No. 01-24-00714-CR
In The Court of Appeals
For the 1st District of Texas

Edwin Henriquez-Cuellar,
Appellant

v.

The State of Texas,
Appellee

On Appeal from Cause Number 1761726
From the 185th District Court of Harris County, Texas

Brief for Appellant

ORAL ARGUMENT NOT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

This appeal is based on the application of settled law to the facts at trial. Appellant does not request oral argument but would welcome the opportunity should the Court determine argument would be helpful to its deliberations and decision.

STATEMENT OF THE CASE

Mr. Henriquez-Cuellar was charged with murder and entered a plea of not guilty (3 R.R. 7-8). On September 12, 2024, a jury found Appellant guilty of murder (C.R. 261). On the same day, the jury assessed punishment at 40 years TDC (C.R. 268). Notice of Appeal was filed on September 16, 2024 (C.R. 277).

ISSUES PRESENTED

1. Where testimony presented circumstantial evidence of Appellant's state of mind: that he was pursued, threatened, and confronted with a hostile altercation, and where that evidence could have led jurors to conclude that Appellant's actions were justified, and if not justified, were instead reckless, was it error for the trial court to refuse to submit the lesser-included charge of reckless manslaughter to the jury?

STATEMENT OF FACTS

This is a case about a single fatal stab wound (4 R.R. 176). The decedent, Alejandro Duran-Mejia was stabbed in a confrontation with Appellant Edwin Henriquez-Cuellar that began over a dispute regarding Nancy Jaimes' and Edwin's daughter E.H. (3 R.R. 96). In the moments before the stabbing, Nancy,

her boyfriend Alejandro, and her son Antonio "Chris" Jaimes[1] pursued and intercepted Edwin's truck in the street, jumped out of their vehicle, and ran to surround Edwin's truck, all angry and yelling (4 R.R. 153). Edwin emerged from his truck on the passenger side (3 R.R. 113) armed with a knife that had a blade approximately 3 inches long (4 R.R. 181). Chris testified that he could tell from Edwin's actions that Edwin thought something was going to happen to him (4 R.R.156).

Surveillance video portrays a confrontation that lasted mere seconds during which Edwin and Alejandro moved together for 4 or 5 steps each with arms up at torso level, then separated (SX 92).[2] The video shows that Alejandro steps back and falls, and Edwin steps backward then walks to his truck (Id.). Neither Chris nor Nancy was looking at the moment the stabbing occurred, and neither Chris nor Nancy knew that Alejandro had been stabbed until Alejandro fell to the ground (4 R.R. 10, 121). Nancy did not even see that Edwin had a knife until Edwin and Alejandro separated and she saw the knife in Edwin's

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[1] There was some confusion at trial between the two names beginning in A and ending in o (e.g. at 4 R.R. 40). To avoid that confusion in this brief, Antonio "Chris" Jaimes will be referred to simply as "Chris."

[2] State's Exhibit 92 was a folder of multiple videos, both edited and unedited (3 R.R. 107). The unedited camera angle that captured that moment of the confrontation and stabbing is in the 3047 Durwood Surveillance folder, file name beginning with "CH03-20220306-215823…" All references to "SX 92" in this brief refer to that video within State's Exhibit 92.

hand (3 R.R. 117). Chris and Nancy recognized the knife as a decorative knife that they had given Edwin as a gift years before (4 R.R. 11; 145-146).

Background

Nancy Jaimes testified that she and Edwin ended their relationship in 2018 but they have a daughter E.H. together (3 R.R. 72). E.H. was 12 years old when the incident occurred (5 R.R. 64). Nancy and Edwin have never had a custody agreement and Nancy was okay with Edwin coming to get E.H. when he wanted (3 R.R. 75). Before the incident, E.H. had been wanting to spend more time with Edwin and had talked to both of her parents about moving in with her father to be able to see him more (5 R.R. 71).

Nancy had been dating her boyfriend Alejandro for about 9 months before the incident (3 R.R. 73). Nancy testified that she did not know until after the incident that Alejandro had been antagonizing Edwin by text message (3 R.R. 96), but she did testify that she had previously instructed Alejandro to stay out of any arguments or relationship she had with Edwin (4 R.R. 56).

Chris, Nancy's son, had moved out of Nancy's house at 15 to live with his own father because he and Edwin did not see eye to eye. (4 R.R. 135).

