

No. 01-24-00308-CR

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IN THE FIRST COURT OF APPEALS  
AT HOUSTON, TEXAS

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JOSE FELICIANO CASANOVA,

Defendant-Appellant

vs.

THE STATE OF TEXAS,

Plaintiff-Appellee

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On Appeal from the 25<sup>th</sup> District Court  
of Colorado County, Texas  
Hon. William D. Old, Presiding  
Trial Court Cause No. 21-153

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APPELLANT'S BRIEF

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**Oral Argument  
Conditionally Requested**

## **Identity of Parties and Counsel**

No. 01-24-00308-CR; *Jose Feliciano Casanova v. The State of Texas*

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APPELLANT’S BRIEF

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Statement of the Case

This is an appeal from a Judgment of Conviction by Jury for felony murder, in which the district court imposed a life sentence, no fine, \$300 in court costs, and awarded 931 days of jail credit. Clerk’s Record (“CR”) 128-130, and Reporter’s Record (“RR”) vol. 6, p.15, l. 1-12.

### Statement Regarding Oral Argument

Appellant's counsel does not request oral argument because this appeal raises an insufficient evidence issue, which can be decided based upon the record and the briefs. However, if the panel assigned to this appeal has questions that are not answered by the parties' briefs, this writer can appear to argue on appellant's behalf.

### Issue Presented

Issue 1: The evidence is legally insufficient to support the jury's guilty verdict for felony murder, primarily because while the State produced evidence that appellant may have been in a vehicle in a nearby town about 30 minutes before the shooting, the State did not produce evidence placing the appellant at the scene when the shooting occurred, and the circumstantial evidence inferring that appellant was responsible for the shooting is insufficient to support a guilty verdict. The Third Court of Appeals reversed and rendered judgment of acquittal in a similar case in which that defendant was arrested near the scene when the offense was discovered, but that defendant's only temporal connection to the property where the offense occurred was a six month old speeding ticket. That same result should occur in this appeal.

## Statement of Facts

This is an appeal from a Judgment of Conviction by Jury, in which the district court imposed punishment of a life sentence, no fine, \$300 in court costs, and awarded 931 days of jail credit. CR 128-130, and RR vol. 6, p.15, l. 1-12. The Trial Court's Certification of Defendant's Right of Appeal is at CR 131.

Appellant Jose Feliciano Casanova was charged in a December 16, 2021 indictment with one count of felony murder, occurring on or about September 10, 2021, in Colorado County, Texas, occurring as follows:

. . . Jose Feliciano Casanova . . . did then and there commit or attempt to commit an act clearly dangerous to human life, namely shooting a firearm at or in the direction of Keaton D. Hancock, that caused the death of Keaton D. Hancock, hereafter styled the complainant, and the defendant was in the course of intentionally and knowingly committing a felony, namely Deadly Conduct Discharge a Firearm, and the death of the complainant was caused while the defendant was in the course of and in furtherance of the commission or attempt of the felony.

CR 4. Attorney James M. Reeves was appointed to represent Mr. Casanova on January 7, 2022. CR 10.

Appellant's case proceeded to a jury trial that occurred from February 26 to 29, 2024, presided over by 25<sup>th</sup> District Court Judge William D. Old, and reported at RR vols. 2-5, with the exhibits at RR vol. 7. The details of the jury trial, and why the evidence is insufficient to support the jury's guilty verdict, will be discussed in the argument section of this brief. The jury found appellant guilty of the offense of felony murder, as charged in the indictment. RR vol. 6, p. 146, l. 4-9, and CR 127.

Appellant did not ask that the jury be polled. RR vol. 6, p. 146, l. 10-13. The jury was discharged, appellant's bond was revoked, and appellant's punishment hearing was set for April 11, 2024. RR vol. 6, pp. 146-149.

The punishment hearing is reported at RR vol. 6. The State called the decedent's mother, and after her testimony was given, the State rested. RR vol. 6, pp. 8-10. Appellant rested without calling any witnesses. RR vol. 6, p. 10, l. 9-10. In the punishment arguments, the State requested a life sentence, and appellant made no sentence length recommendation, but instead asked the trial court to consider appellant's history and upbringing, as well as the evidence presented in the jury trial, to determine the length of sentence. RR vol. 6, pp. 10-14.

The district judge verbally imposed a life sentence, and awarded jail credit. RR vol. 6, p. 15, l. 1-12. The written judgment imposed a life sentence, assessed \$300 in court costs, and awarded 931 days of jail credit. CR 128. The trial judge also informed appellant that he had the right of appeal, made that notation on the trial court's certification of right of appeal, stated that a notice of appeal must be filed within 30 days of the sentencing date unless a motion for new trial was filed within 30 days of sentencing, and asked trial counsel to ensure that proper paperwork would be filed if appellant wished to appeal. RR vol. 6, p. 15, l. 14-21. The trial judge also informed appellant that if he was indigent and could not afford an attorney for appeal, one would be appointed, and appellant stated he understood. RR vol. 6, pp. 15-16.



