

**No. 14-24-00832-CR**

**IN THE COURT OF APPEALS  
FOR THE FOURTEENTH DISTRICT OF TEXAS**

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**CASEY LEE CALDWELL**  
*Appellant*

DEBORAH M. YOUNG  
Clerk of The Court

**v.**

**THE STATE OF TEXAS**  
*Appellee*

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On Appeal from Cause Number 1730635  
From the 178<sup>th</sup> District Court of Harris County, Texas

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**BRIEF FOR APPELLANT**

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## **STATEMENT OF THE CASE**

Mr. Caldwell was charged by indictment with the first-degree felony offense of murder. (C.R. at 87). Mr. Caldwell entered a plea of not guilty and the case proceeded to a jury trial. (3 R.R. at 7). On October 24, 2024, the jury found Mr. Caldwell guilty of murder as charged. (4 R.R. at 199) (C.R. at 284). Mr. Caldwell received a sentence by the trial court of twenty-five (25) years in the Institutional Division of the Texas Department of Criminal Justice. (5 R.R. at 69) (C.R. at 411). Mr. Caldwell filed a timely notice of appeal, and the Harris County Public Defender's Office was appointed to represent him. (C.R. at 417 & 420).

## **ISSUE PRESENTED**

### **ISSUE ONE**

THE EVIDENCE IS LEGALLY INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR THE OFFENSE OF MURDER BECAUSE THE STATE FAILED TO DISPROVE HIS JUSTIFICATION OF SELF-DEFENSE.

## **STATEMENT OF FACTS**

Harris County Sheriff Deputy Callao Razuri was dispatched to Primo's Food Store on July 4, 2021. (3 R.R. at 25-27). When he arrived, he observed a black Ford truck with the driver's door open parked in front of the store. (3 R.R. at 29). A male was lying on the ground next to the truck and another deputy was performing CPR on him. (3 R.R. at 29-30). This was approximately 1:50 a.m. (3 R.R. at 30). Razuri ran the license plate of the truck, obtained a driver's license photo and identified the male as

Jecorey Lucas. (3 R.R. at 31). Lucas had gunshot wounds in his upper torso area and appeared to be dead. (3 R.R. at 31).

*Incident happens in known crime area*

On cross-examination Razuri agreed the photos of Primo's do not tell the whole story of the area and that the area around Primo's is a "very crime infested area." (3 R.R. at 35-37). It is not a place he would allow his wife to travel to. (3 R.R. at 35-37). There are people hanging out and engaging in illegal activities all day long at Primo's, including sell drugs. (3 R.R. at 36-37). Razuri spoke to the store clerk and a patron inside the store, neither of whom saw the incident. (3 R.R. at 39 & 42). Razuri's investigation did not reveal any other witnesses who had seen what happened, but he did find shell casings at the scene. (3 R.R. at 32-33).

Detective Anthony Thompson was the lead investigator. (3 R.R. at 144). Thompson testified that he did not find or talk to anyone who witnessed the shooting at the scene. (3 R.R. at 147). Thompson was not surprised by the lack of witnesses as he was familiar with the area and described it as a "high drug trafficking area" and that "no one wants to be around to witness anything or say anything to the police." (3 R.R. at 147).

Detective Billy Davis was tasked with canvassing for witnesses. (3 R.R. at 69). When Davis arrived on the scene, Lucas was already deceased. (3 R.R. at 68). Davis testified he spoke with individuals at the scene but only one was willing to provide him with their name and none of the witnesses present had actually witnessed the shooting.

(3 R.R. at 68 & 94). Davis testified that from a law enforcement officer's perspective, witnesses might not want to be identified if they live in the area and are scared of retaliation. (3 R.R. at 95-96).

*Surveillance video shows argument after minor fender bender*

After speaking with Primo's store manager, Davis collected the store surveillance video. (3 R.R. at 69) (State's Exhibit 19).<sup>1</sup> Davis explained the timestamp was one hour off, most likely due to the failure to change the clock for Daylight Savings Time. (3 R.R. at 70). Video clips were played for the jury while Davis narrated.<sup>2</sup> (3 R.R. at 73). Davis identified a person inside the store wearing a black tank top and blue jean shorts as Caldwell. (3 R.R. at 73) (State's Exhibit 19 - camera angle 4, first video, timestamp 00:15 & 24:56). Caldwell is seen multiple times on the video going in and out of the store. Davis described Caldwell as either counting money or just looking at it. (3 R.R. at 73).