The day of the incident

On the day of the incident Nancy testified that Edwin had messaged her and picked E.H. up around noon, then E.H. spent the whole day with Edwin

(3 R.R. 88). E.H. contacted her mom to pick her up in the evening because she wanted to go back home (3 R.R. 82-83). Nancy picked Alejandro and Chris up before going together to pick E.H. up from Edwin's house (3 R.R. 85-86). The four then went to have dinner together at Wingstop (3 R.R. 86).

Chris testified that Alejandro had been drinking at the laundromat before Nancy picked him up, and that Alejandro had been drinking from a bottle of tequila in the explorer that night as well (4 R.R. 156, 148). Toxicology later showed that Alejandro was drunk with a BAC of .239 (4 R.R. 178-179).

Shortly after arriving home from Wingstop with E.H., Nancy and Alejandro were sitting in the explorer to smoke (3 R.R. 90). After E.H. and Chris had gone inside, Nancy saw Edwin pull up to her house in a blue truck (Id.). Edwin had called E.H., then arrived at Nancy's house to pick E.H. up; E.H. came out of the house and got into the truck with him (5 R.R. 76). At first Nancy said she was just confused, but she grew concerned because Edwin sped away after picking E.H. up, and because E.H. didn't answer any of the family's phone calls when they tried to call her for an explanation (3 R.R. 94-95).

Finally, Alejandro admitted to Nancy that he knew what was going on and confessed that he had sent antagonizing messages to Edwin, including a photo of E.H. eating food with him at Wingstop and a message taunting Edwin about not paying for his daughter's dinner (3 R.R. 96). E.H. later testified that

she knew the photo had been taken of her and had asked Alejandro to delete it because she knew it would cause problems (5 R.R. 92).

E.H. testified that in the car, her father was asking where Alejandro lived and would not allow her to answer her phone, which she eventually dropped under the passenger seat (5 R.R. 101). E.H. decided to get out of her father's truck and go back to her mother's house (5 R.R. 81-82). Shortly after being picked up by her father, E.H. returned home running on foot and told Nancy that her dad left with her phone and her stuff when she got out of the car (4 R.R. 10). Upon hearing this, Nancy testified that she, Alejandro, and Chris got back in their Explorer to pursue Edwin (3 R.R. 100; 4 R.R. 37). Nancy testified that the intent in jumping in the Explorer was to get E.H.'s things back (Id.). Chris testified that he did not know about E.H.'s things in Edwin's car, but that they intended to catch him and keep him from leaving so Nancy could call the authorities about him speeding off with E. H. (4 R.R. 114).

Nancy saw Edwin's truck and pursued him until she "intercept[ed]" him on Durwood Street two streets over from her home (3 R.R. 100-101). Nancy said that she was angry (4 R.R. 40), Alejandro was drunk (4 R.R. 61), and that Chris had a history of arguing with Edwin and was carrying a butterfly knife (4 R.R. 54-56).

Chris testified that after stopping Edwin he, Nancy, and Alejandro surrounded Edwin's car (4 R.R. 153). He testified that he was on the driver's side, Alejandro was on the passenger's side, and Nancy was standing in front of the truck so that Edwin couldn't leave (Id.). Nancy said she and Chris were yelling at Edwin to give E.H.'s things back (4 R.R. 70). A witness across the street described "yelling and screaming. . . curse words in Spanish. . . curse words in English" (4 R.R. 195-196).

Nancy then testified that Edwin got out of his own truck on the passenger side (4 R.R. 6). The witness across the street testified that he saw a "shoving match" beside the Explorer (4 R.R. 197), then the surveillance video shows the few seconds of Edwin and Alejandro moving together with arms up at torso level (SX 92). The surveillance is not clear enough to depict an identifiable moment or exact manner in which Alejandro was stabbed (Id.)

Nancy did not see the moment of the stabbing (4 R.R. 10). Chris likewise was not looking because he was trying to remove a knife from his own pocket (4 R.R. 121). Nancy testified that she did not see Alejandro or Edwin with weapons, and did not know Edwin had a knife until after Alejandro fell to the ground (5 R.R. 10-11), then she saw Edwin's knife when he was returning to his truck (4 R.R. 30). Nancy and Chris both recognized Edwin's knife as a small

decorative knife that they given to him as a gift years before (4 R.R. 11; 145-146).

