

No. 01-24-00853-CR  
In the First Court of Appeals  
At Houston, Texas

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DAVID WAYNE ELMORE, SR.  
V.  
THE STATE OF TEXAS

BRIEF OF APPELLANT

On Appeal from  
The 122nd District Court of  
Galveston County, Texas  
No. 23CR0789

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ORAL ARGUMENT WAIVED

February 24, 2025

### List of Interested Persons

Appellant David Wayne Elmore is incarcerated on a 27 ½ year sentence at the Mac Stringfellow Unit of the Texas Department of Criminal Justice.

Margaret Hindman, P.O. Box 517, Galveston, Texas 77553 and Krystal Bell, Bell Law, PLLC, 17515 Spring Cypress Rd., Cypress, Texas Texas represented Appellant at trial

The State of Texas was represented at trial by Shannon Donnelly ADA, and Ms. Casey Kirst, ADA of the Office of the Criminal District Attorney of Galveston County, Texas

The State of Texas is represented on Appeal by Ms. Rebecca Klaren, ADA, of the appellate division of the Office of the Galveston County District Attorney.

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DAVID WAYNE ELMORE, SR.

V.  
THE STATE OF TEXAS

**BRIEF OF APPELLANT**

TO THE HONORABLE FIRST COURT OF APPEALS:

Statement of the Case

The single issue presented is whether the trial court is whether the trial court erred in refusing the Defense instruction for a lesser included offense of manslaughter as opposed to the indicted charge of murder.

Procedural History

- Defendant/Appellant Elmore was indicted for murder CR 6
- The Court Charged the jury on guilt innocence phase CR 56
- Guilt Innocence Verdict appears at CR 67
- The Court Charge the jury on punishment at CR 74
- Judgement of conviction and sentence of 27 ½ years was entered

At CR 68

- Certificate of Discovery Compliance appears at CR 80
- Certification of Right to Appeal appears at CR 156
- Notice of Appeal appears at 160

### Facts

#### State's Witness Weston Harris 3 RR 17

Officer Harris is with the Galveston Sheriff's Office. He was called to the scene and was apparently the first witness who had had direct contact with the Defendant Elmore. He apprehended Elmore some blocks from the scene based on a physical description. 3 RR 20/18. He identified Defendant as sitting in the courtroom. 3 RR 22/5.

Officer Harris was tasked with watching over Defendant Elmore until other officers could take charge of him.

In that interval, Defendant made numerous statements without questioning from Officer Harris. At one point, Harris explained that his own actions were not personal but that he, Harris, had a family to go home to. In response Defendant stated words to the effect that, "That's why I killed that motherfucker to day." 3 RR 29/20 (Harris' testimony.)

After playing a portion of the video SX 1, Harris testified in reference to Defendant's statements:

He was talking about what led up to it, that he was told by a family member that the victim had been caught sleeping with a child and that—referring that there was a lot to him killing him, that he didn't just do it out of nowhere. It had been built up. And then at the end he said he didn't feel bad about it either... Said maybe he needed to go to jail so he doesn't hurt anybody else.

3 RR 30/5-20.

At at another point Harris testified that the Defendant stated that, "He he hopes it—that his situation doesn't interfere with his ability to own a firearm." 3 RR 32/11.

On cross examination, Harris testified that the Defendant had also sttaed that the victim [herein referred to as "Jody"] had tried to kill him the previous night. 3 RR 34/14.

State's Witness Seth Dickmeyer 3 RR 37

Seth Dickmeyer was a 20 year old recalcitrant witness under subpoena and only barely cooperative on the stand. 3 RR 38/9, 38/ he was "threatened under arrest" referring to his subpoena.

At the time of the incident he was on the Elmore family's collective property changing his tires. 3 RR 38/20. Dickmeyer did not know exactly who lived on the property, describing it as a "crack spot" consisting of numerous trailers. 3 RR 39/5.

Dickmeyer testified in substance that he saw the defendant come onto the property, go into one of the houses/trailers, come out and started shooting at the victim, who was “working out” on one of the tires. 3 RR 40/11. Further, “this guy was “...laughing his ass off, shooting this guy....He saves his last two shots for his head.” 3 RR 41/14-18.

Dickmeyer was questioned for about 8 hours. 3 RR 42/22, and apparently resented it.

Following cross examination, Dickmeyer was excused, and departed with these words before the jury: “It’s about time. Thank you for wasting my time.” 3 RR 45/7.

