No. 14-24-00632-CR

In the Court of Appeals
for the Fourteenth District
Houston, Texas

Le Dadrine Da Prea Hall	§	**Appellant**
	§	
vs.	§	
	§	
The State of Texas	§	**Appellee**

Appellant's Brief

Appeal from the 185th District Court
Trial Cause No. 1844499
Harris County, Texas

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Oral Argument Requested

Identification of Parties

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Statutes and Rules

Statement of the Case

Appellant was indicted in cause number 1700219 with the felony offense of capital murder. He was re-indicted on November 17, 2023, for the offense of murder wherein it was alleged that he intentionally and knowingly caused the death of Jailyn[1] Page on October 20 , 2020 and did intend to cause serious bodily injury to Jailyn Page by committing an act clearly dangerous to human life by shooting Jailyn Page with a firearm in cause number 184499. (CR 152). A jury was selected on August 20, 2024. Appellant was found Appellant guilty of murder and assessed his punishment at twenty-five years in the Texas Department of Criminal Justice and assessed a fine of $10,000. (CR 457). Notice of Appeal was timely filed. (CR 469). Appellant was determined to be indigent and counsel was appointed. The trial court certified that Appellant had a right to appeal. (CR 448).

Statement Regarding Oral Argument

Oral arguments will benefit this Court given the complexity of the issues presented. Appellant believes that oral argument would be of significant benefit to the Court as the primary issue involves the apparent conflict

[1] Jailyn Page was spelled different ways throughout the reporter's record and jury charge.

between Tex. Code Crim. Proc. article 38.36 and the self-defense against multiple assailants when only one of the assailants' death results from the accused conduct. The question posed is whether article 38.36 limits the evidence admitted solely concerning the relationship and circumstances of the victim and the accused or between all of the assailants and the accused. Appellant believes that article 38.36, when there is evidence of multiple assailants, that the word "victim" applies to all of the would be assailants and not only one. As Judge Keller explained in her concurring opinion in *Dickey v. State,* 22 S.W3d 490, 493 (Tex. Crim. App. 1999):

> The theory behind the multiple assailants charge is that, when it is clear that an attack is being conducted by multiple people as a group, a defendant is justified in using force against any member of the group, even if the recipient of that force is not engaging in conduct that would, by itself, justify the use of force (or deadly force as the case may be)... the rule concerning multiple assailants is essentially an application of the law of parties to the defendant's assailants."

Issues Presented

Issue Number One

Trial court abused its discretion in sustaining the State's objection to Appellant's testimony concerning the group that Bryce Goddard, Sir Mitchell, and Tyrone Mitchell were hanging out with. (6 RR 257).

Issue Number Two

Trial court abused its discretion in sustaining the State's objection to Appellant's investigation to determine the person who shot him in November 2019 and his relationship to Goddard, Page and Mitchell. (6 RR 251).

Issue Number Three

Trial court abused its discretion by sustaining the State's objection to Appellant's testimony that he had been attacked by Sir Mitchell along with others at a gas station one month prior to the October 20, 2020 shooting at the DD Sky Club.

Issue Number Four

Trial court abused its discretion in sustaining State's objection to testimony concerning Page's gang affiliation and pictures of Page in social media with a gun.

Issue Number Five

Trial court erred in overruling Appellant's request for a jury instruction at punishment concerning sudden passion arising from adequate cause.

Issue Number Six

Trial court erred in overruling Appellant's requested jury instruction at guilt concerning self-defense arising from apparent danger arising from being attacked by multiple assailants.

TO THE JUSTICES OF THE FOURTEENTH COURT OF APPEALS:

COMES NOW, LE DADRINE DA PREA HALL, Appellant herein, by and through his attorney, STANLEY G. SCHNEIDER, and pursuant to TEX. R. APP. P. 38, files this appellate brief and would show the Court as follows:

Statement of Facts

On October 20, 2020, four people were shot inside the DD Sky Club in Houston, Texas. Jailyn Page and Bryce Goddard were two of the men killed. A man named Sir Mitchell also suffered a gun shot wound. Appellant was identified as one of two men who fired weapons[2] inside the club. Appellant's half-brother Demontae Williams was the other. Appellant claimed that he shot at Page, Goddard and Mitchell in self-defense because they attacked him and he had reasonably belief that deadly force was necessary. It was clear from video evidence and eyewitness testimony that Mitchell and Goddard along with Page started the altercation with Appellant that resulted in the shootings.

