and there was an open book fracture of her pelvis. (5 R.R. at 50). Complainant's left humerus

and her left ankle were fractured as well. (5 R.R. at 52-53). The amount of injuries the Complainant suffered, specifically to her rib area, would have made it difficult for her to breath. (5 R.R. at 56). In describing the Complainant's cause of death, Dr. Ward testified:

> So the cause of death is the generalized reason for her death, which was the blunt force injuries, but when we talk about hemorrhage and we talk about, you know, difficulty oxygenating, those are all mechanisms, which they could definitely work together to cause her death.

(5 R.R. at 56)

Dr. Ward could not determine what position the Complainant was in when she was struck by the vehicle or what portion of her body was struck first. (5 R.R. at 58).

SUMMARY OF THE ARGUMENT

Appellant contends that there is insufficient evidence to support Appellant's conviction for capital murder, as the evidence is insufficient to demonstrate that he had the intent to kill the Complainant. A contention that Appellant or the driver of the Malibu knew the Complainant was behind and underneath the vehicle, and intended to kill her would be based on pure speculation in contradiction to the evidence admitted at trial. Deputy Crain could not say whether Appellant or the driver of the vehicle

was aware that the Complainant was behind it at the moment the vehicle began backing up. In addition, eyewitnesses at the scene could not say that the driver of the vehicle knew that the Complainant was underneath the vehicle at the time it fled. Finally, the medical examiner testified that she could not determine what position the Complainant was in when she was struck by the vehicle or what portion of her body was struck first. As a result, this Court should reform Appellant's judgment to reflect a conviction for the lesser included offense of felony murder and remand this case back to the trial court for a new sentencing hearing.

ARGUMENT

Whether the evidence is legally insufficient to support Appellant's conviction for Capital Murder, as there is insufficient evidence of Appellant's specific intent to kill the Complainant?

A. Applicable Law and Standard of Review

"In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt." *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011), citing *Jackson v.*

Virginia, 443 U.S. 307, 318-19 (1979) and *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). "Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard in two circumstances: (1) the record contains no evidence, or merely a 'modicum' of evidence, probative of an element of the offense or two; or (2) the evidence conclusively establishes a reasonable doubt." *Ervin v. State*, 331 S.W.3d 40, 55 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd). "[T]he State may prove the defendant's identity and criminal culpability by either direct or circumstantial evidence, coupled with all reasonable inferences from that evidence." *Gardner v. State*, 306 S.W.3d 274, 285 (Tex. Crim. App. 2009). "Direct and circumstantial evidence are treated equally: 'Circumstantial evidence is as probative as direct evidence in establishing the guilt of the actor, and circumstantial evidence alone can be sufficient to establish guilt.'" *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). An appellate court presumes that the jury resolved any conflicting inferences in favor of the verdict and defer to that resolution. *Id*. In addition, an appellate court defers to the jury's evaluation of the credibility and weight of the evidence. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). "[J]uries are not permitted to come to conclusions based

on mere speculation or factually unsupported inferences." *Hooper*, 214 S.W.3d at 15. If the evidence at trial raises only a suspicion of guilt, then the evidence is insufficient, even if the suspicion is strong. *Winfrey v. State*, 323 S.W.3d 875, 882 (Tex. Crim. App. 2010). "It is the obligation and responsibility of appellate courts to ensure that the evidence presented actually supports a conclusions that the defendant committed the crime that was charged." *Id*.

"Texas Penal Code section 19.03(a)(2) provides that a person commits a capital murder if the person commits murder, as defined under 19.02(b)(1) (intentionally or knowingly causing the death of an individual), and the person intentionally commits the murder in the course of committing or attempting to commit a specified offense." *Griffin v. State*, 491 S.W.3d 771, 774 (Tex. Crim. App. 2016). One of those specified offenses is robbery. TEX. PEN. CODE § 19.03(a)(2). A person commits the offense of robbery "if, in the course of committing theft…and with intent to obtain or maintain control of the property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." TEX. PEN. CODE § 29.02(a). "'In the course of committing theft' means conduct that occurs in an attempt to commit, during the commission, or in