State’s Witness Bret Moreau 3 RR 45

Corporal Moreau is with the Galveston County Sheriff’s Department, serving there for 13 years.

Arriving at the scene, he was advised by others that the suspect had fled on foot. 3 RR 47/22.

Moreau testified that the suspect (Defendant) had several circular wounds to his head 3 RR 49/4.

James Elmore Sr. (Father of the defendant) retrieved a gun from inside the residence and gave it to Moreau. 3 RR 50 /13, and the gun was bagged and secured.



State's Witness Larry Gene Crow, Jr. 3 RR 52

Officer Crow is with the Galveston County Sheriff's Office and has been in law enforcement for about 35 years. 3 RR 52/16. His specialty is crime scene investigation. Most or all of Crow's testimony on direct examination was objective, i.e., description of processing of evidence at the crime scene, etc., and is not contested.

On cross examination, Crow testified that he did not find or observe a machete at the scene, 3 RR 89/15. Crow could not positively say, however, that there was not a machete at some point. 3 RR 90/15. \

Also, Crow testified (accurately in view of the cartridge casings in evidence) that the pistol in question was a .32 caliber rather than a .22. 3 RR 89/24.

State's Witness Patrick Ryan. 3 RR 91 ff

Officer Ryan is a crime scene supervisor for the Galveston County Sheriff's Office. He testified at length regarding something known as the FARO M 70 system, which is a device resembling surveyors' equipment. Two major benefits are that it is more accurate than hand drawing, and also it produces a three dimensional product. 3 RR 95/12-20. It was admitted without objection by

flashdrive as SX 101. 3 RR 99/5 and displayed to the jury. Cross examination was uneventful, and the results of the FARO scan are not challenged, as they do not weigh on the ultimate defensive posture of Appellant, i.e., state of mind.

State's Witness Jennifer Bell 4 RR 7

Lt. Jennifer Bell is with the Crime Scene Division of the Galveston County Sheriff's Office. Her general duties were to secure the crimes scene. More particularly, she did not find a machete or any other weapon near the body of the deceased. 4 RR 9/16. She described a GSR (Gun Shot Residue) kit and its functions, and explained that since the suspect had admitted firing a weapon, no GSR tests were run on him. 4 RR 17/20-25. She further testified to seeing scratches on the Defendant's elbow and knees, approximately one or two days' old. 4 RR 14/15-25

On cross examination, Lt. Bell admitted that it was "highly possible" that things had been moved around at the scene, and further that because no machete had been mentioned to her, she was not looking for one. 4 RR 20/3-10.

State's Witness Erin Barnhart , M.D. 4 RR 21

Dr. Barnhart is the Medical Examiner for Galveston County and performed the autopsy on the deceased. The one possibly significant finding was that the fatal shot was one that entered through the top of the head and lodged in the upper portion of the spinal column. 4 RR 36-37/16 ("Almost certainly a lethal injury.").

On cross examination, the post mortem blood tests revealed the presence or metabolites of controlled substances, and Dr. Barnhart agreed that it was “...possible at the time of death.” 4 RR 51/17-18.

State’s Witness Irene Estrada 4 RR 55

Ms. Estrada is a forensic scientist with the Texas Department of Public Safety Crime Lab in Houston. Her testimony was restricted to reciting the procedures she properly followed in gathering, identifying and preserving various forensic specimens for analysis by others. Her testimony to for those purposes is not challenged and does not affect the sole issue presented by appellant.

State’s Witness Jacaranda Solis 4 RR 67

Ms. Solis is a forensic scientis in the biology DNA section of the Texas Department of Public Safety Laboratory in Houston.

Ms. Solis’ testimony was the standard recitation of analysis of DNA evidence, including the ritual precaution that, technically, she could not specifically identify the donor of a given specimen, but could only present statistical analyses. 4 RR 74/19. That analysis provided “...very strong support for the proposition that [Defendant] James Elmore, Jr. is a contributor to the subject profile.” 4 RR 75/21.

State's Witness Seth Rowlands 4 RR 86

Mr. Rowlands is a detective with the Galveston County Sheriff's Department. His role in this case was to interview the James Elmore III. 10made and so any such error is not preserved, and in all likelihood would be harmless in the posture of this case. The gist of Elmore III's testimony was a description of Defendat's shooting the victim multiple times.

Asked if defendant and the victim were friends, Elmore III simply stated, "No." 4 RR 93/2.

Similarly, James Elmore Sr. was interviewed. His statement in that interview was that he had a completely different point of view than Elmore III, i.e., Elmore Sr. was inside.