The record reflects that law enforcement was dispatched to the club at 1798 West Gray at approximately 9:48 P.M. Officer Jacob Varley was the first to arrive.

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[2] A shell casing from a third weapon was discovered in the club as part of the investigation.

Officer Varley testified that when he arrived, he saw a lot of people running out of the club and downstairs into a large parking lot. (4 RR 29). Upon entering the club, he immediately saw four people lying on the ground. He found one man, Sir Mitchell, still conscious. Mitchell refused to identify who shot him. (4 RR 43). Emergency personnel arrived and began treating Mitchell.

Officer Varley accompanied Mitchell to the hospital to ensure his safety. (4 RR 34). Mitchell refused to talk to him, saying that he did not talk to the police. (4 RR 34). Officer Varley observed that Mitchell was shot in the back near his spine and on top of his shoulder and his lower back. (4 RR 34). Officer Varley collected a projectile that was handed to him by a member of the medical staff which he tagged. No weapon was recovered from Mitchell. No GSR samples were taken from Mitchell. (4 RR 43).

Homicide Detective Traci Andrade, upon her arrival at the club, learned that two suspects entered the club and started shooting. (4 RR 50). She went to the hospital and attempted to speak to Mitchell who also refused to speak to her. After Mitchell was taken into surgery, a projectile was found in his hospital bed. (4 RR 52).

Victoria Boren, a crime scene supervisor with the Houston Forensic

Science Center, described the club as she found it on October 20, 2020. Ms. Boren presented a scene diagram which represented the layout of the DD Sky Lounge. Pictures of the scene were introduced into evidence without objection. (4 RR 67). According to Ms. Boren, the lighting in the club was very dim. Accessory light in the club illuminated some it but not well. (5 RR 42). The various casing recovered from the scene were identified.

The first witness to the shooting who testified was Karen Benitez, who was working as bartender that night. The club was having an open mic event that night. (5 RR 61). There were between 50 and 80 people in the club around 8:30-9:00 p.m. when she first saw a gun. Ms. Benitez ran to the back of the club when she saw the gun while her brother, who was also working stayed at the bar. (5 RR 64). Ms. Benitez stated she heard gunshots and a girl yelling. When the shooting stopped, she returned to the bar area and saw the bodies on the floor. (5 RR 64).

Ms. Benitez tried to help a man laying by the bar. She then stayed at the scene and talked to the police. The bar had three separate surveillance video that Ms. Benitez helped law enforcement retrieve. (5 RR 65, 67).

The first video shown was of the dance floor. The person shooting could

not be seen on the video. Ms. Benitez is seen coming from the back area followed by her brother. The video shows her trying to help the people shot. (5 RR 70).

The second video was taken of the club from the entrance area and showed the beginning of the altercation between two groups of men. (5 RR 73). The video shows two men pointing guns and security walking toward them. When the police asked Ms. Benitez if she could identify the men in the altercation, she said that she didn't think so. (5 RR 74). Ms. Benitez met with police in August 2021 to view a photo spread. First, police read her warnings about the photo spread. (5 RR 74). Ms. Benitez looked at two photo arrays. State's Exhibit 147 is the first photo array that she viewed and the police wrote down what she said on that exhibit. (5 RR 75). Ms. Benitez looked at another photo array State's Exhibit 148.

The trial court overruled Appellant's objection to the police rendition of what Ms. Benitez said at the time she viewed the photo array. (5 RR 76-78). On State's Exhibit 147, the police wrote "Witness picked No. 6. No. 6 had a gun and shot. Very positive." (5 RR 79). Appellant's picture was identified. She identified Appellant in the courtroom as the person shooting the gun in the

club. (5 RR 79).

The security guard working at the club on the night of the shooting was named Sam. (5 RR 82). Ms. Benitez stated in reviewing the scene video that she could hear gunshots and then shortly after the first shots, she heard more shots. (5 RR 84).