Appellant's trial counsel filed an April 11, 2024 Motion for New Trial and Motion in Arrest of Judgment. CR 138-140. The trial court denied this motion in an April 12, 2024 order. CR 141. Casanova's attorney then filed an April 16, 2024 Motion to Withdraw, CR 143-145, which was granted in an order signed that same date. CR 149. This writer was appointed to represent Mr. Casanova on appeal, CR 151, and timely filed Defendant's Notice of Appeal on April 18, 2024. CR 152. The Trial Court's Certification of Defendant's Right of Appeal is at CR 131.

### Summary of the Argument

Viewing the evidence in the light most favorable to the jury's guilty verdict, the evidence was insufficient to find that appellant Casanova was in the vehicle shown on a Columbus junior high school surveillance video which depicts shots fired from that vehicle near the decedent's house. The State failed to prove that appellant was inside that vehicle, or that this vehicle was the same vehicle in which appellant was seen about 30 minutes earlier at a Buc-EE's in the nearby town of Eagle Lake. The other circumstantial evidence presented by the State failed to prove beyond a reasonable doubt that appellant was involved in the shooting that caused the death of the decedent, either personally, as a party, or as a co-conspirator.

The Third Court of Appeals reversed and rendered judgment of acquittal in an appeal in which that defendant was arrested while found walking along the roadside near the residence when the offense was discovered, but the State's evidence

connecting that defendant with that residence was a six month old speeding ticket. Because the State failed to connect that defendant with the residence where illegal drugs were located, the Third Court found the evidence legally insufficient to support the jury's guilty verdict, and rendered judgment of acquittal. The same result should occur in this appeal, since the State's evidence fails to prove beyond a reasonable doubt that appellant Casanova was connected to the shooting that resulted in the jury's guilty verdict for felony murder.

### Argument and Authorities

Issue 1 (Restated): The evidence is legally insufficient to support the jury's guilty verdict, primarily because while the State produced evidence that appellant may have been in a vehicle in a nearby town about 30 minutes before the shooting, the State did not produce evidence placing the appellant at the scene when the shooting occurred, and the circumstantial evidence inferring that appellant was responsible for the shooting is insufficient to support a guilty verdict. The Third Court of Appeals reversed and rendered judgment of acquittal in a similar case in which that defendant was arrested near the scene when the offense was discovered, but that defendant's only temporal connection to the property where the offense occurred was a six month old speeding ticket. That same result should occur in this appeal.

In reviewing the legal sufficiency of the evidence to support a conviction, the reviewing court considers the 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. [\*Jackson v. Virginia\*](#), 443 U.S. 307, 319 (1979).<sup>1</sup> "If, based on all the evidence, a reasonably-minded jury must necessarily

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<sup>1</sup> The hyperlinks in this brief are to the Google Scholar versions of the opinions.

entertain a reasonable doubt of the defendant's guilt, due process requires that [the reviewing court] reverse and order a judgment of acquittal." [\*Johnson v. State\*](#), 967 S.W.2d 410, 412 (Tex. Crim. App. 1998). A finding of legal insufficiency requires reversal and entry of judgment of acquittal. [\*Burks v. United States\*](#), 437 U.S. 1 (1978).

There is no longer a separate review for factual sufficiency of the evidence. [\*Brooks v. State\*](#), 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). The jury is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. [\*Lancon v. State\*](#), 253 S.W.3d 699, 707 (Tex. Crim. App. 2008). The reviewing court should not act as a thirteenth juror that substitutes its own opinion of the credibility and weight of the evidence for that of the fact finder. [\*Brooks\*](#), 323 S.W.3d at 905. Instead, the reviewing court must resolve inconsistencies in testimony in favor of the verdict, and then ask whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. [\*Curry v. State\*](#), 30 S.W.3d 394, 406 (Tex. Crim. App. 2000).

The legal sufficiency of the evidence is measured by considering the elements of the offense as defined by a hypothetically correct jury charge. [\*Cada v. State\*](#), 334 S.W.3d 766, 773 (Tex. Crim. App. 2011). A hypothetically correct jury charge is one that "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the

defendant was tried.” [Cada](#), 334 S.W.3d at 773, quoting [Malik v. State](#), 953 S.W.2d 234, 240 (Tex. Crim. App. 1997).

As stated at p. 1 (pdf 7) of this brief, appellant Casanova was charged by indictment with the felony murder of Keaton D. Hancock by committing or attempting commit an act clearly dangerous to human life, shooting a firearm at or in the direction of Keaton D. Hancock, and that appellant was in the course of committing the felony of deadly conduct by discharging a firearm. *See* Tex. Pen. Code § 19.02(b)(3) (felony murder statute), and Tex. Pen. Code § 22.05(b)(1) (deadly conduct statute involving knowingly discharging a firearm at one or more individuals). The jury listed three possible ways that appellant could be found guilty of felony murder: (1) primary actor liability by appellant’s own conduct; (2) party liability if the shooting occurred by parties Ethan Dulany or Cairo Ruvalcaba, Jr.; and (3) coconspirator liability if appellant conspired with Dulany or Ruvalcaba to commit a felony, and Dulany or Ruvalcaba caused Keaton Hancock’s death. CR 118-119, and CR 121-125 (jury charge). Neither Dulany or Ruvalcaba testified at appellant’s trial, and no evidence concerning any conspiracy between these three persons was presented, so this theory of liability is not applicable to the appeal at bar. The jury charge did not ask the jury to decide which of these three theories of liability occurred, only whether appellant was guilty of felony murder, as charged in the indictment. CR 127.