immediate flight after the attempt or commission of theft." TEX. PEN. CODE § 29.01(1). Theft is the unlawful appropriation of property with intent to deprive the owner of the property. TEX. PEN. CODE § 31.03(a). "Capital murder is a result-of-conduct offense; the crime is defined in terms of one's objective to produce, or a substantially certainty of producing, a specified result, i.e., the death of the named decedent." *Louis v. State*, 393 S.W.3d 246, 251 (Tex. Crim. App. 2012), quoting *Roberts v. State*, 273 S.W.3d 322, 329 (Tex. Crim. App. 2008), *abrogated in part on other grounds by Ex parte Norris*, 390 S.W.3d 338, 341 (Tex. Crim. App. 2012). A person acts "intentionally" with respect to the result of his conduct when it is his "conscious objective or desire to…cause the result." TEX. PEN. CODE § 6.03(a).

A person commits the offense of felony murder if he "commits or attempts to commit a felony, other than manslaughter, and the in the course of an in furtherance of the commission or attempt, or in immediate flight from the commission or attempt the person commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual." TEX. PEN. CODE § 19.02(b)(3). "Felony murder is, essentially, 'an unintentional murder committed in the course of committing a felony.'"

Rodriguez v. State, 454 S.W.3d 503, 507 (Tex. Crim. App. 2014), quoting *Fuentes v. State*, 991 S.W.2d 267, 272 (Tex. Crim. App. 1999). "The element distinguishing capital murder from felony murder is the intent to kill." *Threadgill v. State*, 146 S.W.3d 654, 665 (Tex. Crim. App. 2004).

A person is criminally responsible for another person's conduct if "acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense." TEX. PEN. CODE § 7.02(a)(2). "In determining whether an accused is a party to an offense and bears criminal responsibility, the court may look to events before, during, and after the commission of the offense." *Scott v. State*, 946 S.W.2d 166 (Tex. App.—Austin 1997, pet. ref'd), citing *Beardsley v. State*, 738 S.W.2d 681, 684 (Tex. Crim. App. 1987). "Participation in an enterprise may be inferred from the circumstances and need not be shown by direct evidence." *Id*., citing *Ex parte Prior,* 540 S.W.2d 723, 728 (Tex. Crim. App. 1976). "If the evidence shows the mere presence of an accused at the scene of an offense, or even his flight from the scene, without more, then it is insufficient to sustain a conviction as a party to the offense." *Valdez v. State*, 623 S.W.2d 317, 321 (Tex. Crim. App. 1981). "For a defendant to be found guilty as a party to a

secondary offense, the jury must determine that the second felony was committed in furtherance of the unlawful purpose and was one that the co-conspirator should have anticipated as a result of carrying out the conspiracy." *Anderson v. State*, 416 S.W.3d 884, 889 (Tex. Crim. App. 2013), citing TEX. PEN. CODE § 7.02(b).

If the evidence cannot sustain the conviction after the above review, then this Court must order an acquittal or reform the judgment to a lesser-included offense. *Thornton v. State*, 425 S.W.3d 289, 299-300 (Tex. Crim. App. 2014). This Court may reform the judgment to reflect a lesser-included offense only to avoid the "unjust result" of an outright acquittal. *Id*. This inquiry turns on two questions:

> 1) in the course of convicting the appellant of the greater offense, must the jury have necessarily found every element necessary to convict the appellant for the lesser-included offense; and 2) conducting an evidentiary sufficiency analysis as though the appellant had been convicted of the lesser-included offense at trial, is there sufficient evidence to support a conviction for that offense?

Id. at 300.

"When an appellate court finds the evidence insufficient to establish an element of the charge offense, but the jury necessarily found the defendant guilty of a lesser offense for which the evidence is sufficient, the

appellate court must reform the judgment to reflect the lesser-included offense and remand for a new punishment hearing." *Lee v. State*, 537 S.W.3d 924, 927 (Tex. Crim. App. 2017), citing *Thornton*, 425 S.W.3d at 299-300.

