No. 01-24-00301-CR

In the
Fourteenth Court of Appeals
For the
State of Texas

———♦———

Cause No. 1740809
In the 182nd District Court
Of Harris County, Texas

———♦———

CAMERON DAVIS
Appellant
v.
THE STATE OF TEXAS
Appellee

———♦———

APPELLANT'S BRIEF

———♦———

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ORAL ARGUMENT NOT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 38.1(e), the Appellant does not request oral argument.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.1(a), a complete list of the names of all interested parties is provided below.

Trial Judge:	Honorable Danilo Lacayo Presiding Judge, 182nd District Court Harris County, Texas
Appellant:	Cameron Davis TDCJ No. 02499368 TDCJ – Memorial Unit 59 Darrington Road Rosharon, Texas 77583
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STATEMENT OF THE CASE

On March 8, 2022, Appellant was charged by indictment with the felony offense of murder. (CR 24). A jury was selected on April 1, 2024, and sworn on April 2, 2024. (CR 166-74; 2RR 4-227; 3RR 47). On April 4, 2024, the jury found Appellant guilty as charged in the indictment and the trial court assessed punishment at confinement in the Texas Department of Criminal Justice—Institutional Division for life. (CR 190-93; 5RR 56; 6RR 117-18). On April 5, 2024, the trial court certified Appellant's right to appeal, Appellant filed notice of appeal, and the trial court appointed appellate counsel. (CR 195, 198-99, 201-202).

ISSUES PRESENTED

First Issue: Did the trial court err when it failed to instruct the jury that their verdict must be unanimous as to which, if any, of the two alleged offenses had been committed, denying Appellant of his right to a unanimous verdict?

Second Issue: Did the trial court abuse its discretion when it denied Appellant's motion to suppress an out-of-court identification of Appellant?

Third Issue: Was the evidence sufficient to convict Appellant?

STATEMENT OF FACTS

On September 23, 2021, Complainant Ryniscia Sanford was shot and killed at the 910 Cyress Station apartment complex in Houston, Harris County, Texas. (CR 24). Surveillance video gathered from the location showed the complainant being chased by a man and then shot several times. (3RR 166-235; 4RR 129-201). A maintenance man, Carlos Umana, was cleaning carpet at the complex at the time of the incident. (3RR 60-75). Umana recalled a woman running into the apartment he was servicing and being followed by a man with a firearm. (3RR 62-64). Umana described the gunman as a black male with long braids. (3RR 64). A resident at the apartment complex, Samantha Wyble, observed a disturbance between the complainant and the gunman from her apartment balcony. (3RR 77-98). Wyble described the suspect as having short or shaved hair. (3RR 81). Wyble identified Appellant in a photo array, citing 65% certainty in her selection. (3RR 88-89). Umana also identified Appellant in a photo array, but no other details were provided. (3RR 67). Both testified at trial and identified Appellant in the courtroom. (3RR 67-68, 90).

Evidence was presented by a friend of the complainant, Margaret Washington, that the complainant and Appellant had been in a dating relationship. (3RR 142-165). Washington testified that on the day of the incident, she was on the phone with the complainant for approximately 30 minutes before she heard a male voice in the car that she recognized as "King." (3RR 145). Washington said the complainant referred to Appellant as "King," though another witness averred that Appellant's nickname was "Pokey" and that no one calls him "King." (4RR 205-07).

A single fingerprint matching Appellant's right hand was lifted from the outside of the complainant's vehicle. (3RR 220-21, 248-54). On surveillance video, the gunman touched the vehicle with his left hand. (3RR 256; 4RR 165). The gunman fled the scene and was seen behind a nearby strip center; a firearm was retrieved from the area. (3RR 259-67). Casings gathered from the crime scene and fragments recovered from autopsy were found to have been fired from the recovered firearm. (4RR 87-119).

Appellant did not testify; he maintains his innocence.