Camera angle 14 is the clearest video of the entire interaction between Caldwell and Lucas. It shows the majority of the store's front walkway, a large part of the parking

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<sup>1</sup> State Exhibit 19 contains 10 video clips from the various cameras located at Primo's Food Store. During trial, the trial prosecutor referred to the different cameras and timeslips for the various clips. The proper clip can be identified by the first few letters of the filename. For example, AO4 refers to the clip from Camera 4. The timestamp the prosecutor is referring to is not the time of day shown on the video itself but is the timestamp from the video players.

<sup>2</sup> Portions of the video were also played during the cross-examination of Detective Thompson.



lot and the passenger side of Lucas' truck.<sup>3</sup> Camera angle 13 shows the driver's side of Lucas' truck where he was standing when he was shot.

In the first video from camera 14, Lucas can be seen driving up to the store and getting out of his vehicle. (State Exhibit 19 camera angle 14, first video, timestamp 00:77:33).<sup>4</sup> He begins talking to someone in the car next to him, walks away and then comes back and talks to the people in the car again. (State Exhibit 19 - camera angle 14, first video. timestamp 00:10:56). While Lucas is out of the vehicle, his truck begins to roll back and strikes a car passing behind his truck. (State exhibit 19 - camera angle 14, first video, timestamp 00:11:10). Davis identified the car as belonging to Caldwell. (3 R.R. at 93).<sup>5</sup>

The video does not contain sound but shows Lucas and Caldwell having several verbal exchanges. (State Exhibit 19 - camera angle 14, first video, timestamp 00:12:30 - 00:14:53). During these exchanges, Lucas appears "irritated and aggravated" and yelling at Caldwell. (3 R.R. at 96-97). Both detectives agreed the video shows Caldwell remaining calm after the car accident. (3 R.R. at 96-97) (4 R.R. at 71). Caldwell appeared to have an envelope in his hand, presumably insurance information. (3 R.R. at 96-97). Caldwell walks towards Lucas, but Lucas starts to walk towards the store. (State Exhibit

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<sup>3</sup> The State played camera angle 13 before angle 14. The identifications of the complainant and his vehicle occurred during this narration. (State Exhibit 19 starting at 53 minutes) (3 R.R. at 90).

<sup>4</sup> The timestamp is located at the top left of the video.

<sup>5</sup> Detective Thompson later testified the license plate on the vehicle showed the vehicle was registered to Caldwell. (3 R.R. at 149).

19 - camera angle 14, first video, timestamp 00:13:30 - 00:13:50). Lucas starts to enter the store and then immediately comes back out. (State Exhibit 19 - camera angle 14, first video, timestamp 00:13:50 - 00:13:59). Davis agreed that Lucas appeared to be upset. (3 R.R. at 114). Lucas then reenters the store and when he comes out it, he goes to his truck and opens the driver's door. (State Exhibit 19 - camera angle 14, first video, timestamp 00:14:00 - 00:14:25).

Caldwell is standing by his vehicle at the back of Lucas's truck and then reaches into his car and returns with what appears to be a phone. (State Exhibit 19 - camera angle 14, first video, timestamp 00:14:19 - 00:14:31). Thompson testified he could not tell from the video whether Caldwell attempted to take photos of the two vehicles. (4 R.R. at 74). After a second or two, Caldwell reaches into his vehicle, emerges and then fires a gun. (3 R.R. at 94) (State Exhibit 19 - camera angle 14, first video, timestamp 00:14:35 - 00:14:53).

Davis testified he did not see Lucas with a weapon in any of the surveillance videos, nor did he see Lucas get anything out of the vehicle. (3 R.R. at 90-91, 93 & 104). Davis goes on to say he saw Lucas walk towards the back of the truck, then turn towards the driver's seat and then turn again toward the back of truck and then fall to the ground. (3.R.R. at 90-91). Caldwell then drives away. (3 R.R. at 91). (State Exhibit 19 camera angle 14 first video timestamp 00:14:51).

*Man in white ransacks scene as witnesses scatter*

The videos show the other vehicles present leave the scene immediately after the shooting. (State Exhibit 19, camera angle 14, first video, timestamp 00:15:17) (camera angle 13, timestamp 00:14:36- 15:30). Davis agreed the video shows people approaching the body and when pressed, Davis could not say whether someone had removed a weapon from the body and that he could not see on the video what took place with the person who reached over the body. (3 R.R. at 100-104). Detective Thompson, however, agreed it was possible the person bending over the body in the video could have picked something up. (4 R.R. at 50) (State Exhibit 19 - camera angle 14, first video, timestamp 00:16:46-00:16:55).