Next, Rowlands interviewed the defendant, who was cooperative. 4 RR 98/11. The defendant was Mirandized. 4 RR 100/9. In that interview, the Defendant according to Rowlands "appeared on the verge of [being] angry." 4 RR 102/25.

According to Rowlands, the victim Garcia had been convicted of a State Jail felony of assault. 4 RR 104/15.

The fight between Defendant and the victim was about 5:00 p.m. the night before the lethal incident. 4 RR 105/23. The defendant said in his interview that

there were no threats made in after the first fight. 4 RR 106/10. No machete was found at the scene. 4 RR 106/25.

According to Rolands, there was no report of a sexual assault, as Defendant claimed had taken place. 4 RR 107/25.

Defense Witness Christopher Jones 4 RR 136

Mr Jones was involved with the victim's aunt for about 7 years, and so became acquainted with the victim. They were not "personal friends". He was present on the night before the shooting. 4 RR 136.

On the night before the shooting, Jones saw the victim "Jody" come from behind and from the rear attack Defendant/Appellant Elmore. 4 RR 137/24. By "attacked," Jones meant that "Jody" used closed fists. "Jody" then put Defendant/Appellant in a "chokehold" and started choking him. 4 RR 138/1-7.

At that point, Jones testified that his "...wife had to go grab jody's ball sack--excuse my language—to get him to release David." 4 RR 138/9. At that point, David (Defendant) was "purple in the face" 4 RR 138/11.

About a week or a week and a half before the shooting, "Jody" had attacked Jones, "...beating the shit out of me..." 4 RR 140/4.

On cross examination by the State, Jones testified that he had been to prison "once." 4 RR 141/25. Other offenses were testified to at 4 RR 142-143.

Defense Witness James Elmore, Sr. 4 RR 148

James Elmore Sr. is the grandfather of the Defendant David Elmore. 4 RR 148/22.

The Victim “Jody” had no legal entitlement to be on the property in question at all. Mr. Elmore, Sr. testified that “Jody” never got permission as such to live there. 4 RR 150/16. As Elmore, Sr. described it:

Q: Did you ever tell him he needed to leave the property?

A: Well, he just sort of move din and took over like he was in charge. I think he just came in and we couldn’t get rid of him. He just—he run roughshod over the kids. And I caught him a couple of times screaming at the younger kids. I told him, I said, ‘You need to take off, get out of here.’

4 RR 150/18-25.

Defense Witness Richard Hatfield 4 RR 165

Mr. Hatfield may be described generally as a family member or acquaintance. He knew the Defendant through his grandfather, whom he had know for about 25 years. 4 RR 164/15-25.

The last time Mr. Hatfield saw “Jody” was when he “...choked out David at his grandmother’s place.” 4 RR 167/5.

At 4 RR 171-172, Mr. Hatfield admitted to having convicted of about four or more felonies, ranging from burglary of a habitation, aggravated robbery and possession of a controlled substance.

According to Mr. Hatfield, “Jody” rented a room on the property in question where the shooting took place. 4 RR 171/6.

Mr. Haftfield’s bottom line description of Jody, possibly subject to a sustained objection, was “God don’t like ugly....I’m just saying.” 4 RR 172/14.

Defendant/Appellant David Wayne Elmore, Sr. 4 RR 176

Defendant/Appellant Elmore took the stand in his own defense.

Elmore grew up in Galveston Couty, mainly in Dickinson and Bacliff. He lived at 4422 18<sup>th</sup> Street, Bacliff for “most of my life.” 4 RR 176/25.

From Elmore’s standpoint, the victim “Jody” was at best an interloper or trespasser. “He just showed up over there.” 4 RR 177/23. Amidst numerous objections, Elmore did manage to testify that Jody’s car was impounded and that, “I seen him walking the streets for at least two weeks before he started coming over.” 4 RR 179/15.

Elmore’s interactions with “Jody” were limited:

A: I was getting to know him, his name, what his story was. He said he just got out of jail. He was fighting with his quote unquote “baby mama” That got him in a fight with her daddy...”

4 RR 181/18 at which point a hearsay objection by the state was sustained.

The first physical altercation was the day before the shooting, when Elmore was attacked by Jody from behind and almost strangled to death. 4 RR 182/13.

The previous altercation was marked by “Jody’s” threats of future action:

A: Because he was still talking shit in my ear the whole time while he was choking me to  
4 RR 184/13.