Nancy testified that she went to Alejandro's side as he laid on the ground, tried to help him, and then removed "only his cell phone" from his body and immediately walked away (4 R.R. 24). Instead of staying by Alejandro, Nancy went back to the house supposedly to get Chris a fresh shirt (4 R.R. 24). Nancy denied taking anything else from Alejandro's body (4 R.R. 25) and denied going back to the house for anything other than a shirt (4 R.R. 27). She also denied deleting anything from Alejandro's phone (4 R.R. 52), but she admitted that she did use Alejandro's phone to send a text message to Edwin after the incident (4 R.R. 71-72), and that she was reluctant to hand Alejandro's phone over to officers when they demanded it (4 R.R. 52).

Nancy returned to the scene with E.H. and Chris, and all three were present at the scene by the time the first investigating officer arrived (3 R.R. 30).

The Investigation

Investigators at the scene did not observe any weapons on Alejandro or in the Explorer, but they did not search the home where Nancy had returned before investigators arrived (5 R.R. 45). The first investigator on scene spoke to Chris but did not search him because she did not consider him to be a suspect; she did not discover that he had a knife in his pocket (3 R.R. 42). The next

officer to arrive did discover Chris's knife while separating the witnesses (4 R.R. 82), but only took it from him temporarily and did not collect the knife as evidence (4 R.R. 89-90).

When testifying at trial, homicide lieutenant Joshua Barnes testified that from his experience, being chased down by another vehicle and boxed in could be viewed as a threat (5 R.R. 59-60). He also testified that from what he had learned, when Edwin armed himself, he was "either defending himself against Alejandro or against Antonio [Chris]" (5 R.R. 57).

Edwin's testimony

After the jury convicted him, Edwin testified in punishment. He testified that he was "very afraid" when Nancy, Alejandro, and Chris chased him down in his truck (6 R.R. 42). He thought "they were going to hurt me" (Id.) Edwin explained that his truck stalled and he got out of his vehicle to try to get away from them (6 R.R. 44). Edwin testified that he drew his knife in the altercation after Alejandro had hit him, and that the stabbing was a reaction: "I just reacted -- I just reacted. I never meant to hurt the person. I didn't know that it was [Alejandro]" (6 R.R. 45). In closing, defense counsel argued "He wanted you to understand the fear that he felt, even if the fear was misplaced. He wanted you to know he really did feel afraid and he was sorry and he wished he could change it" (6 R.R. 65).

SUMMARY OF THE ARGUMENT

The evidence at trial showed that Mr. Henriquez-Cuellar was threatened when three adults aggressively pursued and confronted him, creating a tense and hostile situation which caused him to react out of fear. During the charge conference, defense counsel asserted that from that evidence the jury could have concluded either that Edwin was acting in self-defense (already included in the court's charge), or alternatively that Edwin was acting recklessly when swinging a knife at close range in the altercation.

By denying the instruction on the lesser-included offense of reckless manslaughter, the court forced the jury into an "all-or-nothing" choice between convicting for murder as-charged or acquitting entirely. This deprived the jury of a reasonable alternative, significantly increasing the likelihood of an unjust conviction on the greater charge despite the circumstances described by witnesses' testimony. Given the low threshold for submitting a lesser charge and the harm caused by its omission, the trial court's error warrants reversal and a new trial.

ARGUMENT AND AUTHORITIES

POINT OF ERROR NUMBER ONE

THE COURT ERRED IN DENYING APPELLANT'S REQUEST FOR A MANSLAUGHTER INSTRUCTION.

1) Preservation of Error

During the conference on the charge, Defense Counsel requested a lesser-included instruction for the offense of manslaughter arguing, "based on what we've heard, there is evidence to show that he was in a confrontation that did not necessarily include him trying to kill anybody," and that "he was reckless instead. . .it was reckless for him to have done so" (5 R.R. 111-112). The trial court responded

> that falls under the second paragraph of murder instruction and [the Court] is not going to provide manslaughter and -- a manslaughter lesser because the Court doesn't find that there's a scintilla of evidence that it would fit the evidence heard by the Court,

and denied the defense request (5 R.R. 113). The Court's reference was presumably to the clause in the jury instructions allowing for a murder conviction "if he intends to cause serious bodily injury and intentionally or knowingly commits an act clearly dangerous to human life that causes the death of an individual" (Jury Charge, C.R. 249). Defense Counsel again objected, emphasizing that Appellant did not have to present evidence for manslaughter to have been raised by the evidence, and

reemphasizing that "he didn't intend to kill" (5 R.R. 113). The charge presented to the jury did not include the requested manslaughter instruction and the jury was not permitted to consider that Mr. Henriquez-Cuellar may have acted recklessly rather than intentionally or knowingly.