In addition to bending over Lucas' body, the same man in white is seen opening the passenger door of Lucas' vehicle and removing things. (3 R.R. at 100-101) (State Exhibit 19 - camera angle 14. first video, timestamp 00:17:06 - 00:17:17:34). The video was taken to the station, where police magnified the image. (3 R.R. at 102). Davis stated that after reviewing the enhanced video, law enforcement could not "tell exactly what it was, but we clearly could see it was not a weapon." (3 R.R. at 102). Thompson agreed that it was unknown what the stolen items were, and stated "it could have been a knife that was picked up for all we know." (4 R.R. at 52-53).

*License plate leads to Caldwell's arrest*

Thompson watched the surveillance video and using the license plate number of the car involved was able to confirm the vehicle was registered to Caldwell. (3 R.R. at

149). The next day, the police found the vehicle at the registered address and confirmed the damage to the front of the vehicle. (3 R.R. at 150). Harris County Sheriff's Investigator Nolan watched the video with Thompson and recognized Caldwell on the video.<sup>6</sup> (3 R.R. at 126 & 151). At some point later, Thompson found the weapon used in the shooting at Caldwell' girlfriend's mother's apartment. (3 R.R.at 152).<sup>7</sup> Nolan identified State's exhibit 20 as the gun that had been found. (3 R.R. at 131-132).

*Caldwell admits to shooting Lucas*

After Caldwell was arrested, Thompson met with him and conducted a recorded interview. (3 R.R. at 153-154). Caldwell initially asked for an attorney and Thompson terminated the interview. (3 R.R. at 163). Thompson testified that sometime later Caldwell asked to speak with Thompson. (3 R.R. at 163). Thompson read Caldwell his rights again and Caldwell agreed to talk with Thompson. (3 R.R. at 163). Thompson agreed Caldwell gave a confession where he told Thompson everything that happened the night of the shooting. (3 R.R. at 154-155)

When asked what Caldwell's demeanor was while giving the statement, Thompson initially stated Caldwell was nervous, but Thompson did not believe Caldwell was crying. (3 R.R. at 163-166). However, after listening to the statement

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<sup>6</sup> In the punishment phase, Caldwell testified Nolan was the officer who took Caldwell's statement after he witnessed his best friend being murdered in front of him. (5 R.R. at 20-21).

<sup>7</sup> The parties stipulated to State's Exhibit 34 which indicated the bullets submitted were fired from the gun submitted. (3 R.R. at 141-142).

outside the presence of the jury, Thompson agreed Caldwell was crying during the statement. (4 R.R. at 22-23). Thompson did not interpret the crying as Caldwell being remorseful. (4 R.R. at 91).

*Lucas physically larger than Caldwell and high on drugs*

Thompson agreed Lucas was bigger than Caldwell and was approximately 6 foot and 237 pounds. (3 R.R. at 166-167). Thompson testified the autopsy report indicated that at the time of his death Lucas had amphetamine, cocaine, methamphetamine and benzoylcegonicno in his system. (4 R.R. at 27). While Thompson could not testify as to the effects a certain drug would have on a certain individual, he agreed that being under the influence of drugs could cause someone to be angry and aggressive. (4 R.R. at 32-33).

*Drugs and paraphernalia found in Lucas' truck*

Thompson agreed that what appeared to be two grams of methamphetamine, a crack pipe and scales were found when Lucas' truck was searched. (4. R.R at 34, 40, 42). Thompson testified that scales typically indicate the selling of drugs and that individuals who sell drugs normally have firearms. (4 R.R. at 40-41). Thompson agreed it was possible that Lucas sold drugs. (4 R.R. at 43).

*Violence common to the area*

When talking about Primo's and the general area Thompson was asked about self-defense and whether someone would probably be in danger in the environment at Primo's, Thompson responded, "someone like me or you" and when counsel clarified

someone in general Thompson stated, “if that’s your environment you’ll be fine.” (4 R.R. at 56). However, Thompson agreed that people in the area are quite often subjected to violence and are on high alert against violent acts. (4 R.R. at 57 & 60). On re-direct, Thompson clarified that he meant “someone living in that environment, they can walk down that street, that area and not be worried about anybody in that area.” (4 R.R. at 82).