SUMMARY OF THE ARGUMENTS

First Point of Error: The trial court erred when it failed to instruct the jury that their verdict must be unanimous as to which, if any, of the two alleged offenses had been committed, denying Appellant of his right to a unanimous verdict. Accordingly, Appellant's murder conviction should be reversed and remanded for a new trial.

Second Point of Error: The trial court abused its discretion when it denied Appellant's motion to suppress an out-of-court identification of Appellant. Accordingly, Appellant's murder conviction should be reversed and remanded for a new trial.

Third Point of Error: The evidence is not sufficient to support Appellant's conviction. Accordingly, Appellant's murder conviction should be vacated and an acquittal entered.

———————♦———————

APPELLANT'S FIRST POINT OF ERROR

The trial court erred when it failed to instruct the jury that their verdict must be unanimous as to which, if any, of the two alleged offenses had been committed, denying Appellant of his right to a unanimous verdict.

The court's charge denied Appellant the right to a unanimous verdict guaranteed by TEX. CONST. art. V, §13 and TEX. CODE CRIM. PROC. art. 36.29(a). Because the court charged the jury in the disjunctive, it allowed the jury to find the Appellant guilty of murder if they found (1) that he either intentionally or knowingly caused a death of the

complainant, *or* (2) that he intended to cause serious bodily injury and intentionally or knowingly committed an act clearly dangerous to human life that caused the death of the complainant. This charge permitted the jury to convict Appellant without reaching a unanimous verdict as to which paragraph in the indictment the State had proven beyond a reasonable doubt.

Appellant is cognizant that this issue has been raised and rejected by appellate courts. *Yost v. State*, 222 S.W.3d 865 (Tex.App.—Houston [14th Dist.] 2007, pet. ref'd)("[J]urors are not required to agree on the defendant's specific mental state; rather, they need only agree that the defendant possessed one of the alternate mental states that satisfy the element of intent under the statute."). Appellant urges this Court to reanalyze and reconsider its holding.

STANDARD OF REVIEW

Jury charge error is governed by article 36.19, TEX. CODE CRIM. PROC., which states:

> Whenever it appears by the record any criminal action upon appeal that any requirement of Articles 36.14, 36.15, 36.16, 36.17, and 36.18 has been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of defendant, or unless it appears from the record

> that the defendant has not had a fair and impartial trial. All objections to the charge and to the refusal of special charges shall be made at the time of the trial.

If a timely objection is made to the proposed jury charge, or a special charge is requested and denied, reversal is required, absent harmless error. *Almanza v. State*, 686 S.W.2d 157, 171 (Tex.Crim.App. 1985)(op. on reh'g). If no objection is made, reversal is only proper if the error is so egregious and created such harm that the defendant did not receive a fair and impartial trial. *Id.*

Whether the reviewing court is looking for "some harm" or for "egregious harm," the actual degree of harm "must be assayed in light of the entire jury charge, the state of the evidence, including the contested issues and weight of probative evidence, the argument of counsel and any other relevant information revealed by the record of the trial as a whole." *Id.*; *see also Ovalle v. State*, 13 S.W.3d 774, 786 (Tex.Crim.App. 2000)(per curiam).

ERROR WAS PRESERVED

During the charge conference after both sides had rested and closed, the trial court provided the parties with the standard boilerplate jury charge used in Harris County murder trials.

The abstract portion of the court's charge read as follows:

> Our law provides that a person commits the offense of murder if he intentionally or knowingly causes the death of an individual; or 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.

(CR 182).

In the application section, the trial court submitted two different ways of committing murder, in the disjunctive:

> Now, 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, Cameron Davis, did then and there unlawfully, intentionally or knowingly cause the death of Ryniscia Sanford, by shooting Ryniscia Sanford with a deadly weapon, namely, a firearm; or
>
> 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, Cameron Davis, did then and there unlawfully intend to cause serious bodily injury to Ryniscia Sanford, and did cause the death of Ryniscia Sanford by intentionally or knowingly committing an act clearly dangerous to human life, namely, by shooting Ryniscia Sanford with a deadly weapon, namely, a firearm, then you will find the defendant guilty of murder, as charged in the indictment.