B. Analysis

Appellant's indictment alleged that he committed the offense of capital murder on or about September 23, 2021. (C.R. (2023) at 35). Specifically, the indictment alleged:

> **ANDREW WILLIAMS,** hereafter styled the Defendant, heretofore on or about **September 23, 2021**, did then and there unlawfully, while in the course of committing and attempting to commit the robbery of [the Complainant], intentionally cause the death of [the Complainant] by striking the Complainant with a deadly weapon, namely a motor vehicle.

(C.R. (2023) at 35)

The jury charge also authorized Appellant's conviction under the law of parties. (C.R. (2023) at 321-322).

1. *The evidence is insufficient to demonstrate that Appellant or any of his co-conspirator's committed capital murder with the intent to kill the Complainant*

Appellant contends that there is insufficient evidence to support Appellant's conviction for capital murder, as the evidence is insufficient to demonstrate that he had the specific intent to kill the Complainant. "While

an automobile is not a deadly weapon per se, intent to kill by use of an automobile may be shown from all the circumstances surrounding the killing." *Samuels v. State*, 785 S.W.2d 882, 887 (Tex. App.—San Antonio 1990, pet. ref'd), citing *Palafox v. State*, 484 S.W.2d 739, 743 (Tex. Crim. App. 1972). "The only difference between the offense of capital murder and the offense of felony murder is that capital murder requires the *specific intent to kill*, whereas felony murder involves an unintentional killing." *Uvukansi v. State*, No. 01-14-00527-CR, 2016 Tex. App. LEXIS 5915 at *18 (Tex. App.—Houston [1st Dist.] June 2, 2016, pet. ref'd) (mem. op., not designated for publication), citing *Santana v. State*, 714 S.W.2d 1, 9 (Tex. Crim. App. 1986) and *Fuentes*, 991 S.W.2d at 272. "Direct evidence of the requisite intent is not required.[.]" *Hart v. State*, 89 S.W.3d 61, 64 (Tex. Crim. App. 2002). "Intent is most often proved through the circumstantial evidence surrounding the crime." *Dominguez v. State*, 125 S.W.3d 755, 761 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd), citing *Hernandez v. State*, 819 S.W.2d 806, 819 (Tex. Crim. App. 1991). "A jury may infer intent from any facts that tend to prove its existence, such as the acts, words, and conduct of the defendant." *Id*. "Additionally, intent to kill may be inferred from the use of a deadly weapon, unless it would not be reasonable to infer

that death or serious bodily injury could result from the use of that weapon." *Id.*, citing *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996) and *Ahrens v. State*, 43 S.W.3d 630, 634 (Tex. App.—Houston [1st Dist.] 2001, pet. ref'd).

There was no evidence that Appellant or any of the alleged co-conspirators used a firearm during the commission of the offense. See *Mitchell v. State*, No. 07-20-00026-CR, 2021 Tex. App. LEXIS 7409 at *8 (Tex. App.—Amarillo Sept. 3, 2021, pet. ref'd) (mem. op., not designated for publication) (in finding sufficient evidence to support an intent to kill, court considered that the record showed "[a]ppellant and the other robber entered the Quick Sak at night with guns."). In addition, Appellant contends that there was insufficient evidence that the driver of the Malibu (whether it was the Appellant or one of the other co-conspirators) was actually aware that the Complainant was near the vehicle at the time it began to back up and exit the parking lot. Chase Christian, one of the passengers in the vehicle pulling up to the McDonald's as the Malibu was backing up and exiting, was under the impression that the driver of the car did not realize that somebody was under their car because maybe they did not see it, might have thought it was a bump, but they should have felt something. (4 R.R. at

20-21). Based on what he saw, Mr. Christian testified that there was no way he personally knew whether or not the driver of the vehicle intended run over the person. (4 R.R. at 23).