#### *State’s Remaining Evidence*

Thompson testified based on his experience Caldwell’s behavior was consistent with drug dealing. (4 R.R. at 85). Caldwell’s objection was sustained, and the court instructed the parties Thompson could only testify as to specific things he saw and did. (4 R.R. at 85). Thompson then testified Caldwell was at Primo’s between 12:00 a.m. and 1:15 a.m. (4 R.R. at 87). During that time, Caldwell approached several cars, but Thompson could not say what Caldwell was doing. (4 R.R. at 88). Thompson testified that when Caldwell was inside the store, he had a large amount of cash on him and Caldwell did not make any purchases while at the store. (4 R.R. at 90). Thompson agreed the incident involved a car accident and not a drug deal that went badly. (4 R.R. at 94).

Dr. Emma Henrie testified the cause of death was multiple gunshot wounds. (4 R.R. at 106). Dr. Henrie testified that methamphetamine and benzoylecgonine affect the body by causing the heart to race, blood pressure to increase and could cause someone to become excited easily, erratic and maybe even delusional. (4 R.R. at 108).

Dr. Henrie further stated having a combination of two separate drugs in the system is synergistic and could make one more aggressive. (4 R.R. at 109).

The State rested after having Lucas' aunt identified Lucas in two photos. (4 R.R. at 11-114) (State's Exhibit 35 and 23).

*Scene Officer called as Self-Defense Expert*

The defense called Deputy Carlos Stephenson. Stephenson was the first officer to arrive on the scene. (4 R.R. at 124). His involvement in the investigation was limited to performing CPR on Lucas and then taping off the scene. (4 R.R. at 124).

Stephenson described Primo's as being a high-crime area and stated law enforcement receives many calls from the area, and he had worked shootings in the area. (4 R.R. at 121). Stephenson agreed that it was not unusual for people who did not work there to hang out at night at Primo's. (4 R.R. at 123). Prior to court Stephenson had not seen any of the videos from that night. (4 R.R. at 125).

Stephenson has a side business teaching civilians how to use firearms in self-defense. (4 R.R. at 118-119). As part of his instruction, he educates individuals on how to make a determination whether or not to use deadly force against someone else. (4 R.R. at 127). Stephenson agreed that an individual could have a weapon in their waistband that was not visible. (4 R.R. at 129). When shown Defense Exhibit 5, a still photo from the surveillance video, Stephenson testified it looked "like a black object

inside of a pants.”<sup>8</sup> (4 R.R. at 131). Stephenson told the jury that individuals can still have the right to self-defense in situations where the person perceives the other person had a weapon and it was later discovered they did not. (4 R.R. at 134-135).

*Caldwell observed attempting to calmly handle fender-bender*

Eddie Williams testified he would “hang out” with his friends at Primo’s and Lucas would also “hang out there”. (4 R.R. at 152). Williams was present the night of the shooting and remained until after the police arrived. (4 R.R. at 149-150).

Williams saw Lucas’ car hit Caldwell’s car. (4 R.R. at 153). Williams testified Caldwell had his insurance and was attempting to get an understanding with Lucas about calling the police about his insurance. When asked what Caldwell said to Lucas, Williams testified Caldwell did not say anything threatening to Lucas. (4 R.R. at 169). Caldwell just kept saying that Caldwell had insurance on his car and could they call the police. (4 R.R. at 169). Williams said Caldwell had his insurance in one hand and his phone in the other. (4 R.R. at 169) (State Exhibit 19 – camera angle 14, first video, timestamp 13:00-13:30). Williams testified that Lucas never gave Caldwell insurance information and was angry when Caldwell suggested calling the police. (4 R.R. at 164).

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<sup>8</sup> Stephenson said it hard to see on the photo but “on that blown-up device you can see a little more.” (4 R.R. at 133). Counsel presumes Stephenson is referring to the visual audio equipment in the courtroom which allows items to be magnified.



### *Lucas' disproportionate reaction*

Lucas reacted aggressively and loudly to where everyone could hear and this aggressive talk disturbed Williams. (4 R.R. at 160). Lucas told Caldwell that he “ain’t got nothing for you, get the f---, I mean get out of my face...” and something to the effect of “get out of my face or I’ll beat you up” (4 R.R. at 154& 161). Williams further stated that Lucas was “talking a lot and made a bunch of aggressive movements” towards Caldwell. (4 R.R. at 164). Williams described Lucas’ aggression as the “type that would cause a normal person to be fearful of him.” (4 R.R. at 156). On cross-examination Williams agreed he never saw Lucas with a weapon that night. (4 R.R. at 169-170).