(CR 183-84).

The word "unanimous" appeared only twice in court's charge. First, when instructing the jury to select a foreperson. (CR 188). And second, at the end, where it states, "Your verdict must be by a unanimous vote of all members of the jury." (CR 189).

Appellant made the following objection to the court's charge and requested the following special instruction:

> MR. J. VELA: Defense has one objection, your Honor. Under the 6th Amendment, the Texas Constitution, and the U.S. Constitution, the defense makes the following argument.
>
> The State has pled under the indictment two ways to commit murder, essentially manner and means is how defense would characterize it. So, intentional and knowingly commit murder or act clearly dangerous. What this allows the jury to do is to convict and not be unanimous. In other words, some can be for intentional and knowingly and others can be for act clearly dangerous. Defense would argue that this is a violation of the defendant's rights under the 6th Amendment, Texas Constitution, and U.S. Constitution because it does not require that the jury be unanimous as to whether it's unanimous in intentional killing or unanimous act clearly dangerous to human life. Defense makes this argument because

under the murder statute, 19.02(b)(1), is one way to commit murder under the statute and 19.02(b)(2) is another way to commit murder. Essentially, it's not two manner and means. They're two actually two separate statutory provisions for murder. And defense would argue that allowing the jury to – for some of them to vote guilty on intentional killing and some of them to vote guilty on act clearly dangerous violates the defendant's rights and it should be unanimous as to intentional or unanimous as to act clearly dangerous.

So, on Page 2 defense submits the following proffer. It would be Paragraph -- one, two, three -- 4, starting with, Now. Defense would argue it should read, Now if you unanimously find from the evidence beyond a reasonable doubt that on the date in question it was an intentional or knowingly caused the death. And then on the next paragraph it should read, defense would proffer, If you unanimously find from the evidence that it was, to wit, an act clearly dangerous to human life. Currently it leaves out the unanimity instruction, and defense would argue that it violates defendant's rights as a 6th Amendment issue as well as the progeny of Texas Constitution and U.S. Constitutional cases. Here ends my proffer.

(4RR 211-212)(sic).

The judge denied Appellant's request. (4RR 212).

THE RIGHT TO JURY UNANIMITY

The jury's verdict must be unanimous in all criminal cases. *See Ngo v. State*, 175 S.W.3d 738, 745 (Tex.Crim.App. 2005)("Under our state constitution, jury unanimity is required in felony cases…"). A unanimous jury verdict, "ensures that the jury agrees on the factual elements underlying an offense," requiring, "more than mere agreement on a violation of a statute." *Francis v. State*, 36 S.W.3d 121,125 (Tex.Crim.App. 2000). When the State charges an individual with different criminal acts, regardless of whether they constitute violations of the same or different statutory provisions, the jury must be instructed that it cannot return a guilty verdict unless it unanimously agrees upon the commission of any one of the criminal acts. *Id.*

It is true that a trial court may submit a disjunctive jury charge and obtain a general verdict where the alternate theories involve the commission of the "same offense." *Id.* at 124; *Kitchens v. State*, 823 S.W.2d 256, 258 (Tex.Crim.App. 1991). But in this case, because the charge defined murder through separate theories with separate mental

states and elements, the two methods of committing murder were not the "same offense." The jury should have been required to unanimously agree that the State proved the elements of one offense.