2) Relevant Law and Analysis

a) Standard of Review

In analyzing a jury charge issue, an appellate court's first duty is to decide whether error exists, *Ngo v. State*, 175 S.W.3d 738, 743 (Tex. Crim. App. 2005). When determining whether a lesser-included offense should be submitted, the evidence is viewed in the light most favorable toward submitting the lesser-included offense, *Bufkin v. State*, 207 S.W.3d 779, 782 (Tex. Crim. App. 2006). If the defendant objects to an error in the trial court's jury charge, a Court of Appeals will reverse if there is "some harm" to the appellant, *Reeves v. State*, 420 S.W.3d 812, 813 (Tex. Crim. App. 2013).

A trial court must instruct the jury on a lesser-included offense if (1) the offense in question is a lesser included offense under Article 37.09 of the Texas Code of Criminal Procedure and (2) there is some evidence that would permit a rational jury to find that the defendant is not guilty of the greater offense but is guilty of the lesser included offense, *Hayward v. State*, 158 S.W.3d 476, 478 (Tex. Crim. App. 2005); *Moore v. State*, 969 S.W.2d 4, 8 (Tex. Crim. App. 1998). If both requirements of the test are

met, the error is reviewed for harm. *Trevino v. State*, 100 S.W.3d 232, 242 (Tex. Crim. App. 2003).

Because the lesser-included offense of manslaughter meets both requirements of the test and Mr. Henriquez-Cuellar was harmed by the exclusion of the instruction, the judgment and murder conviction must be reversed, and the case remanded for a new trial.

1. Manslaughter is a Lesser-Included Offense of Murder

An instruction is required on a lesser-included offense where the proof required for the greater offense includes the proof necessary to establish the lesser-included offense. *Forest v. State*, 989 S.W.2d 365, 367 (Tex. Crim. App. 1999). An offense is a lesser included offense if it differs from the offense charged only in the respect that a less culpable mental state suffices to establish its commission. Tex. Crim. Proc. Code art. 37.09. In *Cavazos v. State*, 382 S.W.3d 377, 384 (Tex. Crim. App. 2012), the Court found manslaughter was a lesser included offense of murder when the indictment alleged the intent to cause serious bodily injury and the commission of an act clearly dangerous to human life by shooting with a firearm. The Court concluded

> that causing death while consciously disregarding a risk that death will occur differs from intending to cause serious bodily injury with

a resulting death only in the respect that a less culpable mental state establishes its commission.

Id. at 384.

Similarly, in the present case, the indictment authorized a conviction if the jury found Mr. Henriquez-Cuellar intended to cause the complainant serious bodily injury and cause his death by committing an act clearly dangerous to human life, specifically by stabbing him (C.R. 30). Thus, under *Cavazos*, manslaughter is a lesser included offense of murder in this case.

By ruling that the defense request "falls under the second paragraph," which addressed intentionally or knowingly causing serious bodily injury and causing death by committing an act clearly dangerous to human life, the trial court disregarded this important distinction (5 R.R. 113).

2. The evidence supports submitting the lesser included offense of manslaughter to the jury.

The evidentiary threshold is low for the submission of a lesser-included offense

The second prong of the test is satisfied if there is some evidence that would allow "a jury to rationally find that, if the defendant is guilty, he is only guilty of the lesser-included offense." *Bullock v. State*, 509 S.W. 3d 921, 928 (Tex. Crim. App. 2016). This "standard may be satisfied if some evidence refutes or negates other evidence establishing the greater offense or if the evidence presented is subject to different interpretations." *Id.* at 928. To be entitled

specifically to a manslaughter instruction there "must be some affirmative evidence that Appellant did not intend to cause serious bodily injury when he [injured] the victim, and must be some affirmative evidence from which a rational juror could infer that Appellant was aware of but consciously disregarded a substantial and unjustifiable risk that death would occur as a result of his conduct." *Cavazos v. State*, 382 S.W.3d at 385. When "the evidence establishing the lesser-included offense casts doubt on the greater offense, a lesser-included offense instruction allows the jury to vote for a rational alternative" *Quan Nguyen v. State*, No. 14-15-01023-CR, 2017 WL 1540810, at *2 (Tex. App.—Houston [14th Dist.] Apr. 27, 2017, pet. ref'd)(not designated for publication) *citing Forest v. State*, 989 S.W. 2d at, 367.