Deputy Crain reviewed the surveillance footage from McDonald's that he described as being of poor quality. (5 R.R. at 67). This footage showed a vehicle, later identified by Deputy Crain as the Appellant's Malibu, moving from the bottom right-hand corner of the video and park next to the Complainant's vehicle. (5 R.R. at 161; 7 R.R. State's Ex. 63 at 9/23/2021 11:39:34-40). The video then freezes after the Complainant walks toward the driver's side of her SVU and the initial contact between the suspects and the Complainant are not seen. (5 R.R. at 161; 7 R.R. State's Ex. 63 at 09/23/2021 11:39:50). In the next sequential video clip from the same camera angle, Deputy Crain identified what he later learned to be struggle taking place behind the car, although the footage is unclear as to what is specifically occurring. (5 R.R. at 161-162; 7 R.R. State's Ex. 63 at 9/23/2021 11:40:01). Deputy Crain testified that you could not make out exactly what's behind the car and he was unable to tell the positioning of anybody over the course of the next several seconds as this went on. (5 R.R. at 162). According to Deputy Crain, Complainant was visible on the

passenger's side of the vehicle from the surveillance videos. (5 R.R. at 169). However, when asked if someone inside the Malibu looking backwards could see the struggle, Deputy Crain did not know what the view was from inside of the vehicle and did not know what would be visible from the inside to out. (5 R.R. at 192). He also characterized such an attempt as speculation. (5 R.R. at 192). Furthermore, Deputy Crain also noted that if the Complainant was on the ground, it was not likely one would see her from the inside perspective of the vehicle. (5 R.R. at 192-193).[16] Finally, Deputy Crain could not say whether the driver of the Malibu knew the Complainant was behind the car. (5 R.R. at 194). In sum, the evidence does not demonstrate that Appellant, or the driver of the Malibu, knew the Complainant was behind the vehicle at the time the Malibu backed out of the McDonald's parking lot, thus there is insufficient evidence to demonstrate that Appellant had a specific intent to kill the Complainant.

These circumstances contrast with other cases that inferred intent from a defendant driving towards the complainant. See *Bonham v. State*, 680 S.W.2d 815, 817 n. 1 (Tex. Crim. App. 1984) (as victim was sitting on

[16] Dr. Ward testified that she could not determine what position the Complainant was in when she was struck by the vehicle or what portion of her body was struck first. (5 R.R. at 58).

the side of the road, the defendant ran over her with a car. Defendant realized that he had run over the victim when his car got stuck in a ditch.)[17]; *Salazar v. State*, 131 S.W.3d 210, 213 (Tex. App.—Fort Worth 2004, pet. ref'd) (witnesses testified defendant aim his car at victim by driving full speed over the curb and onto the sidewalk, instead of taking one of the exists out of the parking lot. In addition, after defendant hit victim, the body fell on the hood of defendant's car, hit the windshield, and was hit by the back of the car as defendant drove over curb), *Johns v. State*, No. 07-17-00111-CR, 2018 Tex. App. LEXIS 4174 (Tex. App.—Amarillo June 11, 2018, pet. ref'd) (mem. op., not designated for publication) (although brother testified that defendant did not threaten him, believed that defendant did not intend to run him over, and it was not necessary for him to move out of the way, Court determined that these were "simply favorable inferences that [a]ppellant draws from the testimony of his brother"…and

[17] More specifically, the Court of Criminal Appeals wrote: "If we were looking at one act alone, the mere running over of a pedestrian, we would have trouble in saying that the jury was correct in their finding of the proper intent. However, we are not operating in a vacuum. This offense started with a brutal assault and abduction compounded by the forcible rape and robbery of the sixty-two year old victim. It is hard to believe that after completing these horrendous acts upon his victim that appellant would drive to a sparsely populated area on the outskirts of Houston with the intent to release his victim and urge her to go for help. Furthermore, there is nothing in the record to suggest that after appellant ran over [the victim] with the car that he did anything to assist her." *Bonham*, 680 S.W.2d at 819.

"[e]qually logical inferences are that he knew what he was doing when he got behind the wheel and accelerated at brother").

The State might contend that Appellant or one of the co-defendants knew the Complainant was underneath the Malibu when the vehicle came to a sudden stop and kind of rocked back and forward, thus establishing that Appellant intended to kill the Complainant.[18] "[J]uries are not permitted to come to conclusions based on mere speculation or factually unsupported inferences." *Hooper*, 214 S.W.3d at 15. "[A]n inference is a conclusion reached by considering other facts and deducing a logical consequence form them. Speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. A conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on the facts or evidence to support a finding beyond a reasonable doubt." *Id*.