The State presented testimony of two lay witnesses, several law enforcement witnesses, some expert witnesses to authenticate video evidence or cell phone evidence, and the medical examiner who performed the autopsy. None of the lay witnesses identified appellant as being in the vehicle in which the shots were fired that caused Keaton Hancock's death.

Kelly Venghaus, who was Keaton Hancock's mother, testified that on September 10, 2021, both she and her son lived in the same house on MLK Street in Columbus, Colorado County, Texas. RR vol. 3, pp. 35-37, and p. 40. This house was "right across from the junior high," also named as the Riverside campus. RR vol. 3, p. 40, l. 9-13. The family had watched a football game earlier that evening, and Keaton was outside smoking because he was upset at the game's result, and when Ms. Venghaus and her husband (Keaton's father), went to bed for the evening, she heard a "loud thump." RR vol. 3, pp. 41-42. She and her husband both "got up and walked around the house, trying to figure out what it was," and Ms. Venghaus opened the front door and discovered Keaton Hancock "laying on the porch." RR vol. 3, p. 42, l. 9-22. Ms. Venghaus stated that she turned the light switch on, and learned that Keaton was deceased. RR vol. 3, p. 42, l. 23-25.

The other lay witness, Ashleigh Bidales, testified that on September 9 and 10, 2021, she lived in a nearby house on the same street in Columbus as Ms. Venghaus's and Keaton Hancock's house. RR vol. 3, p.176, l. 17-25. At about 2:05 a.m. on

September 10, 2021, Ms. Bidales was about to go outside to smoke a cigarette, when she heard gunshots coming from the direction of the junior high school. RR vol. 3, pp. 177, l. 7-14, and pp. 178-179. She paused for a second, looked through her front door blind, heard a “Karlyn engine picking up speed,” saw a four door silver-grey Karlyn drive by her house, and then called Jaelon Hancock to tell him that she heard shots coming from the direction of his house. RR vol. 3, pp. 179-180, and p. 183, l. 10-21. (The “Karlyn” was later identified as a 2001 Infiniti, as shown in State’s Exs. 129, the search warrant to search that vehicle, at RR vol. 7, pdf 135). She could not reach Hancock, so she called his cousin Dante Stevens at 2:09 a.m., but she did not report the gunshots to the police. RR vol. 3, p. 184, l. 8-19, and State’s Ex. 52, at RR vol. 7, pdf 53. Ms. Bidales could not see the driver or the passengers inside the Karlyn when it drove by her house. RR vol. 3, p. 186, l. 13-17, and pp. 187-188. She looked for a similar vehicle on the Internet, found a picture of a 1996 Nissan Altima, gave that picture to Captain Alley of the Columbus Police Department on September 10, 2021, and told Captain Alley that the vehicle she saw drive by looked similar to the 1996 Altima picture. RR vol. 3, p. 189, l. 2-17. Ms. Bidales told Captain Alley that she could identify the suspect Karlyn if she saw it again, but she was never asked to do that. RR vol. 3, pp. 189-190.

Zachary Venhaus, the Director of Technology at the Columbus Independent School District (“ISD”), testified that he was employed by Columbus ISD on

September 10, 2021, discussed the location of the Columbus Junior High School Riverside Campus, stated that the school's video security system was working properly on that date, with the time and date stamps correctly displayed, and he transferred images from that security system to Captain Alley, which was admitted as State's Ex. 54. RR vol. 3, pp. 141-145. While the images of gun fire from the vehicle, depicted as flashes of light, can be seen on this video, it is unclear exactly what type of vehicle is shown, or the color of the vehicle, and the license plate is also not visible. Two still images from that video are State's Exs. 65 and 66, at RR vol. 7, pdf 66-67.

Elinor Hehir, a forensic scientist in the digital multimedia section of the Texas Department of Public Safety's Crime Lab in Austin, testified that she received a request from the Brenham office of the Texas Rangers to clarify and enhance a video, she received a USB drive with two video files on it, she discussed the clarifications she made in the video and how they were done, and she stated that the enhanced image was more distinct, but still fairly and accurately represented the original image. RR vol. 4, p. 151, l. 9-25, and pp. 160-165. Ms. Hehir's report was admitted as State's Ex. 151, which is a DVD pictured at RR vol. 7, pdf 224, and is included with the video exhibits filed separately with this Court. The four enhanced images from the junior high school surveillance video (State's Ex. 54), showing a vehicle, are discussed at RR vol. 4, pp. 166-170. This writer has viewed this exhibit, and does not

believe that the enhanced images, which are not much clearer than the original images, can be used to identify exactly what type of vehicle is depicted.