The morning after the “choking” altercation, Elmore went to his mother’s house to get some coffee, because his own power was out. 4 RR 186/25. Because of the previous altercation he was carrying the gun with him at that time. 4 RR 187/4.

Elmore’s mother did not have coffee, so Elmore headed to the 18<sup>th</sup> Street /Bacliff property, Elmore thought that “Jody” had left. He was concerned that Jody would come up behind him again. 4 RR 188, generally.

Elmore asked James III about Jody’s whereabouts, to which James replied, “He’s probably in the house”, 4 RR 189/15, so Elmore went looking for Jody.

The fatal altercation was described by Elmore in subsequent passages:

Q: And what did you see when you went out in the backyard?

A: Mr. Joseph (Jody) working out in the backyard.

Q: Working out how?

A: Pushups.

Q: And did you say anything to him?

A: I really can’t remember exactly like—all I know is I saw him and instinct took over. I don’t know.

4 RR 191/11.

Asked about his feeling concerning Jody, Elmore answered:



A: It was fear. Fear that he might do that again. Like, somebody might no save my life again. And this is on my family's property where I'm supposed to feel safe.

4 RR 191/22.

On the day in question, Elmore:

"...took the gun for protection so that wouldn't happen again. Like I said, I had hoped he was gone. Plenty of time for him to have left. I told my Mom. She called over there. He should have been gone. I don't know what more I could do. These type of people over there don't—they don't call the police. If you do, it just makes things worse. Like you shouldn't have an altercation with them, period. They're on that gang shit..."

4 RR 194/4.

Asked his purpose in going to the house in question, Elmore answered, "To drink some coffee, visit my grandfather." 4 RR 194/14.

Elmore's purpose was to protect his family:

A: I have the right to protect myself and my family. What is the oath our military takes, foreign and domestic? And Im a United States Citizen. If I can't protect my family, then who, why, what else is there. You can't protect yourself from a gang member."

4 RR 195-196/4.

Testimony continued at 5 RR 8.

Q: Okay. But you were looking for him, right?

A: Yeah. I didn't want to be assaulted by him again. Like, yea, I was worried about where he was at.

5 RR 15/23.

Elmore described his intention at the tie he fired the shot:

Q: Okay. So when you fired that shot, it was your intention to kill hi?

A: Yes.

However, a more complete view of the scene and intention is found at 5 RR 20:

A: Like maybe 10 feet. Like, I fired at him before he even got completely up. Like, he seen me. Like, it was...

Q: Okay, so...

A: It was in the action right ther. Like, when I round the corner, he seen me. He was getting up. I pulled the gun out. I started firing at him.

5 RR 20/18-23.

The prosecution challenged Elmore on why he returned on the day in question:

Q: And you chose to go back to where there was a perceived threat?

A: This is where I go every day.

5 RR 28/14.

Further:

A: I hoped he wouldn't be there.

5 RR 29/11.

The state attempted to emphasize lack of remorse as *post hoc* proof of present intention:

Q: You also told Detective Rowlands "I don't fee sorry about it neither." Are you sorry ab

A: Not really.

Q: You're not sorry that you murdered Jody.

A: It wasn't murder.

5 RR; 38/25.

Elmore later demonstrated why it was, as the State might phrase it, necessary to shoot when he did:

Q: I asked why he felt threatened?

...

A: Like I was saying, he strangled me until I was no more. No more conscious, out here, like, I don't know where I went . Not until they got him off me did I snap back to here, reality.

Later:

Q: Did you shoot him in retaliation?

A: It's not retaliating either. No. This was him still being on the property after he tried to kill me. Like, now that's a threat to my life. What am I supposed to do, just turn y back to him again and allow hm to do that again? **Maybe nobody would stop him the next time.**

5 RR 47/1-4 (emphasis added).

State's Rebuttal Witness: Jesse Garcia 5 RR 49

Ms. Garcia was the mother of the deceased. Her testimony did not involve the question presented here, i.e., state of mind of the defendant.

### Issue For Review

Issue 1 – The trial court erred in refusing to instruct the jury on manslaughter as a lesser included offense. 5 RR 61/7.

### Preservation of Error

Error was preserved in accordance with TRAP 33.1, i.e., the complaint was made to the trial court by a timely request, objection or motion that...stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint unless the grounds were apparent from the context and the trial court ruled on the request, objection or motion either expressly or implicitly. The formal charge conference commenced at 5 RR 57. Defense counsel urged inclusion of a lesser included manslaughter instruction which the court denied. 5 RR 61/7-10. See below for analysis.