Again, Deputy Crain could not say whether Appellant or the driver of the vehicle was aware that the Complainant was behind it at the moment the vehicle began backing up. (5 R.R. at 192). In addition, eyewitnesses at

[18] In their closing argument, the State heavily emphasized this when arguing that Appellant had the intent to kill the Complainant. (6 R.R. at 33-36).

the scene could not say that the driver of the vehicle knew that the Complainant was underneath the vehicle at the time it fled. (4 R.R. at 20-21, 42). While Mr. Christian testified that he believed the driver should have felt something, this is a far cry from imputing to the Appellant that he was aware that the Complainant was underneath the vehicle. (4 R.R. at 20-21). In fact, Mr. Christian clarified that there was no way he personally knew whether or not the driver of the vehicle intended run over the person. (4 R.R. at 23). The medical examiner also testified that she could not determine what position the Complainant was in when she was struck by the vehicle or what portion of her body was struck first. (5 R.R. at 58). A contention that Appellant or the driver of the Malibu knew the Complainant was behind and underneath the vehicle, and intended to kill her would be based on pure speculation and is not sufficiently based on the facts or evidence. Thus, based on the foregoing, Appellant contends that there was insufficient evidence to support his conviction for capital murder as either a principal or party given that insufficient was evidence was presented regarding a specific intent to kill the Complainant.

2. The evidence was sufficient to support a conviction for the lesser-included offense of felony murder

Because the evidence failed to demonstrate Appellant specifically intended to kill the Complainant, this Court should consider whether to reform the judgment to reflect a conviction for the lesser-included offense of felony murder or order an outright acquittal under the *Thornton* inquiry. See *Thornton*, 425 S.W.3d at 299-300. Appellant believes that this Court could potentially determine that the evidence adduced at trial was sufficient to support a conviction for the lesser-included offense of felony murder.

A person commits the offense of felony murder if he "commits or attempts to commit a felony, other than manslaughter, and the in the course of an in furtherance of the commission or attempt, or in immediate flight from the commission or attempt the person commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual." TEX. PEN. CODE § 19.02(b)(3). "The felony murder doctrine dispenses with the necessity of proving [the] mens rea accompanying the homicide itself; the underlying felony supplies the culpable mental state." *Johnson v. State*, 4 S.W.3d 254, 255 (Tex. Crim. App. 1999). The jury was charged on the offense of felony murder:

> if you find from the evidence beyond a reasonable doubt that on or about the 23rd day of September, 2021, in Harris County, Texas, the defendant, Andrew Williams, did then and there unlawfully, while in the furtherance of the commission or attempted commission of the felony of robbery of [the Complainant], or in immediate flight from the commission or attempted commission of the felony of robbery of [the Complainant], commit an act clearly dangerous to human life, to-wit: by striking [the Complainant] with a deadly, namely a motor vehicle, that caused the death of [the Complainant]

(C.R. (2023) at 322)[19]

Initially, in viewing the evidence in the light most favorable to the jury's verdict, there was sufficient evidence that Appellant committed or attempted to commit the felony offense of robbery as either a principal or party. According to Deputy Crain, Appellant and the other individuals were engaged in a practice called jugging. (5 R.R. at 113). Jugging details a criminal event wherein an individual or multiple individuals case or surveil financial institutions to identify potential victims in order to steal money from them that would be withdrawn from that institution. (5 R.R. at 113). Multiple surveillance videos were admitted into evidence, along with GPS records from the Appellant and Mr. Ford's Impala.

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[19] The jury charge also authorized the jury to consider the lesser-included offense of felony murder under party liability. (C.R. (2023) at 322-323).