The Court of Criminal Appeals carefully dissected the Texas murder statute in *Lugo-Lugo v. State*, 650 S.W.2d 72, 81 (Tex.Crim.App. 1983):

> "Murder under Section 19.02(a)(1)[1], (supra, by knowingly causing death, contemplates both the commission of an act clearly dangerous to human life and an awareness of the nature of that act. Applying the definition of 'knowingly,' a person knowingly causes death 'when he is aware that his conduct is reasonably certain to cause the result.' Section 6.03(b), supra. In a prosecution under Section 19.02(a)(1), it surely cannot be inferred that the individual was reasonably certain his conduct would result in death unless his conduct in causing death was clearly dangerous to human life. Thus, with respect to a murder under Section 19.02(a)(1), supra, the act, by necessity, must be objectively clearly dangerous to human life and the individual, by definition, must subjectively be aware that the act resulting in the death was clearly dangerous to human life.
>
> We also note that murder under Section 19.02(a)(2) (, supra, is a "result" type of a crime. It is committed when (1) the *individual intends to cause serious bodily injury,* (2) commits an act clearly dangerous to human life that (3) causes the death of an individual. If we apply the definitions of "intent" under Section 6.02(a) and serious bodily injury under V.T.C.A. Penal Code, Section 1.07(a)(34) we conclude that a prosecution under Section 19.02(a)(2), supra, must first show

[1] Now TEX. PENAL CODE sec. 19.02(b)(1) and 19.02(b)(2).

> that the individual, acting with the conscious objective or desire to create a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of any bodily member or organ, caused the death of an individual. Thus, the first element of prosecution under Section 19.02(a)(2) is satisfied.
>
> The second element of prosecution under Section 19.02(a)(2) *requires a showing that the individual commits an act clearly dangerous to human life,* i.e., it requires that the act intended to cause serious bodily injury be objectively *clearly dangerous to human life.* Because the definition of serious bodily injury includes serious permanent disfigurement and protracted loss or impairment of a bodily member or organ, it does not necessarily follow that an act that intended to cause serious bodily injury was also intended to be clearly dangerous to human life. Since an act that was intended to cause serious bodily injury may not have been intended to be clearly dangerous to human life, the statute requires that the character of the act be measured by an objective standard. **Thus, while an individual may be convicted of murder under Section 19.02(a)(1), supra, by intending to cause death notwithstanding that the act resulting in death was not objectively clearly dangerous to human life, the individual could not be convicted of murder under Section 19.02(a)(2), supra, by intending to cause serious bodily injury unless the act resulting in death was objectively clearly dangerous to human life**."

Lugo-Lugo, 650 S.W.2d at 81 (emphasis added).

Thus, intentional murder and an intentional act that results in death are distinct offenses. *See Plunkett v. Estelle*, 709 F.2d 1004, 1010 (5th Cir. 1983), cert. denied*; McKaskle v. Plunkett*, 465 U.S. 1007 (1984).

They have different elements that the State must prove. *See Brown v. State*, 955 S.W.2d 276, 284 (Tex.Crim.App. 1997); *see also Fazzino v. State*, 531 S.W.2d 818, 820 (Tex.Crim.App. 1976)(holding that intent to kill is not an element of murder charged under sec. 19.02(b)(2)).

Though the punishment range stays the same, there is an appreciable difference in culpability between an intentional killing and intentional, harmful conduct that results in death. This difference matters. Not requiring unanimity lessens the State's burden of proof and provides the jury a *choice* – something that does not exist in any other case. Requiring unanimity reshapes the approach to trial – from trial strategy to approaches to the punishment phase of trial.

Therefore, the trial court erred in denying Appellant's special jury instruction requiring juror unanimity as to the definition of murder they believed had been committed. Appellant's case should be reversed and remanded for a new trial.

APPELLANT'S SECOND POINT OF ERROR

The trial court abused its discretion when denied Appellant's motion to suppress the out-of-court identification of Appellant.

Appellant objected to the admission of the out-of-court identification of Appellant by Carlos Umana ("Umana"). (3RR 16-41). During a hearing outside the presence of the jury, Umana testified that he was cleaning carpet in apartment 310 when an unidentified woman ran inside the apartment, followed by a man with a firearm. (3RR 27). Umana described the suspect as having long braided hair. (3RR 34). Numerous surveillance videos from the apartment complex depict a male – who the State identified as the shooter – with short or shaved hair.