Both sides rested after Williams’ testimony. (4 R.R. at 175). After hearing closing argument and deliberating, the jury found Caldwell guilty of murder as charged in the indictment. (4 R.R. at 199).

### *Punishment evidence*

During the punishment phase, Caldwell pled true to the enhancement paragraph and stipulated to his prior criminal history. (5 R.R. at 5) (State’s Exhibit 52). The State then called the complainant’s mother Gloria Lucas. Ms. Lucas testified that at the time of his death, her son had two daughters who he spent time with. (5 R.R. at 8-9). Ms. Lucas further testified regarding how her son’s death affected the different members of the family. (5 R.R. at 9-12). The State then rested. (5 R.R. at 12).

### *Character Witnesses*

The defense called two character witnesses, Weldon Jenkins and Beverly Launis. Jenkins and Caldwell both lived in a government housing apartment complex when they were teenagers. (5 R.R. at 35-37). Jenkins described the complex as a place where “you see stuff.” (5 R.R. at 37). Jenkins expounded stating that he and Caldwell were exposed to drug usage, violence, murder, beatings and seeing dead bodies in the hallways or vacant apartments. (5 R.R. at 38-39). Jenkins testified that growing up Caldwell did not live with his own parents but would stay with a friend. (5 R.R. at 40-41).

Jenkins described Caldwell as being very bright and stated he went to the Art Institute of Technology but did not finish because he was incarcerated. (5 R.R. at 41). Jenkins continued his education and became a recording engineer because of Caldwell’s influence. (5 R.R. at 42 & 49). In 2020 or 2021, Jenkins and Caldwell started a recording studio together. (5 R.R. at 46).

Jenkins testified that Caldwell was 21 or 22 when he was released from prison and after that worked multiple jobs at a time in order to provide for his mother and his son. (5 R.R. at 43). Jenkins testified Caldwell had custody of his son and that Caldwell coached his son’s football team and made sure his son does not miss a day of school. (5 R.R. at 44-45). Caldwell also took care of his disabled mother until her death. (5 R.R. at 48).

Beverly Launis, Caldwell's fiancé, testified that Caldwell treats his autistic son extremely well. (5 R.R. at 53). Caldwell goes to every game, practice, doctor's appointments and makes sure his son had everything he needs for school. (5 R.R. at 53). Caldwell is the one who gets his son ready for school and makes his breakfast. (5 R.R. at 53).

Launis testified Caldwell was affected deeply by the shooting. (5 R.R. at 55). Launis described Caldwell as being destroyed, that he was remorseful and regretted what he had done. (5 R.R. at 58). Caldwell had told his mother he was going to turn himself in, but she asked him to wait until after they talked with an attorney so that Caldwell was not without representation. (5 R.R. at 57). However, the attorney was out of town for the July 4<sup>th</sup> holiday and Caldwell was arrested before the attorney returned. (5 R.R. at 56).

*Caldwell's testimony*

Caldwell testified on his own behalf during the punishment phase. (5 R.R. at 13). Caldwell testified he would like to tell Lucas' family that he was sorry, and he did not mean for this to happen. (5 R.R. at 19). Caldwell stated he wanted to reach out to them before the day of court but was prohibited by his bond conditions. (5 R.R. at 19).

Caldwell also testified about his childhood. His mother became so addicted on drugs that Caldwell ended up in foster care when he was around 13 or 14 years old. (5 R.R. at 13). His father was not involved in Caldwell's life at the time. (5 R.R. at 14). Caldwell testified regarding the different jobs he had and his relationship with his son.

(5 R.R. at 15-17). Caldwell testified his son was diagnosed with autism at age 3. (5 R.R. at 18). Caldwell is the primary caregiver as the child's mother has never really been involved in the child's life. (5 R.R. at 18).