The evidence demonstrated that Appellant's device went to the Queen Saver store and arrived at 7:15 a.m., prior to the incident with the Complainant. (5 R.R. at 88). Appellant's GPS records verified this, showing that his device was pinged at that location at 7:17:52 a.m. (4 R.R. at 75; 5 R.R. at 88; 7 R.R. State's Ex. 70 at 214). Appellant was wearing a zip-up black hoodie. (5 R.R. at 89-91, 7 R.R. State's Ex. 88 and 89). Surveillance video from the Queen Saver showed Lawrence Thomas, an alleged co-defendant, arriving at 7:50 a.m., where he later changed into a hoodie. (5 R.R. at 92-95; 7 R.R. State's Ex. 90 and 91). Another co-defendant, Felton Ford, arrived an hour after Mr. Thomas, driving an Impala, where he was greeted by the Appellant at the door of the Queen Saver. (5 R.R. at 97-99; 7 R.R. State's Ex. 92-94). While at the Queen Saver, Mr. Ford returned to his car, put a mask on, and grabbed a pair of gloves. (5 R.R. at 101). He wore the mask in the parking lot in the direction of Mr. Thomas and the Appellant and had a conversation with the Appellant by the Malibu. (5 R.R. at 102, 108; 7 R.R. State's Ex. 120). At approximately 8:58 a.m., Mr. Ford left in the Impala, followed by Appellant and Mr. Thomas in the Malibu. (5 R.R. at 109). Appellant's GPS records were consistent with him leaving the Queen Saver around this time, as the device was last pinged at the Queen

Saver location at 8:52 a.m. (4 R.R. 76; 5 R.R. at 110; 7 R.R. State's Ex. 70 at 217).

After departing the Queen Saver, Appellant made two stops at banks. (5 R.R. at 110-112). The first was a Bank of America Branch, from approximately 9:10 a.m. to 9:22 a.m. (4 R.R. at 76-77; 5 R.R. at 111; 7 R.R. State's Ex. 70 at 217-218). The second was a BBVA bank branch. (4 R.R. at 77; 5 R.R. at 111; 7 R.R. State's Ex. 70 at 217-218). The next location where Appellant was stationary was at the vicinity of 13750 Interstate 10, a shopping center that includes Walmart, Sam's, Home Depot and Chase Bank. (4 R.R. at 77-79; 5 R.R. at 112l 7 R.R. State's Ex. 70 at 219). Deputy Crain also reviewed GPS records related to Mr. Ford's vehicle and those records lined up the locations at or near the same time with Appellant's GPS monitor. (5 R.R. at 115; 7 R.R. State's Ex. 67). After Mr. Ford pulled his vehicle up next to the Complainant's at the Chase Bank, subsequent surveillance video from the nearby Home Depot and Sam's Club showed Appellant's Malibu and Mr. Ford's Impala following behind the Complainant. (5 R.R. at 130-132, 137-139; 7 R.R. State's Ex. 103). Other surveillance videos showed the Complainant's vehicle being tailed by both the Malibu and Impala while she was driving northbound on Uvalde, in the

direction of the McDonald's. (5 R.R. at 139-140). Eventually surveillance video from the McDonald's and Appellant's GPS records placed him and the Malibu in McDonald's parking lot at the time the surveillance video captured the Complainant struggling. (5 R.R. at 161-162, 173-174). GPS records from Mr. Ford's Impala and surveillance video from inside of the McDonald's placed him at the McDonald's prior to the struggle. (5 R.R. at 149-150; 7 R.R. State's Ex. 117). Surveillance video from inside the McDonald's showed the Complainant entering and exiting the McDonald's with her purse. (7 R.R. State's Ex. 63 9/23/2021 11:31:25-11:39:46). In the second parking spot of the McDonald's where the Complainant's SUV was located, there was a smashed bag of McDonald's food and a carton of drinks. (3 R.R. at 82; 7 R.R. State's Ex. 8-10, 16). An earring was also located nearby. (3 R.R. at 83; 7 R.R. State's Ex. 13). Complainant's purse was never located. (5 R.R. at 64). According to Deputy Crain, the McDonald's surveillance video showed a struggle at the back of the Malibu and the Complainant's driver's side door remaining over. Finally, phone records from both Mr. Ford and the Appellant showed that Appellant made an outgoing call to Mr. Ford at 8:59 a.m. that lasted 1 hour and 40 minutes on September 23. (5 R.R. at 212-213).