Stacy Rogers informed the jury that she owned the Farris Hotel located in Eagle Lake, Texas, discussed her hotel's security camera system which was working properly with the time and date stamps correctly displayed, and a DVD containing images from that system on September 10, 2021 was admitted as State's Ex. 55. RR vol. 3, pp. 146-148. This video exhibit shows two night time camera views of an automobile driving by this Eagle Lake hotel from 1:39:50 to 1:40:00 a.m. on September 10, 2021, but the automobile's license plate is not visible, and it may or may not be a four door vehicle. Still images from State's Ex. 55 were admitted as State's Ex. 68, 69, 70, and 71, located at RR vol. 7, pdf 69-72.

Columbus Police Department Officer William "Rusty" Moulder informed the jury that his department contacted 15 businesses in Columbus to obtain any video evidence from the night of the shooting, and that nine businesses responded, but the vehicle was not shown in any of those videos. RR vol. 4, pp. 182-182, and p. 197, l. 1-12.

Juanita Justilian informed the jury that she worked for Buc-Ee's corporate office in Pearland, Texas, and her duties included downloading videos from different Buc-Ee's locations. RR vol. 3, pp. 149-150. She was employed at Buc-Ee's in September 2021, she testified that the Eagle Lake location of Buc-Ee's had a video



surveillance system that was working properly on September 10, 2021, with the time and date stamps correctly displayed, and the witness transferred images from that surveillance system to Captain Alley, which were admitted as State's Ex. 56. RR vol. 3, pp. 149-153. State's Ex. 60, which is a still image from that video exhibit showing a silver-grey automobile with three persons visible (driver, front seat passenger, and right rear seat passenger) at Buc-Ee's at 1:37:35 a.m. on September 10, 2021, was admitted. RR vol. 7, pdf 63. A picture of appellant walking into the Eagle Lake Buc-Ee's at 1:38:53 a.m. that same date was admitted as State's Ex. 57, RR vol. 3, p. 247, l. 5-8. *See also* RR vol. 7, pdf 60.

Officer Gabriel Cott testified that he was employed on September 8, 2021 as a patrol officer for the Eagle Lake Police Department, and he was dispatched to a "shots fired" call at 5:38 p.m. that same date. RR vol. 3, pp. 45-46. The location of the call was Heather Flores' house on Walnut Street in Eagle Lake. RR vol. 3, pp. 46-47. Officer Cott identified appellant in court as one of the persons at this house when he arrived on scene. RR vol. 3, pp. 47-48. Several persons were outside the house having a barbeque when a shooting occurred, resulting in no injuries. RR vol. 3, p. 48, l. 7-16. Cott stated that three suspects were developed for this shooting, and the motivation was retaliation for one of the shooters being arrested and sent to jail, with some property being stolen while he was in jail. RR vol. 3, p. 53, l. 10-24. Officer Cott stated that many people at the scene, including Mr. Casanova, threatened to

retaliate for this shooting, and that the family was upset with the Eagle Lake Police Department. RR vol. 3, p. 54, l. 3-22.

The following day, September 9, 2021, Officer Cott attempted to conduct a traffic stop when he heard shots fired towards the Eagle Lake Funeral Home, which is located directly behind the Flores' residence. RR vol. 3, pp. 55-56. Cott ended the traffic stop, informed dispatch of what he had heard, and drove his patrol car in the direction of the shots. RR vol. 3, p. 56, l. 8-20. Officer Cott observed no one at the funeral home, but he did see spent casings on the pavement, and saw one of the windows was damaged from the gun shots. RR vol. 3, pp. 58-59. Cott then contacted several subjects standing in front of the Flores residence, one of whom was appellant Casanova. RR vol. 3, pp. 59-60. Mr. Casanova had a long barrel rifle slung around his neck, and he was upset because one of the suspects in the prior day's shooting had posted a picture on Snapchat at the nearby funeral home. RR vol. 3, pp. 60-61. Appellant stated he had been shot at, and that he threatened to retaliate against Dontrae Johnson by stating, "They're dead, bro," and gesturing in a way not identified in the record. RR vol. 3, pp. 61-62.

Officer Cott then informed the jury that he was dispatched on September 10, 2021 at 3:45 a.m. to another shooting which occurred in Eagle Lake that resulted in the death of Jonathan Segura. RR vol. 3, pp. 70-72. Three other persons arrived at the scene ten minutes later, two of whom were named Casanova, and they were the

stepfather and stepbrother of decedent Jonathan Segura. RR vol. 3, pp. 74-75.

Officer David Weatherall, who worked for the Eagle Lake Police Department from December 2010 to December 2021, testified that he knew both Hector and Heather Flores, who lived in Eagle Lake, and that they had a large extended family, some of whom lived in the Eagle Lake area. RR vol. 3, pp. 86-88. Heather Flores is appellant Jose Casanova's sister. RR vol. 3, p. 88, l. 1-5. Officer Weatherall was dispatched at 6 p.m. on September 8, 2021 to a shooting at the Flores' house, and many family members, including appellant, were there. RR vol. 3, pp. 90-91. Appellant informed Weatherall that Dontrae Johnson, Daegan Mendoza, and Dante Stevens exited a vehicle, approached the Flores' residence, and started firing at the residence with AR-15 rifles, causing Casanova to run. RR vol. 3, pp. 92-93. Officer Weatherall testified that appellant Casanova stated that the motive for the shooting was that someone had stolen some "dope" from Daegan Mendoza's house, but Casanova denied stealing the "dope." RR vol. 3, p. 93, l. 3-20. Weatherall was aware of this break-in because he was dispatched to Mendoza's home on September 6, 2021 to investigate that incident. RR vol. 3, pp. 93-94.