The video shows two people walking across the room to the bar. They are standing at the bar facing the stage. The video shows one of the men shot walk by them. (5 RR 87). The two people standing at the bar walk back to their seats.[3]

Ms. Benitez described the scene on the video where a man in a puffy jacket starts the fight.[4] (5 RR 89). The video shows five men standing together two of whom died. (4 RR 89). The five men are talking. Ms. Benitez can't hear what is being said. She said that the man in the puffy jacket started talking to the two men that had been standing at the bar. (5 RR 91). The man in the puffy jacket appears to be getting angry. (5 RR 91). The man removes his puffy jacket and throws it over the bar.

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[3] Appellant testified that he and his brother walked to the bar area and were standing with their back to the bar when Goddard walked by them.

[4] The person who started the fight was Mitchell.

She sees the security guard try to break up the altercation.

Ms. Benitez tried to help the person who started the fight. (5 RR 94).

At 14:17 of the surveillance video, it appears that the security guard is holding a suspect and another shooter is nearby. The person that Ms. Benitez helped has taken off his shirt and hoodie. The man she helped is seen on the surveillance video taking off his necklace. (5 RR 96).

The man that started the fight is seen raising his shirt. Both gunmen exit the club followed by the Sam the security guard.

On the video, a man in a black jacket appears to be calling for somebody. Ms. Benitez is seen running to help.

Kevin Benitez testified that he was working as a barback at the club with his sister Karen. (5 RR 105). His job was to keep the coolers stocked and make sure the bartenders had everything they needed. He was 17 or 18 years old at the time of the shooting. On October 20th, he arrived at the club around 6 p.m. to set up the bar and set up the hookahs for patrons.

Mr. Benitez remembers talking to his sister when he heard an altercation. (5 RR 109). Someone threw a shirt or a hoodie over the bar in his direction. (5 RR 109). Guns were pulled and shots were fired toward the bar

and the crowd. What started off seeming like it was going to be a fight became something way bigger. (5 RR 109).

Mr. Benitez saw security getting between the two groups. He then saw a gun come over the shoulder of the security guard and shots being fired. (5 RR 110). Mr. Benitez remembered grabbing his sister and going to the back of the club away from the shooting.

After the shooting stopped, Mr. Benitez tried to help two of the men injured. He remembers one man shot in the back and the other in the lung. He identified the person that he and sister were trying to help. He remembers one man who he watched die. (5 RR 112).

In March 2021, law enforcement contacted him and asked if he would look at some pictures. Mr. Benitez identified the third picture in a show up of a man that he identified as "saw this man shoot." (5 RR 116).

Mr. Benitez stated that the week before the shooting at another open mic event, there were problems involving all four of the people shot. (5 RR 117). Mr. Benitez agrees that before the shooting, the men who were shot started an altercation of some sort as they stood near the bar.

In the video, two people are seen shooting. One was held by the security

guard and the other wasn't. (5 RR 123). The person identified by Mr. Benitez as a shooter was not being held by the security guard. (5 RR 123).

Ambra Jones, a cousin to Appellant's brother Demontae Williams, testified that she went to the club with her husband Micha, Demontae and Appellant. (5 RR 127). Ms. Jones stated that Appellant and Demontae have the same mother but not the same father. In October 2020, she was living with her husband Micha and her children. Ms. Jones stated she is self-employed. She said that Micha was a rapper and that he was going to perform at the open mic event that night.

A man named Vic contacted Ms. Jones regarding Micha performing at the club's open mic event. (5 RR 131). State's Exhibit 153 is the promotional flier for the event. (5 RR 132).

On October 20, 2020, Ms. Jones' car broke down so she asked Demontae to give them a ride. When Demontae picked her and Micha up, Appellant was with him. Other members of their family were meeting at the club to watch Micha perform.

When they arrived, Ms. Jones did not know that anyone with her had guns. A surveillance video of the parking lot showed Ms. Jones arriving at the

club and getting out of the back seat of the vehicle that Demontae drove.

The group had problems getting into the club without paying the entrance fee. When they finally got into the club, the group went to the bathroom to take pictures that could be posted on social media.