Deputy A. Vera ("Vera"), Harris County Sheriff's Office, testified that he prepared a photo array containing Appellant's photograph. (3RR 18, 21, 25). Vera testified that he utilized a database to find five (5) other individuals with similar characteristics to Appellant to use as fillers. (3RR 18-19, 22-24). The photo array created by Vera contained six (6) men with varying lengths of braids. When Umana was presented with the photo array by Harris County Deputy A. Hinojosa, he selected Appellant's image and noted, "I saw him with a firearm." (3RR 20, 28-

29, 31-34). Importantly, Umana did not see the complainant get shot. (3RR 33).

When asked to make an in-court identification, Umana was asked, "Do you see the individual that you selected [in the photo array] in the courtroom today?" (3RR 30). He identified Appellant.

Appellant's hair was in braids at the time of trial. (3RR 31).

STANDARD OF REVIEW

A trial court's denial of a motion to suppress is reviewed for an abuse of discretion. *Furr v. State*, 499 S.W.3d 872, 877 (Tex. Crim. App. 2016). A pre-trial identification procedure may be so suggestive and conducive to a mistaken identification that subsequent use of this identification at trial would deny the accused due process. *Barley v. State*, 906 S.W.2d 27, 32–33 (Tex.Crim.App.1995); *Mendoza v. State*, 443 S.W.3d 360, 363 (Tex.App.—Houston [14th Dist.] 2014, no pet.). An appellate court reviews *de novo* the question of whether a particular pre-trial identification procedure amounted to a denial of due process. *Mendoza*, 443 S.W.3d at 363; *see Gamboa v. State*, 296 S.W.3d 574, 581 (Tex.Crim.App. 2009)(applying standard in context of reviewing ruling

"on how the suggestiveness of a pre-trial photo array may have influenced an in-court identification").

In making this determination, the reviewing court uses a two-step process: (1) first, determine if the pre-trial identification procedure was impermissibly suggestive; and (2) if it was, then determine if the impermissibly suggestive nature of the pre-trial identification gave rise to a substantial likelihood of irreparable misidentification. *Mendoza*, 443 S.W.3d at 363; *Burkett v. State*, 127 S.W.3d 83, 86 (Tex.App.—Houston [1st Dist.] 2003, no pet.). Appellant bears the burden of establishing, by clear and convincing evidence, that the pretrial identification procedure was impermissibly suggestive. *Burkett*, 127 S.W.3d at 86 (citing *Barley*, 906 S.W.2d at 33–34).

ERROR WAS PRESERVED

After the jury was selected but prior to the start of evidence, Appellant requested an identification hearing outside the presence of the jury. (3RR 12). During the hearing, Appellant argued that the second out-of-court identification of Appellant, made by Umana, should be suppressed, as it was not properly administered and was impermissibly

suggestive. (3RR 37-40). The trial court denied Appellant's motion. (3RR 41).

Appellant referenced his objection to the photo array when it was admitted during trial. (3RR 109).

ANALYSIS

"Reliability is the linchpin in determining admissibility of identification testimony. *Nunez-Marquez v. State*, 501 S.W.3d 226, 237 (Tex.App.—Houston [1st Dist.] 2016)(*quoting Burkett*, 127 S.W.3d at 88). The following non-exclusive factors are considered in a reliability analysis:

> (1) the opportunity of the witness to view the [suspect] at the time of the crime;
> (2) the witness' degree of attention;
> (3) the accuracy of the witness' prior description of the [suspect];
> (4) the level of certainty demonstrated by the witness at the confrontation; and
> (5) the length of time between the crime and confrontation.

Ibarra v. State, 11 S.W.3d 189, 195 (Tex.Crim.App. 1999)(internal quotations omitted)(citing *Manson v. Brathwaite*, 432 U.S. 98 (1977); *Neil v. Biggers*, 409 U.S. 188, 199 (1972).