While Officer Weatherall was investigating the September 8, 2021 shooting at the Flores' home in Eagle Lake discussed earlier, Daegan Mendoza's stepmother arrived at the scene, which caused the family members to "erupt," resulting in the officers having to hold some family members back, and Weatherall stated that Jose

Casanova and Heather Flores both threatened the Mendozas. RR vol. 3, p. 95, l. 3-24. Weatherall also informed the jury that Dontrae Johnson had posted on Snapchat that if someone “f\*\*\*[ed]” with his family, including Daegon Mendoza, then Johnson would come to Eagle Lake and take care of it. RR vol. 3, p. 98, l. 9-15.

Columbus Police Department Officer Chris Mayfield was employed by that agency on September 9-10, 2021, and at 2:05 a.m. on September 10, 2021, he heard gunfire coming from the east, and while driving in that direction, he received a 911 call that somebody had been shot at a residence on MLK Street in Columbus. RR vol. 3, pp. 102-103, and pp. 106-108. Mayfield observed Keaton Hancock, who was deceased, laying on the front porch. RR vol. 3, pp. 110-111. Bullet fragments were found inside the house, but no shell casings were found, which the witness believed indicated that the shooter was in a vehicle or moving in some manner. RR vol. 3, pp. 114-118, and p. 124, l. 6-16. However, Officer Mayfield also admitted that shots fired from a revolver would not leave shell casings at a crime scene. RR vol. 3, p. 124, l. 20-22. Mayfield learned from an interview with Jaelyn Hancock that there was a possible witness who had identified a person in the vehicle that drove by, but he could not get Hancock to tell Mayfield who that person was, and Mayfield later learned that the information about this witness did not fit the time line determined by other investigators, and he did not know if that lead was followed up in the investigation. RR vol. 3, pp. 138-140.

Columbus Police Department Officer Kevin Daniel was off-duty at the time of the September 10, 2021 shooting that is the subject of this appeal, and he went to the scene to assist in the investigation. RR vol. 3, pp. 160-161. Based on Daniel's training and experience as a police officer and the evidence obtained at the scene, Daniel believed that the weapon that killed Keaton Hancock was fired from a moving object across a wide range, likely a drive-by shooting, and that the vehicle was moving from west to east. RR vol. 3, p. 173, l. 6-18.

Columbus Police Department Captain Wendy Alley was dispatched in the early morning hours on September 10, 2021 to investigate the shooting on MLK Street in Columbus. RR vol. 3, p. 222, l. 11-17. Alley did not locate any eyewitnesses to the murder. RR vol. 3, p. 226, l. 6-7. Captain Alley informed the jury that about one hour and 40 minutes after the shooting in Columbus, there was another shooting in Eagle Lake, which resulted in Jonathan Segura's death. RR vol. 3, p. 230, l. 2-14. Alley felt like these two shootings could be related, and she was aware of the two earlier shootings in Eagle Lake on September 8 and 9, 2021. RR vol. 3, pp. 231-232. She informed Texas Ranger Cody Rogers, who was the lead investigator for Mr. Segura's murder, of this retaliation theory. RR vol. 3, pp. 232-233.

Captain Alley spoke with Ashleigh Bidales at her workplace, and Ms. Bidales described the vehicle that she saw driving by as an older model, silver or grey four-door vehicle, with tinted windows, no headlights as it drove by, with factory rims. RR

vol. 3, p. 234, l. 1-17. Alley thought it was significant that Ms. Bidales called Dante Stevens after the shooting, because she believed that Bidales knew that Stevens was involved in the prior shootings at Eagle Lake. RR vol. 3, p. 234, l. 18-23. After Captain Alley spoke with Bidales, she viewed the surveillance video from the nearby Columbus Junior High School campus, which was admitted as State's Ex. 54. RR vol. 3, pp. 234-235. As discussed earlier in this brief, one can see in this video the flashes of light indicating gun shots were fired from this vehicle, but one cannot determine whether this vehicle is the same vehicle shown at the Eagle Lake Buc-Ee's location 30 minutes before this shooting in Columbus, in spite of the contrary opinion evidence by both Alley and Rogers discussed later in this brief.

Captain Alley identified the driver of the Infiniti four-door vehicle seen at the Eagle Lake Buc-Ee's in State's Ex. 58 as Ethan Dulaney, shown in State's Ex. 59, which is a grainy, unclear image. RR vol. 3, p. 248, l. 3-17, and RR vol. 7, pdf 61-62. Alley also identified appellant Casanova as the person shown walking into the Buc-Ee's at State's Ex. 57, and she testified that he walked out of that store after giving the cashier some money for gas. RR vol. 3, p. 247, l. 12-17, p. 249, l. 8-17, and RR vol. 7, pdf 60. Captain Alley stated that Cairo Ruvalca was in the vehicle with appellant and Ethan Dulaney. RR vol. 3, p. 250, l. 8-19.