Ms. Jones stated that while in the club she saw a man walking toward the bathroom. When he comes back, she saw the man making gestures toward Demontae and Appellant and saying something. (5 RR 143). The man shouted at them that he was going to get them. (5 RR 143). He said "We going to get y'all after the show. Enjoy y'all selves." (5 RR 144).

Ms. Jones identified Appellant as the man that the security guard is trying to escort out of the club. (5 RR 144). After the shooting stopped, everyone ran. She rode home with her husband's brother. Demontae and L.B. were no longer around. (5 RR 145). Ms. Jones identified the person in State's Exhibit 158 as her cousin, Demontae Williams. States's Exhibit 165 was identified as a picture of Appellant. (5 RR 147). Ms. Jones wrote on State's Exhibit 167, "L.D. shot the first time." (5 RR 149).

Demontae was suppose to perform with Ms. Jones' husband that night. Appellant also did music. (5 RR 150). When Ms. Jones called Demontae, she

told him that it was an open mic event and asked if he wanted to go. (5 RR 151).

Ms. Jones stated that the guy with the puffy jacket on the video is the person who starts the problem. (5 RR 152). When Appellant entered the club he was searched by the security guard. (5 RR 155).

J.C. Flores, a detective with the homicide division, was asked to assist the primary detectives by presenting photo arrays to witnesses. Det. Flores testified that according to HPD protocol, an officer who is not involved in the investigation of a case presents photo spreads to witnesses. Det. Flores stated that he did not know who the suspect in the investigation was.

Det. Flores presented two photo arrays on August 12, 2021. He presented what was marked as State Exhibit 147 to Karen Benitez. When she identified a person in State's Exhibit 147, Det. Flores noted that "Witness 1 picked number 6, grabbed the gun and started shooting." (5 RR 163).

In the second photo array presented to Ms. Benitez, she identified Appellant in State's Exhibit 148. He wrote down that she commented at the time of the identification that "had a gun and shot." (5 RR 164). According to Det. Flores, Ms. Benitez stated that she was positive in her identification. (5

RR 164).

Christopher Cegielski, a sergeant with the Houston Police Department, testified as to his involvement in the investigation. He was asked the lead detectives to present a photo array to Kevin Benitez. This took place on March 10, 2021. He reviewed the admonishments that he gave to Mr. Benitez. On State's Exhibit 151, Mr. Benitez was able to identify a man and stated "saw this man shoot." (5 RR 175). Mr. Benitez could not identify anyone in the second photo spread that was presented to him.

Jason Schroeder, the Director of the Trace Evidence Lab at the Harris County Institute of Forensic Sciences, testified concerning trace metal analyses that were performed on Jai'Lyn Page, Bryce Goddard and Christopher Jackson, who were the three who died at the bar on October 20, 2020. Mr. Schroeder explained the function of the laboratory and define gunshot residue and why tests are performed for it. The presence of gunshot residue means that the individual was in the vicinity of a firearm being discharged. (5 RR 187).

Gunshot residue was identified on the hands of Jai'Lyn Page. (5 RR 190). There was gunshot residue on the hands of Bryce Goddard. (5 RR 191). There

was no gunshot residue on Christopher Jackson.

Samuel Hubert testified that he was working as the security guard at DD Sky Bar on October 20, 2020. He had worked security all over Houston and has had extensive training. He wore protective gear while working at the DD Sky Bar which included a 55 pound bulletproof vest that was military issue. The vest had written on it "Security Guard".

Mr. Hubert explained that at an open mic event, performers would try to get the attention of a record label from Houston, Atlanta or California. Beside the performers, their family members and friends would come to the event. (6 RR 12). Mr. Hubert got to work around 7 pm that night. He was the only security guard on duty that night. Typically he worked with a woman. He had a standard procedure for checking people as they enter the club. All men are checked from the waistline down. He cannot touch the women, so he checked only their purses. (6 RR 13).

Mr. Hubert was standing by the door when he heard a woman who goes by the name Momma yell "Sam, Sam, they're fighting." (6 RR 20). He turned around and saw guys arguing. Then he sees a gun. (6 RR 20). He approached the area where there was a gun. He kept saying "we're not doing this tonight."