The Standard of Review as to requests for lesser included instructions is found, e.g., in *Palmer v. State*, 471 S.W.3d 569 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2015, no pet.). First, the trial court must find that the requested instruction is of a lesser included offense, and second whether there is some evidence to permit a rational jury to find that if the defendant is guilty, he is guilty only of the lesser offense.

### Summary of the Argument

The question presented is whether the court should have granted a lesser included manslaughter instruction. The State’s theory of the case was that Defendant Elmore deliberately armed himself and went hunting for Jody, the man who had attempted to strangle him the day before. The record, however, contains evidence that Defendant Elmore’s journey to the house in question was simply to get some morning coffee, and was something he did routinely. He armed himself not because he was on a hunting expedition for “Jody” but because he feared due to the incident of the previous day. Defendant flatly denied that he shot Jody in retaliation. It was error to deny the requested lesser included manslaughter instruction.

### Standard of Review

The guidance on whether to submit a lesser included charge is well stated and specific in *Jones v. State*, 984 S.W.2d 254 (Tex. Crim. App. 1998), affirming the First Court of Appeals’ opinion at 962 S.W. 2d 96 (Tex. App.—Houston [1<sup>st</sup>

Dist.] 1997), which quoted at length from *Bignall v. State*, 887 S.W.2d 21 (Tex. Crim. App. 1994).

### Arguments and Authorities

#### Argument and Authorities Under Issue 1

##### Issue 1 Restated

The trial court erred in refusing to instruct the jury on manslaughter as a lesser included offense. 5 RR 61/7.

Before the trial court, the parties did not appear to disagree that manslaughter was potentially a lesser included offense to murder. The question instead was what constitute “some” evidence from which a rational jury could find that the defendant was guilty, if at all, of only the lesser included offense.

The trial judge placed his thought process on the record after hearing the arguments of counsel pro and con:

The Court: Yeah. Unfortunately, I ‘m not seeing anything that raises even a scintilla that he was reckless. All the testimony says otherwise. I’m not allowing you a manslaughter instruction. We have given you the self-defense instruction. With all the case law even though that’s also not credible, there is—the Court can’t make that determination. We’re going to

let the jury decide that. But there's nothing that I've seen in the record that would allow a manslaughter instruction. So, I'm denying that.

5 RR 61/6-15.

In his comment that some of the testimony may not have been "credible" the judge perhaps let slip that he was internally guided by a his own credibility determination, but then recognizing in a subsequent sentence that credibility determinations were reserved for the jury.

While understandable, that analysis was error. In particular, the trial court appears to have been guided by what it perceived as the predominant theme of Defendant's testimony and other evidence. In *Bignall v. State, supra*, 887 S.W.2d at 23, the Court of Criminal Appeals observed that if there is evidence within a defendant's testimony which raises the lesser included offense, it is not dispositive that this evidence does not fit in with the larger theme of that defendant's testimony.

As is often said, it does not matter whether such evidence was strong or weak, unimpeached or contradicted. E.g., *Rousseau v. State*, 855 S.W.2d 666, 672 (Tex. Crim. App. 1985). The trier of fact is always free to selectively believe all or part of the testimony proffered and introduced by either side. *Bignall, supra*, 887 S.W.2d at 24.

As Jones stated referring to the exculpatory claims of defendant, , “The jury was free to believe this testimony and disbelieve the rest of what he said.” *Jones, supra*, 984 S.W.2d at 258, citing *Bignall* at 887 S.W.2d 22-24.

### State’s Accusation Refuted or Explained

The State’s theory of the case—largely to parry Elmore’s claim of self defense—was that all of Elmore’s actions were planned retaliation for “Jody’s” near lethal assault on him the day before. But there was much to contradict that theory of intent. E.g.:

- From Elmore’s standpoint, the victim “Jody” was at best an interloper or trespasser, and a liable to be found anywhere in the general vicinity: “He just showed up over there.” 4 RR 177/23. Amidst numerous objections, Elmore did manage to testify that Jody’s car was impounded and that, “I seen him walking the streets for at least two weeks before he started coming over.” 4 RR 179/15.
  
- Threats of future action: A: Because he was still talking shit in my ear the whole time while he was choking me to death. Said he was going to fuck my mother, my sister, and my daughter.4 RR 184/13.



- The morning after the “choking” altercation, Elmore went to his mother’s house not looking for Jody, as the State contended, but **to get some coffee**, because his own power was out. 4 RR 186/25. Because of the previous altercation he was carrying the gun with him at that time. 4 RR 187/4.