Alley then discussed the video of a vehicle driving by the Farris Hotel in Eagle Lake, State's Ex. 55, discussed a probable route from the Eagle Lake Buc-Ee's to that

hotel, and then informed the jury that it was an 18 mile drive from the Eagle Lake Buc-Ee's to the Hancock's house on MLK in Columbus driving north on FM 102, and that this drive would take 23 minutes. RR vol. 3, pp. 250-252, and pp. 255-258. Alley believed that the same vehicle was shown in the video from the Eagle Lake Buc-Ee's, shown driving by the Ferris Hotel, and shown in the Columbus Junior High School video. RR vol. 3, pp. 261-262. She believed that appellant was in the front passenger seat, Ruvalcaba was in the rear passenger seat, and that Dulaney was the driver, with the shots coming from the vehicle's passenger side. RR vol. 3, pp. 262-263.

Captain Alley sought assistance from the U.S. Marshal's Service, which arrested appellant and others in Sinton, San Patricio County, Texas on September 26, 2021. RR vol. 3, pp. 264-265. Photos of the silver grey Infiniti involved in this arrest were admitted as State's Exs. 76-82. RR vol. 4, pp. 18-19, and RR vol. 7, pdf 77-83. Alley informed the jury that there was no front license plate on the vehicle at the Eagle Lake Buc-Ee's, and no front license plate on the vehicle involved in the arrest. RR vol. 4, p. 21, l. 2-7. The registered owner of the vehicle was one of the Seguras. RR vol. 4, pp. 22-23. An Apple iPhone was seized from the vehicle involved in the arrest, shown in State's Exs. 83 and 83A. RR vol. 4, pp. 22-23, and RR vol. 7, pdf 84.

Captain Alley admitted that she never showed the 2001 silver grey Infiniti involved in the arrest to Ashleigh Bidales to see if she could identify it as the car she

saw drive by on the night of the shooting. RR vol. 4, pp. 39-40. Alley also admitted that there could have been a fourth person in the vehicle shown on the Eagle Lake Buc-Ee's video in the back seat behind the driver. RR vol. 4, pp. 59-60. Captain Alley testified that Mr. Casanova admitted to being at the Eagle Lake Buc-Ee's that night, and he stated that when they left, they traveled to his brother's house, but Alley believed that he was actually in Columbus at 2:05 a.m., based on her belief that the vehicle shown in that Columbus Junior High School video was the same vehicle shown in the Buc-Ee's video. RR vol. 4, pp. 62-63. Alley then admitted that she did not have a witness who could place appellant Casanova in the shooter's vehicle on MLK Street in Columbus at 2:05 a.m., and that she had no cell phone data or GPS location records placing appellant there at 2:05 a.m. RR vol. 4, pp. 64-65.

Texas Ranger Cody Rogers testified that he was contacted by Columbus Police Department Captain Alley at 5:00 a.m. on September 10, 2021, while he was investigating an Eagle Lake homicide that might have been related. RR vol. 4, pp. 209-210. After Mr. Casanova was arrested in Sinton, both Rogers and Alley traveled there to speak with him in the interview room of the San Patricio County Jail. RR vol. 4, pp. 211-212. Casanova waived his constitutional rights and agreed to provide a statement, first discussing the September 8, 2021 shooting in Eagle Lake, admitting that he was at the Eagle Lake Buc-Ee's to purchase cigarillos and gasoline, and stating that after these purchases, he and the other occupants in the vehicle drove to his



brother's house off of Willis Street in Eagle Lake. RR vol. 4, pp. 218-220. Ranger Rogers stated that this house was south of Buc-Ee's, and that driving north on FM 102 towards Columbus would be driving in the wrong direction to reach this house. RR vol. 4, p. 220, l. 10-18. Mr. Casanova denied being in Columbus at 2:05 a.m. on September 10, 2021. RR vol. 4, pp. 220-221, and p. 236, l. 9-11.

Rogers reviewed the videos from the Eagle Lake Buc-Ee's and from the Columbus Junior High School, and he gave his opinion that the vehicles in both videos were the same vehicle. RR vol. 4, p. 225, l. 8-24. Rogers also mentioned viewing the Farris Hotel video, but rendered no opinion on whether that vehicle was the same vehicle as in the other two videos just discussed. RR vol. 4, pp. 225-226.

Travis County Deputy Medical Examiner Dr. Jennifer Dierksen testified that she performs autopsies for Colorado County, and that she performed the September 11, 2021 autopsy of Keaton Hancock in Austin. RR vol. 4, pp. 83-86. Gunshot wounds were the cause of death, and no soot was found, meaning that the firearm was shot from a distance greater than 30 inches. RR vol. 4, p. 92, l. 18-24, pp. 96-97, and pp. 99-100. The manner of death was homicide, meaning the death occurred by the actions of another person. RR vol. 3, p. 101, l. 5-10. Her autopsy report, admitted as State's Ex. 116, RR vol. 4, p. 105, l. 19, is at RR vol. 7, pdf 114-133.