This evidence was sufficient to demonstrate that Appellant, either as a principal or a party, attempted to commit or committed the felony offense of robbery. While the outside surveillance video from the McDonald's was of poor quality, circumstantial evidence demonstrated that Appellant met with the Mr. Ford and Mr. Thomas at the Queen Saver. He saw Mr. Ford put on a mask at the Queen Saver. Both Appellant's Malibu and Mr. Ford's Impala remained in close proximity to one another as they visited two banks before stopping at the Chase Bank, where the Complainant's SUV was in the ATM line. Surveillance video showed Mr. Ford's Impala pull up next to the Complainant's SUV at the Chase Bank. Afterwards, surveillance video from nearby stores, namely Home Depot and Sam's Club showed the Malibu and the Impala following the Complainant's SUV. Other surveillance video showed both vehicles following the Complainant on Uvalde road in the direction of the McDonald's. These movements were confirmed by Appellant's GPS records and the GPS records from Mr. Ford's vehicle. Surveillance video and GPS records confirmed that Appellant and Mr. Ford's vehicles were at the McDonald's; with Appellant's Malibu pulling up in the parking spot next to the Complainant just prior to the time surveillance video captured the struggle. Circumstantial evidence that allowed a jury to

reasonably infer a struggle took place was demonstrated through the McDonald's food and earring located on the parking lot near where the Complainant's SVU was parked, in addition to her car door being open on the surveillance video. Appellant's GPS data confirmed he was exiting the McDonald's parking lot and pulling onto Uvalde in the same timeframe as the McDonald's surveillance video showed the car that struck the Complainant's pulling away from the camera. Complainant's purse was never located.

A person commits the offense of robbery "if, in the course of committing theft…and with intent to obtain or maintain control of the property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." TEX. PEN. CODE § 29.02(a). "'In the course of committing theft' means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft." TEX. PEN. CODE § 29.01(1). Theft is the unlawful appropriation of property with intent to deprive the owner of the property. TEX. PEN. CODE § 31.03(a). In sum, the evidence recounted above allowed a jury to come to the conclusion that Appellant and his co-defendants followed the Complainant from the Chase Bank to the McDonald's parking

lot where either Appellant or Mr. Thomas attempted to take her purse as she was entering her vehicle. The evidence when viewed in the light most favorable to the verdict, allowed a jury to conclude that a struggle ensued after Appellant or Mr. Thomas attempted to take her purse and that they ultimately succeeded and while fleeing, they ran over the Complainant. As a result, there is sufficient evidence to support the element of attempted to or committed robbery as part of the offense of felony murder.

In addition, viewed in the light most favorable to the verdict, there was sufficient evidence to show that "in the course of an in furtherance of the commission or attempt, or in immediate flight from the commission or attempt the person commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual." TEX. PEN. CODE § 19.02(b)(3). The act clearly dangerous to human life would have been Appellant striking the Complainant with his vehicle. "The 'act clearly dangerous to human life' must be the cause of the victim's death" *In re R.C.*, 626 S.W.3d 76, 84 (Tex. App.—Houston [14th Dist.] 2021, pet. denied), citing *Rodriguez v. State*, 454 S.W.3d 503, 507 (Tex. Crim. App. 2014). "Whether the act is clearly dangerous to human life is measured by an objective standard and not the subjective belief of the actor." *Id.*, citing

Lugo-Lugo v. State, 650 S.W.2d 72, 81 (Tex. Crim. App. 1983) and *McGuire v. State*, 493 S.W.3d 177, 188 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd).

The McDonald's surveillance video showed the Malibu striking the Complainant and subsequently running over her after an apparent struggle left her behind the Malibu. In addition, multiple eye witnesses testified regarding the Complainant being run over in the McDonald's parking lot. Finally, the medical examiner testified regarding the nature of the Complainant's injuries. (5 R.R. at 45-56). Notably, Dr. Ward testified that a patterned abrasion that could have been consistent with a tire mark was on the Complainant's right arm. (5 R.R. at 52-53; 7 R.R. State's Ex. 130). Objectively, the act of backing out the vehicle with the Complainant behind it was clearly dangerous to human life given that it resulted in the Complainant's death. See *Sanders v. State*, No. 06-14-00079-CR, 2015 Tex. App. LEXIS 8407 at *50-57 (Tex. App.—Texarkana Aug. 12, 2015, pet. ref'd) (mem. op., not designated for publication) (evidence legally sufficient to sustain conviction for felony murder where the defendant struck police officer with his motor vehicle while attempting to exit a parking lot, even

though some evidence suggested that the act was not intentional and was an accident).