Anything more than a scintilla of evidence is adequate to entitle a defendant to a lesser charge. *See Goad v. State*, 354 S.W. 3d 443, 446 (Tex. Crim. App. 2011). The evidence more than a scintilla may come from any witness or source of evidence. *See Woodfox v. State,* 742 S.W.2d 408, 410 (Tex.Crim.App.1987), and it is not required that the defendant testify to raise a defensive issue. *Smith v. State*, 676 S.W. 2d 584, 585, 587 (Tex. Crim. App. 1984). It is immaterial whether the evidence is "strong, weak, unimpeached, or contradicted," as long as the evidence exists in the record, *Rousseau v. State*, 855 S.W.2d 666, 672 (Tex. Crim. App. 1993).

Finally, "when inconsistent evidence elicited at trial supports more than one defensive theory, the defendant is entitled to an instruction on every theory raised, even if the defenses are themselves inconsistent or contradictory." *Johnson v. State*, 271 S.W. 3d 359, 362 (Tex. App. –Beaumont 2008, pet. ref'd) *citing Booth v. State*, 679 S.W. 2d 498, 501 (Tex. Crim. App. 1984).

These broad rules exist to prevent trial courts from substituting their weight and credibility judgments for those of the jury, *see Granger v. State,* 3 S.W. 3d 36, 38 (Tex. Crim. App. 1999)("When a judge refuses to give an instruction on a defensive issue because the evidence supporting it is weak or unbelievable, he effectively substitutes his judgment on the weight of the evidence for that of the jury.").

Recklessly swinging a knife without intent to kill supports the submission of a manslaughter instruction

The Court of Criminal Appeals has opined that a single fatal stab wound could allow a jury to find a defendant guilty of only manslaughter if the evidence showed that the stabbing was a reckless response to the circumstances: "[s]ome people intend to kill by stabbing another person a single time, while other people might stab a person only once while recklessly swinging a knife, and they have no intent to kill the person." *Ritcherson v. State*, 568 S.W.3d 667, 678 (Tex. Crim. App. 2018). The Court in *Ritcherson* found that the appellant's statement that her action was a "reflex" did not sufficiently raise such a fact scenario, *Id.*

at 677, but caselaw from around the state presents multiple examples of cases in which a jury found that a single fatal stab wound resulted from reckless actions of the accused.

The 14th Court of Appeals observed that evidence of "bringing up," "flicking" or "thrusting" a six-inch knife at close range in an altercation without the intention to harm the complainant was "some evidence that his actions were reckless" to support a manslaughter instruction but was also an act clearly dangerous to human life and thus did not permit an aggravated assault instruction; the court consequently affirmed the appellant's manslaughter conviction. *Quan Nguyen v. State*, 2017 WL 1540810, at *3; *see also Ojeda v. State,* No. 08-15-00305-CR, 2017 WL 3405313, at *2 (Tex. App.—El Paso Aug. 9, 2017, pet. ref'd)(not designated for publication)(affirming Jury's manslaughter verdict when the facts showed that appellant gained control of the complainant's knife during an altercation and "somehow" stabbed him once, killing him.)

Evidence of an altercation can negate that a stabbing was knowing or intentional, allowing a jury to determine whether it was instead either reckless or justified

Similarly, the Eastland Court of Appeals found that "common sense dictates that the act of poking a knife at someone in an altercation will support a finding of reckless conduct" as a rational alternative for conviction for the greater offense of murder although a jury has rejected a self-defense argument:

"a rational trier of fact could have found the essential elements of manslaughter beyond a reasonable doubt while rejecting appellant's claim of acting in self-defense." *Rhynes v. State*, No. 11-03-00391-CR, 2005 WL 2952377, at *4 (Tex. App.—Eastland Nov. 3, 2005, pet. ref'd)(not designated for publication; overruled as to factual sufficiency review standard). Given the context of previous threats and the immediate circumstances of a physical struggle, a jury that does not find the defendant's actions were immediately necessary or justified may nevertheless find that they were instead reckless. *Id.*

Evidence of a pursuit, threatening behavior, and an ensuing altercation were some evidence that Appellant was acting recklessly when swinging a knife

In the present case, there was affirmative evidence regarding the circumstances of the stabbing that negated the State's claim that the stabbing was intentional or knowing. The evidence presented at trial showed that Mr. Henriquez-Cuellar was pursued by three angry adults who jumped out of their vehicle and surrounded his truck on three sides (4 R.R. 153). One pursuer, Alejandro, was drunk with a BAC of .239 (4 R.R. 178-179); and another, Chris, was armed (3 R.R. 55). Edwin avoided Chris, the larger man at his driver side door (4 R.R. 40-41), and exited his vehicle on the passenger side armed with a knife with an approximately three-inch blade (4 R.R. 6, 181-182).