Carlos Marrero, who worked for the U.S. Marshal's Service in the area of fugitive apprehensions, testified that he served an arrest warrant on appellant

Casanova in Sinton, Texas on September 24, 2021. RR vol. 3, pp. 193-194. Marrero stated that his agency had been told that appellant was in Sinton, that a grey or silver vehicle was involved, and three males were arrested in that vehicle, with appellant being arrested four houses away from the vehicle. RR vol. 3, pp. 195-196, and pp. 200-201. Marrero first stated that the vehicle involved in the Sinton arrest looked like the same vehicle shown in State's Ex. 60, RR vol. 7, pdf 63, taken at the Buc-Ee's in Eagle Lake on September 10, 2021 at 1:37:35 a.m., but he then admitted that he did not state that the vehicle in Sinton was the same vehicle pictured in State's Ex. 60 at the Eagle Lake Buc-Ee's. RR vol. 3, pp. 196-197, and p. 202, l. 4-14.

Detective Sergeant Jonathan Kirk of the Lake Jackson Police Department informed the jury that he was contacted by Investigator Beth Mayfield on September 15, 2023 to recover the contents of a cell phone, that was recovered from the vehicle in Sinton. RR vol. 4, pp. 21-22, and RR vol. 5, pp. 7-8. Sgt. Kirk discussed the procedure he used to access the contents of the cell phone. RR vol. 5, pp. 8-11. That information was then transmitted to Investigator Mayfield. RR vol. 5, pp. 12-13.

Beth Mayfield, an investigator with the Colorado County Attorney's Office, RR vol. 5, p. 15, testified that she completed a probable cause affidavit for a search warrant of a rose gold iPhone, with the search warrant issued by Judge Old. RR vol. 5, pp. 16-17. Inv. Mayfield met with Det. Kirk to have him extract the phone data. RR vol. 5, pp. 19-20. Mayfield admitted that multiple persons used this cell phone,

that she could confirm four different persons used the phone, but she could not state exactly how many persons actually used the phone. RR vol. 5, p. 33, l. 9-18, and p. 63, l. 1-3. Mayfield stated that the phone was registered to “Breelyn,” and the users she identified were Ethan Dulaney, Cairo Ruvalcaba, and appellant Jose Casanova. RR vol. 5, p. 63, l. 7-11.

This phone was located in the 600 block of North Walnut Street in Eagle Lake, Texas at 12:27:34 a.m., it went to an address on Willis Street in Eagle Lake at 12:59:34 a.m. on September 10, 2021, and stayed at that location for approximately 12 hours. RR vol. 5, pp. 24-25. From 1:34 a.m. to 2:05 a.m. on September 10, 2021, which were represented to the jury as the times between when appellant and others were seen at Buc-ee’s in Eagle Lake, and the shooting of Keaton Hancock in Columbus, the phone, which had been used frequently before then, stayed at the Willis Street address, and the phone’s display was off between 1:28 a.m. and 3:38 a.m. RR vol. 5, pp. 25-26. The last phone call on this phone before then occurred at 12:12 a.m. on September 10, 2021. RR vol. 5, p. 26, l. 20-25.

Although appellant Casanova was not the owner of this cell phone, he was a frequent user of the phone. RR vol. 5, p. 27, l. 4-23. Mr. Casanova used the basic text messaging application on this phone, and made calls on this phone, and he had to physically possess the phone to make calls or texts. RR vol. 5, pp. 28-29. The witness informed the jury of several text messages on September 10, 2021 to

appellant's ex-sister-in-law Angela, and text messages on September 19, 2021 indicating that Casanova used this phone to make text messages regarding a gun trade and selling a silver Infiniti vehicle. RR vol. 5, pp. 29-32. In addition to stating that she knew at least four persons used this phone, but she did not know exactly how many users there were, Mayfield admitted that she had no evidence that the silver Infiniti belonged to appellant Casanova, and she admitted that Casanova was not the registered owner of the Infiniti. RR vol. 5, p. 38, l. 16-20.

The State rested after the Investigator Mayfield's testimony, and appellant rested without presenting any evidence. RR vol. 5, p. 64, l. 11-14. The jury found appellant guilty of felony murder as charged in the indictment. CR 127, and RR vol. 5, p. 146, l. 4-6.

The evidence just summarized fails to prove beyond a reasonable doubt that appellant was liable for the offense of felony murder either as a primary actor, as a party, or as a co-conspirator, because the State only proved that appellant was seen in a silver Infiniti at the Eagle Lake Buc-Ee's about 30 minutes before the shooting occurred. The video evidence from the hotel in Eagle Lake of a vehicle driving by from 1:39:50 to 1:40:00 the day of the shooting is insufficient because the viewer cannot identify the vehicle driving by the hotel as the same vehicle from the Eagle Lake Buc-Ee's video, or that appellant was in the vehicle driving by the hotel. The Columbus Junior High School surveillance video shows shots fired out of a vehicle,

but one cannot determine whether the vehicle in that video is the same vehicle that appellant was linked to 30 minutes earlier at the Eagle Lake Buc-Ee's, or if it is the same vehicle driving by the Eagle Lake hotel at 1:40 a.m. Captain Alley and Ranger Rogers are incorrect in testifying otherwise, since the only clear images of the vehicle are from the Buc-Ee's video, but not from the hotel video or the school video.