Upon questioning from the court, Caldwell testified that the night of the incident, his son was with his sister while he was at his studio. (5 R.R. at 19). On his way home Caldwell stopped at Primo's to buy marijuana. (5 R.R. at 19). The court asked about Caldwell's prior relationship with the complainant, and Caldwell said he knew Lucas from the store where they had talked before. (5 R.R. at 22-23). Caldwell told the court he had "seen certain situations, I don't know if it has anything to do with, but, you know, I felt in that moment that I was scared of him." (5 R.R. at 23). Caldwell also explained the night of the shooting, he had a gun for his own protection. He had been shot at several times previously because he was an eyewitness to his best friend's recent murder. (5 R.R. at 20-21).

The court also asked about Caldwell's prior convictions and what controlled substances were involved. Caldwell responded he was selling crack cocaine in order to provide for his son because at the time he could not get a job. (5 R.R. at 20). When the court questioned Caldwell about his 2008 aggravated assault conviction, Caldwell told the court he had gotten into an argument with a store clerk. He stated he did not hurt or threaten anyone and later learned one can be guilty of aggravated assault without ever harming someone. (5 R.R. at 22).

On cross-examination, Caldwell agreed the video showed him with a large amount of cash. He denied the assertion that he was flashing it around, stating it was the rent money for his studio and that he was counting it. (5 R.R. at 25). Caldwell also denied being at Primo's for the entire time of the video. He said he had gone back to his studio about ten minutes away and then returned to Primo's to purchase marijuana, not to hang out. (5 R.R. at 25-29). Caldwell did not purchase any marijuana because the auto wreck occurred. (5 R.R. at 29).

Caldwell admitted the night of the shooting he was still on deferred adjudication for selling drugs and as a condition of his supervision he was not to have a weapon. (5 R.R. at 24). Caldwell tried to explain he had the gun in the car because he was scared for his life and safety. (5 R.R. at 24-27). Caldwell was scared because his friend had been murdered in front of him across the street from Primo's and the case had not been solved. (5 R.R. at 27). Caldwell told the court people were hunting him down and he had been shot at by multiple people. (5 R.R. at 24 & 26-28).

Both sides rested and after hearing closing arguments, the court sentenced Caldwell to twenty-five (25) years in the Institutional Division of the Texas Department of Criminal Justice. (5 R.R. at 69).

### **SUMMARY OF THE ARGUMENT**

Caldwell contends the evidence is legally insufficient to defeat his claim of self-defense. While trying to get insurance information after a simple accident, Caldwell was met with a large, irate man, high on drugs, who threatened to beat him up. Lucas'

actions were more than mere words in that immediately before the shooting, Lucas initially walked towards where Caldwell was standing, then turned back towards the cab of the truck and then turned back towards Caldwell at which point Caldwell retrieved his weapon from his car and fired. The State's own witnesses admitted it was possible the complainant had a weapon. Though one was not found, a bystander is seen on the video bending over the complainant's body and then ransacking the complainant's truck before taking unknown items from it. No rational trier of fact could have found against Caldwell on the self-defense issue beyond a reasonable doubt. Thus, the evidence is legally insufficient to support Caldwell's conviction for murder.

## **ARGUMENT**

### **ISSUE ONE**

THE EVIDENCE IS LEGALLY INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR THE OFFENSE OF MURDER BECAUSE THE STATE FAILED TO DISPROVE HIS JUSTIFICATION OF SELF-DEFENSE.

#### **A. Standard of Review**

In reviewing the sufficiency of the evidence to support a conviction, this Court reviews all of the evidence in the light most favorable to the verdict in order to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1970); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). In a legal sufficiency review, an appellate court provides a due process safeguard, ensuring only the rationality of the trier of fact's finding of the essential elements of the offense beyond a reasonable doubt.

*Laster* at 517. The reviewing court “determines whether the necessary inferences made by the trier of fact are reasonable, based upon the cumulative force of all the evidence.” *Broughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018).

An appellate court gives deference to the responsibility of the fact-finder to fairly resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Id.* The appellate court does not reweigh the evidence or substitute its judgment for that of the trier of fact. *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000). However, this Court’s duty requires it to “ensure that the evidence presented actually supports a conclusion that the defendant committed” the criminal offense for which he was accused. *Smith v. State*, 421 S.W.3d 161, 164 (Tex. App. — San Antonio 2013, no pet.) citing *Williams v. State*, 235 S.W.3d 742, 650 (Tex. Crim. App. 2007).