He was trying to get the gun man out of the door. As he grabbed the man and pulling toward the door, the man started shooting. (6 RR 24). As he was holding one man, another man with a gun came up to him and told him "let him go." (6 RR 25). He let the man go and then followed the men out of the club and down the stairs. They took off running.

Mr. Hubert went back upstairs and saw bodies lying everywhere. The vest that he was wearing that night appeared to have been hit. (6 RR 28). He was unable to identify anyone. (6 RR 29).

Mr. Hubert stated that he frisked every man that came into the club and checked every purse. Mr. Hubert recognized one of the men shot because he had gotten into it with his girlfriend a week and half before the shooting. (6 RR 55). Despite Mr. Hubert searching every man, two men had guns that night inside the club.

Dan Arnold, a homicide detective with the Houston Police Department testified as to his participation into the investigation of the shooting of October 20, 2020 at DD Sky Club. Det. Arnold states he was called by a night shift supervisor to assist because of the number of people involved and the possibility that gangs were involved. (6 RR 60).

Det. Arnold stated that the first thing he did was to view the exterior video from the club. State's Exhibit 164, a still picture from the surveillance video, four people are seen who were of interest. The two suspects are visible near a silver four door sedan. (6 RR 62). One is Demontae Lavon Williams who is seen in State Exhibit 161. The other person is Appellant who is wearing a dark hoodie with a cap on. (6 RR 63). Appellant is depicted in State's Exhibit 160. Appellant was identified by the Det. Arnold in the courtroom. (6 RR64).

Det. Arnold stated that the investigation was assisted by a crime stoppers call saying that Demontae Williams was involved in the shooting. (6 RR 65). They used that information to search social media accounts including Instagram. Though the moniker "bosslady A-M-B", investigators came up with the name of Micha Coleman as someone who was in the club at the time of the shooting as well as Ambra Jones. (6 RR 67).

Det. Arnold interviewed Ambra Jones on November 9, 2020. (6 RR 69). She spent several hours talking to the detective. She told the detective who she was with at the club and identified Williams as her cousin and gave them a partial name for Appellant. (6 RR 70).

Ambra did not see Appellant or Demontae with guns before entering the club but saw them with guns inside the club. (6 RR 72). Once Ambra identified Demontae and Appellant, warrants for their arrest were obtained. (6 RR 74). When they could not be located quickly charges were filed against them. Ultimately, Appellant surrendered to law enforcement by appearing at the jail. (6 RR 76). The detective stated that he attempted to interview Appellant and Demontae but they did not cooperate. (6 RR 76).

Det. Arnold pointed out that over the front door of the DD Sky Bar, a written notice is displayed that informs patrons that it was illegal to carry a firearm in the club. (6 RR 77). Det. Arnold stated that when Appellant and Demontae entered the club with firearms, they were committing felonies. (6 RR 78).

On the surveillance video, Det. Arnold pointed out Sir Mitchell walking up to Demontae and Appellant. (6 RR 82). No guns were visible. Then Mitchell is seen striping off his sweater and another man getting prepared. (6 RR 84). Page, Goddard and Mitchell appear to be standing together with Mitchell making hand movements. Page is standing close to Demontae when the gun is first seen in Appellant's hand. Goddard appears to be restraining Mitchell.

(6 RR 85).

The surveillance video shows the security guard trying to stop the disturbance. (6 RR 86). Page and Mitchell are removing clothes. As the security guard restrains Appellant, Appellant discharges a handgun in the direction of Goddard, Page and Mitchell. Mitchell is standing with his hands up and there is no weapon seen. Appellant fires four or more rounds in the direction of Goddard, Page and Mitchell. (6 RR 88, 89).

As Appellant is restrained by the security guard, Demontae approaches Hubert and appears to be threatening him. Hubert releases Appellant and he flees with Demontae. (6 RR 90).

No weapons are discovered when the bodies of Page, Goddard and Jackson are searched. (6 RR 91). No weapon is found on Mitchell.

As Appellant and Demontae flee, surveillance videos show Appellant with a firearm in his hand. The video shows them getting into their vehicle and leaving without Ambra or Micha.