A similar conviction in which the defendant was not linked to the crime scene at the time the offense was discovered was reversed, with a judgment of acquittal rendered, in [\*Pierce v. State\*](#), No. 03-06-00492-CR (Tex. App. – Austin 2007, no pet.) (not designated for publication).<sup>2</sup> John Merritt Pierce was convicted of possession of methamphetamine in an amount of 200 grams or more, but less than 400 grams. [\*Pierce\*](#), at pdf 1. The San Marcos Police Department received an anonymous telephone call that a fugitive with an escape warrant could be found at a residence in Buda, Texas, with the caller stating that the fugitive was “staying with a man by the name of John Pierce.” [\*Pierce\*](#), at pdf 2. When the officers knocked on the door to serve the warrant on the fugitive, with one officer smelling the odor of methamphetamine from the residence and seeing at least two persons inside, the officers entered the home and discovered only the fugitive present. [\*Pierce\*](#), pdf 2-4. Evidence consistent with the manufacture of methamphetamine was found in the residence. [\*Pierce\*](#), pdf 4.

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<sup>2</sup> This case's hyperlink is to the opinion from the Third Court of Appeals' website.

A search was conducted for the persons who had escaped from the house, and three men were detained about one-quarter mile to one-half mile from the residence, including Mr. Pierce. [Pierce](#), pdf 7-8. Pierce presented testimony from his former next-door neighbor that she had lived next door to Pierce until he moved out before the incident just discussed occurred, and that after Mr. Pierce moved out in May, she saw other persons at the residence who know that he no longer lived there. [Pierce](#), pdf 14 and 27-28.

The Third Court noted that, “No witness places appellant at the Buda house on the day of the search[,]” [Pierce](#), pdf 21, and that, “There was no evidence that, on the day in question, appellant was in close proximity to or the contraband was accessible to appellant.” [Pierce](#), pdf 23. The only evidence that the State produced connecting Pierce to the Buda residence searched was a December 4, 2004 speeding ticket found on a desk in the bedroom of that residence, which was more than six months before the search. [Pierce](#), pdf 27. However, “The testimony at trial showed that appellant had lived at the residence, but had moved in May, and no longer lived there.” [Pierce](#), pdf 27-28. The Third Court of Appeals stated, “that the evidence was legally insufficient to support the jury’s finding beyond a reasonable doubt that appellant exercised actual care, custody, control or management of the contraband.” [Pierce](#), pdf 28-29. The court also noted that, “No witness placed appellant at the residence during the relevant time period,” [Pierce](#), pdf 29, and concluded by holding that the evidence

was legally insufficient to support Pierce's conviction for possession of methamphetamine, and rendering a judgment of acquittal. [\*Pierce\*](#), pdf 29-30.

The same result should occur in Mr. Casanova's appeal herein, because while the State produced evidence showing that Casanova was at the Eagle Lake Buc-Ee's at 1:38:53 a.m. on the date of the shooting, the video evidence from the Eagle Lake hotel showing a vehicle driving by from 1:39:50 to 1:40:00 a.m., and the video evidence from the Columbus junior high school near the decedent's residence, which shows shots fired from a vehicle, are legally insufficient to prove that appellant Casanova was in the vehicle, or that it was the same vehicle that appellant was a passenger in at the Eagle Lake Buc-Ee's about 30 minutes before the shooting in Columbus. The remaining evidence summarized earlier also fails to prove appellant guilty beyond a reasonable doubt. The State only proved that: (1) appellant was at an Eagle Lake Buc-Ee's about 30 minutes before the shooting occurred, (2) the most direct route to the Columbus shooting scene 18 miles away would be 23 minutes in driving time, RR vol. 3, p. 158, l. 16-25, but (3) it failed to prove that appellant was in the vehicle that fired the shots in Columbus, or that this was the same vehicle linked to appellant's appearance at the Eagle Lake Buc-Ee's 30 minutes before the shooting.

For these reasons, the evidence was legally insufficient to support the jury's guilty verdict that appellant Jose Feliciano Casanova committed the offense of felony murder. His conviction should be reversed, and a judgment of acquittal rendered.

Conclusion and Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, appellant Jose Feliciano Casanova respectfully prays that upon review of the briefs filed in this appeal, and any oral argument heard in this case, that this Court sustain the sole issue presented, hold that the evidence is legally insufficient to support the jury's guilty verdict, and the trial court's judgment of conviction, and render judgment of acquittal for appellant.

Respectfully submitted,

/s/ *Gregory Sherwood*

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I hereby certify that a true copy of this document was served by e-service through the State Electronic Filing Service Provider, or by email, upon Colorado County Attorney Jay E. Johannes and First Assistant County Attorney Carolyn C. Olson, 400 Spring, Suite 204 West, Columbus, Texas 78934, on October 9, 2024.

/s/ *Gregory Sherwood*



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