1. Opportunity of the witness to view the suspect at the time of the crime.

Umana testified during the identification hearing that he saw the man who entered the apartment for "one minute," and that the man was a short distance from him, facing him directly. (3RR 36-37). Umana had ample time and positioning to observe the man's face.

2. Witness' degree of attention.

Umana was unable to provide many other details about the man who entered the apartment, but he was certain the man had long braids and remained certain throughout the hearing and trial. (3RR 31-32, 69, 72-73).

3. Accuracy of the witness' prior description of the suspect.

Umana's description of the man's hair was wholly inconsistent with the images caught on surveillance video of the suspect, confirming the inaccuracy and unreliability of his description and later identifications.

4. Level of certainty demonstrated by the witness at the confrontation.

Umana was not asked and did not indicate a percentage of certainty when he viewed the photo array and identified Appellant. (3RR 34-35).

5. Length of time between crime and confrontation.

The photo array was shown to Umana six days after the robbery. (3RR 22). Appellant had already been arrested and charged. (4RR 182-83). Vera testified that the case had garnered a lot of media attention between the date of the incident and the day Umana was presented with the photo array. (3RR 22).

The majority of the *Biggers* factors weigh against the reliability of Umana's identification. *See Biggers*, 409 U.S. at 199–200; *Brathwaite*, 432 U.S. at 114–16; *Delk v. State*, 855 S.W.2d 700, 706 (Tex.Crim.App. 1993); *Wilkerson v. State*, 901 S.W.2d 778, 782 (Tex.App.—Beaumont 1995). From the outset, when Umana described the man who entered the apartment as having long braids, but the surveillance video depicted a man with a nearly shaved head, Umana's ability to identify the suspect became inherently unreliable.

The photo array presented to Umana contained six (6) men with varying lengths of braids – consistent with his description of the man he saw, but wholly inconsistent with the individual seen on surveillance. (3RR 22); *State's Exhibit 104*. Additionally, Appellant was the only person in the photo array wearing a red shirt. (3RR 24).


PHOTO SPREAD

#1 DATE
INITIALS
NOTES

#2 DATE
INITIALS
NOTES

#3 DATE
INITIALS
NOTES

#4 DATE 9-29-21
INITIALS C.U
NOTES

#5 DATE
INITIALS
NOTES

#6 DATE
INITIALS
NOTES

AGENCY _____ TIME PHOTO SPREAD SHOWN _____ VIEW BY _____

OFFICER _____ DATE PHOTO SPREAD SHOWN _____ DATE OF OFFENSE_____

The photo array presented to Umana was not conducted in conformance with the Texas Code of Criminal Procedure. The law requires that photographs used in a photo array – for the suspect and for fillers – be "consistent in appearance with the description of the alleged perpetrator," and "not make the suspect noticeably stand out." TEX. CODE CRIM. PROC. art. 38.20 §3(c)(2)(A). Additionally, article 38.20 §3(d) mandates that a witness who makes an identification "be asked immediately after the procedure to state, in the witness's own words, how confident the witness is in making the identification." TEX. CODE CRIM.

PROC. art. 38.20 §3(d). Though a violation of the statute does not bar admission, the manner in which this photo array was prepared and presented underscores its unreliability. TEX. CODE CRIM. PROC. art. 38.20 § 5(b).

Because the trial court erred in denying Appellant's motion to suppress Umana's out-of-court identification, Appellant's conviction should be reversed, and his case remanded for a new trial.

APPELLANT'S THIRD POINT OF ERROR

The evidence is insufficient to support Appellant's conviction.

In a plurality opinion, the justices of the Court of Criminal Appeals concluded that the *Jackson v. Virginia* legal sufficiency standard is the only standard for determining whether the evidence was sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 894-895 (Tex.Crim.App. 2010)(citing *Jackson v. Virginia,* 443 U.S. 307, 319 (1979). In a sufficiency review, an appellate court views all evidence in the light most favorable to the verdict and determines whether any rational trier of fact could have found the essential elements of the

offense beyond a reasonable doubt. *Salinas v. State*, 163 S.W.3d 734, 737 (Tex.Crim.App. 2005).