Finally, although there was no evidence that the Appellant or any of the co-conspirators brought a deadly weapon such as a firearm to rob the Complainant, Appellant believes that there was sufficient evidence for a jury to rationally conclude that Appellant should have anticipated the Complainant's murder as a result of carrying out the conspiracy to rob the Complainant.[20] Physical force and violence were utilized in robbing the Complainant, who was 71-years old, as Deputy Crain testified that the McDonald's surveillance cameras showed evidence of a struggle behind the Malibu and there was evidence at scene demonstrating a struggle originated at the driver's side door of the Complainant's SUV, namely the McDonald's food on the parking spot. See *Queen v. State*, 940 S.W.2d 781, 788 (Tex. App.—Austin 1997, pet. ref'd) ("It was not necessary, however, for the State to prove that the murder was planned or even that appellant foresaw it. The State had only to prove that the murder should have been anticipated as a

[20] The jury heard evidence that the Malibu was the vehicle Appellant was driving into and out of his apartment complex and that he was the individual who drove the vehicle to the Queen Saver at around 7:15 a.m. (5 R.R. at 82; 7 R.R. State's Ex. 56, 57, and 58). Deputy Crain testified that when Appellant left the Queen Saver at around 8:58 a.m., he was driving the Malibu and Mr. Thomas got into the back passenger's seat of the Malibu. (5 R.R. at 109).

result of the carrying out of the agreement. Considering the gross disparities in strength and stamina between the four conspirators and their intended victim, Paz's reputation for violence, and the viciousness of the attack on Saldana, we believe the jury could rationally conclude beyond a reasonable doubt that murder was an offense appellant should have anticipated as a result of carrying out the agreement to commit robbery.") and *Henson v. State*, No. 05-99-01349-CR, 2001 Tex. App. LEXIS 1512 at * 14-15 (Tex. App.—Dallas Mar. 8, 2001, pet. ref'd) (mem. op., not designated for publication) ("Here, the evidence shows Castillo was obviously drunk when appellant and his companions noticed him. Appellant, May, and Manny attacked Castillo simultaneously and violently. Abrasions consistent with a struggle were found on Castillo's body. From this evidence, a rational jury could find beyond a reasonable doubt that murder was an offense appellant should have anticipated as a result of carrying out the agreement to rob Castillo."). In addition, the fact that the Complainant was killed while the Appellant and the other co-conspirators were attempting to escape after the Complainant was physically assaulted is evidence that supports a determination that Appellant should have reasonably anticipated a murder could have occurred when robbing the Complainant. See *Ford v. State*, 507

S.W.2d 735, 736 (Tex. Crim. App. 1974) (when a conspirator kills someone while trying to escape, the other conspirators should have reasonably contemplated that death and thus all conspirators were liable for that death).

Based on the foregoing, undersigned counsel believes that the evidence was potentially legally sufficient to support Appellant's conviction for felony murder, primarily as a party to the offense. Therefore, Appellant requests that this Court reform the judgment to reflect a conviction for the offense of felony murder, reverse the trial court's judgment, and remand Appellant's case back for a new sentencing hearing as Appellant current sentence of life imprisonment without the possibility of parole is outside the maximum punishment range for a conviction of felony murder. See TEX. PEN. CODE § 12.31(a)(2) (punishment range for capital felony where death is not sought is life imprisonment without parole); TEX. PEN. CODE § 12.32 (punishment range for first degree felony is 5-99 years or life and/or a fine of up to $10,000); TEX. PEN. CODE § 19.02(c) (murder is generally a first degree felony); and TEX. PEN. CODE § 19.03(b) (capital murder is a capital felony).

PRAYER

Appellant, Andrew Williams, prays that this Court reverse the trial court's judgment and remand this case back to the trial court for a new sentencing hearing. Appellant also prays for such other relief that this Court may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this brief was e-served on Jessica Caird of the Harris County District Attorney's Office on May 9, 2025, to the email address on file with the Texas E-filing system.

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/s/ Nicholas Mensch
Nicholas Mensch
Assistant Public Defender

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Filing Description: Appellant's Brief - Williams
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Associated Case Party: Andrew Williams

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