## **B. Applicable Law**

A person commits murder if he “(1) intentionally or knowingly causes the death of an individual” or “(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.” Tex. Pen. Code §19.02(b)(1) & (2). “A person acts intentionally with respect to ...a result of his conduct when it is his conscious objective or desire to ...cause the result.” *Id.* § 6.03(a). “A person acts knowingly...with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.” *Id.* § 6.03(b). “Murder is a result of conduct offense, which means that the culpable mental state relates to the result of

the conduct, i.e., the causing of the death.” *Schroeder v. State*, 123 S.W.3d 398, 400 (Tex. Crim. App. 2003).

Intent must be proven by circumstantial evidence. *See Hart v. State*, 89 S.W.3d 61, 64 (Tex. Crim. App. 2002) (holding that direct evidence of requisite intent is not required). “A jury may infer intent from any facts which tend to prove its existence, including acts, words, and conduct of the accused, and the method of committing the crime and from the nature of wounds inflicted on the victim.” *Id.*

The Texas Penal Code titled “Self-Defense,” provides in part that “a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect against the other’s use or attempted use of unlawful force. Tex. Penal Code §9.31(a). A person is justified in using deadly force against another if he would be justified in using force, and he reasonably believes deadly force is immediately necessary to protect himself against the other’s use or attempted use of unlawful deadly force. Tex. Penal Code §9.32(a). A “reasonable belief” is defined as one that would be held by an ordinary and prudent person in the same circumstances as the actor. *See* Tex. Penal Code §1.07(a) (42). The evidence does not have to show the victim was actually using or attempting to use unlawful deadly force because a person has the right to defend himself from apparent danger as he reasonably apprehends it. *Hamel v. State*, 916 S.W.2d 491, 493 (Tex. Crim. App. 1996).

In a claim of self-defense, the defendant has the burden of producing some evidence to support a claim for self-defense. *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex.



Crim. App. 2003). The issue of self-defense is a fact to be determined by the trier of fact. *Saxton v. State*, 804 S.W.2d 910, 913 (Tex. Crim. App. 1991). The penal code provides that deadly force used in self-defense is a defense to prosecution for murder if that use of force is “justified.” Tex. Penal Code §9.02 & 9.31.

The defendant’s burden of production requires him to adduce some evidence that would support a rational finding in his favor on the defensive issue. *Broughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018). Once the defendant makes his burden of production, the burden shifts back to the State. *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003). The State's burden of persuasion “is not one that requires the production of evidence; rather it requires only that the State prove its case beyond a reasonable doubt.” *Broughton v. State*, 569 S.W.3d 592, 608–09 (Tex. Crim. App. 2018). In solving the sufficiency of the evidence issue the reviewing court determines whether; after reviewing all of the evidence in the light most favorable to the verdict, any rational trier of fact would have found the essential elements of the offense beyond a reasonable doubt and also would have found against the defendant on the self-defense issue beyond a reasonable doubt. *Broughton*, 569 S.W.3d at 609.

### **C. Application of the Facts**

The State failed to meet their burden of persuasion that Caldwell did not act in self-defense when viewed from his standpoint even in the light most favorable to the verdict.

The evidence before the jury showed, the shooting occurred at night in an area described as “a very crime infested area,” where people hang out and engage in illegal activities including selling drugs. (3 R.R. at 35-37 & 147). It is an area where law enforcement receives many calls from, including calls for service after shootings. (4 R.R. at 121). Detective Thompson testified that people who live in the area are quite often subjected to violence. (4 R.R. at 57 & 60).

What started as a simple car accident escalated quickly. Lucas’ truck blocks the view of the initial contact between Caldwell and Lucas. The first view of both parties shows Caldwell examining the damage and walking calmly toward Lucas’ truck while Lucas walks toward the store. The video shows Lucas was agitated, started to enter the store and came back out yelling at Caldwell. (3 R.R. at 96-97) (State’s Exhibit 19). Bystander witness Williams testified when Caldwell was asking Lucas about car insurance, Lucas refused to cooperate and threatened to beat Caldwell up. (4 R.R. at 154& 161). Williams stated Lucas made aggressive movements towards Caldwell. (4 R.R. at 164). Williams testified Lucas’ aggression was of the type that would cause a normal person to be fearful of Lucas. (4 R.R. at 156). There was also a significant size difference between Caldwell and Lucas. The medical examiner testified there were several different narcotics in Lucas’ system which would have had a synergistic effect and could cause one to be more aggressive. (4 R.R. at 107 & 109). Additionally, the defense produced a self-defense expert, an HPD officer who testified it appeared Lucas

had “a black object inside of his pants” after examining Defense Exhibit 5. (4 R.R. at 131).