Evidence is insufficient under this standard in four circumstances: (1) the record contains no evidence probative of an element of the offense; (2) the record contains a mere "modicum" of evidence probative of an element of the offense; (3) the evidence conclusively establishes a reasonable doubt; and (4) the acts alleged do not constitute the criminal offense charged. *See Jackson,* 443 U.S. at 314, 318 n.11, 320; *Laster v. State*, 275 S.W.3d 512, 518 (Tex.Crim.App. 2009); *Mottin v. State*, 634 S.W.3d 761, 765 (Tex.App.—Houston [1st Dist.] 2020, pet. ref'd).

A murder conviction may be based on circumstantial evidence. *See Temple v. State*, 390 S.W.3d 341, 359 (Tex.Crim.App. 2013)(citing *Clayton v. State*, 235 S.W.3d 772, 778 (Tex.Crim.App. 2007)). "Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex.Crim.App. 2007). "Each fact need not point directly and independently to guilt if the cumulative force of all incriminating

circumstances is sufficient to support the conviction." *Nisbett v. State*, 552 S.W.3d 244, 262 (Tex.Crim.App. 2018).

But the evidence must be reliable.

The investigation into Ms. Sanford's death was rushed and incomplete. Appellant was arrested and charged with the offense within 24 hours of its commission. No direct evidence established Appellant as the individual who caused the death of the complainant.

The State's evidence consisted of numerous surveillance videos from the apartment complex. The videos were grainy and bore inconsistent timestamps, and captured a suspect whose face was never clearly seen and whose description varied from witness to witness. Umana consistently described a man with long braids – clearly not the man in the video. The other eyewitness, Wyble, gave a description that more closely matched the individual on the surveillance video but was only 65% sure of her identification at the time it was made. Two and a half years later, she testified inexplicably that she was now "100% certain."

The recovered firearm, believed to have been used to shoot the complainant, was never linked to Appellant. Phones were seized, a

potential treasure trove of data from text messages to social media interactions to call logs to geolocation, but none was introduced. Crime scene investigators and medical examiners gathered evidence and swabbed items for DNA, but none were tested for its presence or compared to potential suspects. Evidence was presented that a single fingerprint from Appellant's right hand was lifted from the exterior of the complainant's vehicle, but the surveillance video clearly showed the suspect touching the vehicle with his left hand, not his right.

Simply stated, the State's evidence did not establish beyond a reasonable doubt that Appellant was the person on the surveillance video. The State's evidence did not establish beyond a reasonable doubt that Appellant shot and killed the complainant. It did not establish Appellant's guilt to the exclusion of others.

Accordingly, the evidence is insufficient to support the jury's verdict, and Appellant's conviction should be reversed and a judgment of acquittal entered.

CONCLUSION & PRAYER

It is respectfully submitted that the trial court erred when it failed to instruct the jury that their verdict must be unanimous as to which, if

any, of the two alleged offenses had been committed, denying Appellant of his right to a unanimous verdict. Accordingly, Appellant's murder conviction should be reversed and remanded for a new trial.

It is further respectfully submitted that the trial court abused its discretion when it denied Appellant's motion to suppress an out-of-court identification of Appellant. Accordingly, Appellant's murder conviction should be reversed and remanded for a new trial.

It is further respectfully submitted that the evidence is not sufficient to support Appellant's conviction. Accordingly, Appellant's murder conviction should be vacated and an acquittal entered

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been delivered to the Harris County District Attorney's Office via e-filing on April 8, 2025.

/s/ Inger H. Chandler
INGER H. CHANDLER

CERTIFICATE OF COMPLIANCE

This is to certify that this brief complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), if applicable, because it contains 5,632 words according to the word count on Microsoft Word.

/s/ Inger H. Chandler
INGER H. CHANDLER

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jessica Caird	24000608	caird_jessica@dao.hctx.net	4/8/2025 10:09:47 PM	SENT