Elmore’s mother **did not have coffee**, so Elmore headed to the 18<sup>th</sup> Street /Bacliff property, Elmore thought that “Jody” had left. He was concerned that Jody would come up behind him again. 4 RR 188, generally.

- Elmore asked James III about Jody’s whereabouts, to which James replied, “He’s probably in the house”, 4 RR 189/15

- The fatal altercation was described by Elmore in subsequent passages:

Q: And what did you see when you went out in the backyard?

A: Mr. Joseph (Jody) working out in the backyard.

Q: Working out how?

A: Pushups.

Q: And did you say anything to him?

A: I really can’t remember exactly like—all I know is I saw him and instinct took over. I don’t know.

4 RR 191/11.

■ Asked about his feeling concerning Jody, Elmore answered:

A: It was fear. Fear that he might do that again. Like, somebody might no save my life again. And this is on my family's property where I'm supposed to feel safe.

4 RR 191/22.

■ On the day in question, Elmore "...took the gun for protection so that wouldn't happen again. Like I said, I had hoped he was gone. Plenty of time for him to have left. I told my Mom. She called over there. He should have been gone. I don't know what more I could do. These type of people over there don't --they don't call the police. If you do, it just makes things worse. Like you shouldn't have an altercation with them, period. They're on that gang shit..."

4 RR 194/4.

■ Asked his purpose in going to the house in question, Elmore answered, "To drink some coffee, visit my grandfather." 4 RR 194/14.

--Testimony continued at 5 RR 8.

Q: Okay. But you were looking for him, right?

A: Yeah. I didn't want to be assaulted by him again. Like, yea, I was worried about where he was at.

5 RR 15/23.

Elmore described his intention at the time he fired the shot:

Q: Okay. So when you fired that shot, it was your intention to kill him?

A: Yes.

However, a more complete view of the scene and intention is found at 5 RR 20:

A: Like maybe 10 feet. Like, I fired at him before he even got completely up. Like, he seen me. Like, it was...

Q: Okay, so...

A: It was in the action right there. Like, when I round the corner, he seen me. He was getting up. I pulled the gun out. I started firing at him.

5 RR 20/18-23. At this point, Elmore—who only wanted some morning coffee, was confronted alone with the man who had tried to strangle him The previous day.

The State challenged Elmore on why he returned on the day in question:

Q: And you chose to go back to where there was a perceived threat?

A: This is where I go every day.

5 RR 28/14. He had a right to go there and a right—esp. in Texas—to arm himself generally, or in fear of a repeat of the previous day's events.

Further:

A: I hoped he wouldn't be there.

5 RR 29/11.

The state attempted to emphasize lack of remorse as post hoc proof of present intention:

Q: You also told Detective Rowlands "I don't feel sorry about it neither." Are you sorry a

A: Not really.

Q: You're not sorry that you murdered Jody.

A: It wasn't murder.

6 RR; 38/25.

Appellant urges that post-event lack of remorse cannot make it more likely than not, per TRE 401(a), that he planned to bushwack Jody, as the State theorized. Elmore was understandably relieved that a serious threat to himself and his family

Then:

Q: Did you shoot him in retaliation?

A: It's not retaliating either. No. This was him still being on the property after he tried to kill me. Like, now that's a threat to my life. What am I supposed to do, just turn y back to him again and allow hm to do that again? **Maybe nobody would stop him the next time.**

5 RR 47/1-4 (emphasis added).

Elmore's purpose was to protect his family:

A: I have the right to protect myself and my family. What is the oath our military takes, foreign and domestic? And I'm a United States Citizen. If I can't protect my family, then who, why, what else is there. You can't protect yourself from a gang member."

4 RR 195-196/4.

In assessing the record, the Court of Appeals is further urged to consider the nature and background of Appellant and various other witnesses. None of the "civilian" witnesses were articulate people. Each of them testified as best they

could in their own limited vernacular, unschooled in the complexities of Texas Law.

Prayer

Defendant/Appellant Elmore prays that this court reverse and remand this case for a new trial under proper instructions.

Respectfully submitted,

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Certificate of TRAP 9 Compliance

Applicable portions of the foregoing brief contain 4,845 words in Times New Roman 14 point type.

*Mark W. Stevens*

Certificate of Service

A true and correct copy of the foregoing Combined Brief with Exhibits has been served upon state's counsel Rebecca Klaren, ADA by electronic filing on February 24, 2025.

*Mark W. Stevens*

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