The State attempt to meet their burden of persuasion relies on three things: 1) that Caldwell left the scene, 2) that verbal provocation alone is not a justification, and 3) that no weapon was found at the scene. It is true Caldwell left the scene, and flight can be an indication of guilt. However, there are many reasons for flight, including panic and fear. Caldwell is not the only person who fled the scene. The video shows almost everyone left the scene. Surely, they all were not leaving due to being guilty of something. Flight is but one factor that this Court considers in determining sufficiency.

It is also true that verbal provocation alone is not sufficient to justify self-defense. The key word is the code’s use of the word “alone.” It does not say words are not a factor. More importantly, the circumstances here show much more than words. Lucas’ body language raised the stakes. Lucas was slamming the store door open, gesturing and making aggressive movements. (State’s Exhibit 19). Lucas’ aggression, according to the witness, was the type that would cause a normal person to be fearful of him. (4 R.R. at 156). This behavior is disproportionate for an auto accident, especially in light of the fact, that Lucas was the individual at fault.

Throughout the altercation, Caldwell mostly remained towards the back of Lucas’ truck and by Caldwell’s vehicle. (State’s Exhibit 19). Immediately prior to the shooting, Lucas walked towards the back of the truck and Appellant, then turned towards driver’s seat and then turned again toward the back of the truck. (3.R.R. at 90-

91). It was at this moment in time when Caldwell reached into his own vehicle, retrieved his weapon and fired at Lucas. (State's Exhibit 19).

The camera angle from the video does not show whether Lucas reached for the black object Officer Stephenson testified was in Lucas' pants. It is true a weapon was not found, but a bystander tampered with the scene before the police arrived. A man wearing white is seen bending over towards Lucas' body and truck. (State Exhibit 19 camera angle 14 first video timestamp 00:16:46-00:16:55). Neither Davis nor Thompson could rule out that a weapon had been removed from the body or truck. (3 R.R. at 103-104) (4 R.R. at 50).

What is known is the same man then ransacked Lucas' truck and stole things from it. (3 R.R. at 100-101) (State Exhibit 19 camera angle 14 first video timestamp 00:17:06-00:17:17:34). What was taken is unknown. Detective Davis testified the police magnified the video and while they could not "tell exactly what [the man in white removed]..., we clearly could see it was not a weapon." (3 R.R. at 102). This is illogical. If an item cannot be identified, how can a weapon be ruled out when numerous weapons exist that are similar in size as the item taken? Detective Thompson was much more candid and agreed the unknown items taken "could have been a knife that was picked up for all we know." (4 R.R. at 52-53). Finally, Williams' testimony about whether Lucas had a weapon that night or normally carried a weapon is not determinative. Williams said on the night in question he did not see Lucas with a weapon, but he also said he was not looking when the shots were fired. He was walking

away from the two men because Lucas had told him to mind his own business. (4 R.R. at 169-172). As to Lucas' typical behavior concerning carrying a weapon, Williams testified, to his credit, he did not know. (4 R.R. at 153). Williams did not say Lucas did not normally carry a weapon. He said he did not know - those are two different things.

Here, the State did not meet its burden of persuasion in disproving self-defense. No rational trier of fact could have found against Caldwell on the issue beyond a reasonable doubt. Accordingly, the evidence is legally insufficient to support Caldwell's conviction for murder. Caldwell's conviction should be reversed and a judgment of acquittal entered.

#### **PRAYER**

Mr. Caldwell asks this Court to reverse and remand to the trial court for entrance of a judgment of acquittal or for any other relief he may be entitled.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to proposed Rule 9.4(i)(3), undersigned counsel certifies that this brief complies with the type-volume limitations of *Tex. R. App. Proc. 9.4(e)(i)*.

1. Including the portions exempted by *Tex. R. App. Proc. 9.4 (i)(1)*, this brief contains 7,010 words printed in a proportionally spaced typeface.
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3. Undersigned counsel understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in *Tex. R. App. Proc. 9.4(j)*, may result in the Court's striking this brief and imposing sanctions against the person who signed it.

*/s/ Angela Cameron*  
Angela Cameron

## CERTIFICATE OF SERVICE

I certify that on the 13<sup>th</sup> day of March, 2025, a copy of the foregoing instrument has been electronically served upon the Appellate Division of the Harris County District Attorney's Office.

*/s/ Angela Cameron*  
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