The State's own evidence and argument established that Edwin's pursuers made mistakes (5 R.R. 129, 137). The State even argued that the circumstances

justified Edwin in arming himself with a knife as when he got out of his truck (5 R.R. 136-137).

Chris testified that from Edwin's actions it looked like Edwin thought something was going to happen to him (4 R.R. 156). Edwin swung his knife at Chris when he came near, then engaged in a struggle with Alejandro (4 R.R. 119-120). Witnesses described Alejandro as having his hands "up," but up at torso level blocking and engaging in a struggle, not up above his head in surrender (4 R.R. 120-121; SX 92). Within seconds of the struggle beginning, Alejandro had been stabbed once in the chest, and Edwin backed away and left (SX 92).

Although the jury did not find that Edwin was justified in acting in self-defense, they could have rationally concluded that the circumstances caused him to wield his knife recklessly and in close range out of fear from the threatening behavior, pursuit, and ensuing altercation. Without a manslaughter instruction, the jury did not have a "rational alternative" between acquittal and intentional murder that would still give significance to these circumstances.

3.) Harm Analysis

If error is found in the charge, the degree of harm necessary for reversal depends on whether the appellant objected to the charge during trial. *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984). If the error in the charge was timely objected to, reversal is required so long as the error is not harmless.

Id. The error is not harmless if it is "calculated to injure the rights of the defendant." *Id.* Trial counsel properly objected to the error in the charge during trial. (5 R.R. 111-113). Therefore, Mr. Henriquez-Cuellar is entitled to reversal so long as the error was not harmless.

The defendant's harm must be calculated in light of the entire jury charge, the state of the evidence, the argument of counsel, and any other relevant information revealed by the trial record. *Id.* Harm exists when the penalty imposed for the charged offense exceeds the potential penalty for the lesser-included offense. *Williams v. State*, 314 S.W.3d 45, 53 (Tex. App. – Tyler 2010, pet. ref'd), *Benge v. State*, 94 S.W.3d 31, 37 (Tex. App. – Houston [14th Dist.] 2002, pet. ref'd) Murder is a first-degree felony, while manslaughter is a second-degree felony. Tex. Pen. Code §§19.02, 19.04. The maximum punishment range for a second-degree felony is 20 years, half of the 40-year punishment ultimately imposed. Tex. Pen. Code §12.33(A).

Harm also generally exists when whenever the failure to submit a lesser included offense leaves the jury with the sole option of either convicting defendant of the greater offense or acquitting him. *Saunders v. State*, 913 S.W.2d 564, 571 (Tex. Crim. App. 1995). There were no other lesser-included offenses provided to the jury, therefore the harm caused by the failure to instruct the jury was not otherwise mitigated. *C.f. Id.* at 572 (where jury already rejected the lesser-included charge of involuntary manslaughter, it is less likely that the

defendant was harmed by a rejection of a second lesser-included offense of negligent homicide in the jury charge). Instead, the defense had to focus their closing argument on an all-or-nothing self-defense strategy (5 R.R. 127). A jury uncomfortable with outright acquittal had no rational alternative to account for the pursuit, threat, and altercation evidence provided by the witnesses at trial. The failure to include an instruction on the lesser-included offense of manslaughter was harmful. *Bridges v. State*, 389 S.W.3d 508, 513 (Tex. App. – Houston [14th Dist.] 2012, no pet.).

Because the trial court erred in denying his request for a manslaughter instruction, and because that denial caused him harm, Mr. Henriquez-Cuellar respectfully asks this Court to sustain his point of error, reverse his conviction and order a new trial.

CONCLUSION AND PRAYER

For the reasons stated above, Edwin Henriquez-Cuellar prays that this Honorable Court sustain his point of error, reverse the judgement of conviction entered below, and grant him a new trial.

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I certify that the foregoing brief was electronically served via Texas e-file on the Harris County District Attorney on the day the brief was filed.

/s/ Amanda Koons
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Amanda Koons

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i) (3), undersigned counsel certifies that this brief complies with all form requirements of TEX. R. APP. PROC. 9.4.

Exclusive of the portions exempted by TEX. R. APP. PROC. 9.4 (i)(1), this brief contains 4,555 words printed in a proportionally spaced typeface.

/s/ Amanda Koons
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