When Appellant and Demontae surrendered to custody, they did not surrender the firearms. One was recovered several months later during a traffic stop. (6 RR 94).

During the cross-examination of Det. Arnold, Appellant establishes that Page is wearing a gold hoodie with a red bandanna on his head.[5] Det. Arnold states that the red bandana could be a flag indicating Page's affiliation with the street gang known as the "bloods." (6 RR 100). Mitchell also had a red bandana in his pocket as he entered the club. (6 RR 101). Goddard had a red head covering. (6 RR 102).

Even though only two guns are seen in the club, it is evident from the videos that Hubert did not do a good job frisking people as they entered. There is a possibility that other weapons made their way into the club. (6 RR 103).

At some point, Page, Goddard and Mitchell are seen with a fourth person, a short man, who was also wearing a red shirt and had a red bandana on his head. (6 RR 105). Det. Arnold did not see the short man enter the club. A fifth man joined the group with a sixth man standing nearby. Det. Arnold did not see any of those men enter the club on the video. (6 RR 107). They were never identified.

Det. Arnold said that Goddard was a documented gang member.

Based on the video, Mitchell approached Appellant and starts talking to

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[5] The red bandanna on Page's head is evidence from which the jury could infer that he was a member of the "Bloods" or a street gang like Goddard and Mitchell.

him. (6 RR 108). Mitchell is the most animated. (6 RR 111). Page and Goddard are standing with Mitchell along with the two other unidentified men. (6 RR 110).

Det. Arnold knew nothing about the background of Mitchell or Goddard. (6 RR 110). He did not know that either of them went to George Ranch High School. He did not know anything about the prior relationship, if any, between Goddard, Mitchell and Appellant. (6 RR 112).

Mitchell continues to be animated and removes his jacket. (6 RR 113). He then turns to Demontae and Appellant with Page and Goddard behind him. (6 RR 113). The three men then approach Demontae and Appellant. Demontae pulls a gun and then Appellant pulls a gun. (6 RR 114).

Even though guns are drawn, Mitchell appears to want to continue to pursue Appellant and Demontae. (6 RR 115). It appears as if Mitchell is raising his shirt as he raises his hands. (6 RR 118). After the shooting, a man wearing a black jacket approached Page, touch his back and then possibility put his hand in his pocket. (6 RR 120). Det. Arnold states that he could see him reach into his pocket and there appears to be something in it but it looks like it might have already been something there. (6 RR 121).

Det. Arnold stated that the fact that Goddard was a documented gang member and he, Page and Mitchell were wearing red bandannas could be indicative of their affiliation with the street gang "Bloods". (6 RR 126). He found no indication that Demontae or Appellant were associated with a gang.

Det. Arnold explained that there are certain criteria that the Houston Police Department use to document an individual as a gang member including: association, acts and fruition of gang activity or self declaring, and wearing colors. When a person has all three then the individual's name is placed in the police gang tracker system. (6 RR 131).

William Diaz, a Houston Police Officer, testified that on January 23, 2021, he was working patrol when he initiated a traffic stop on a vehicle that ran a red light. There were four people in the vehicle. (6 RR 137). When the vehicle was searched, a handgun was found in a handbag near where a woman named Cassandra Cochrum was sitting. (6 RR 138, 140). Nobody in the car claimed ownership of the gun.

Officer Diaz' s partner, Jairo Patino testified. Officer Patino testified that on January 23, 2021, he and Officer Diaz conducted a traffic stop at Harwin and Hillcroft. There were four people in the vehicle. During a search of the

vehicle, a gun was found which Officer Patino tagged into evidence.

Dr. Hannah Jarvis, a forensic pathologist testified concerning the autopsies performed in this case. Dr. Jarvis stated that Dr. Dwayne Wolf was the one who actually performed the autopsies. (6 RR 152). The State introduced State Exhibits 195 through 217, pictures taken during the autopsies of Jai'Lyn Page, Bryce Goddard and Christopher Jackson. (6 RR 153). Dr. Jarvis detailed the wounds sustained by each of them. Gunshots wounds were the cause of their deaths. There was a small amount of alcohol, .023 blood alcohol in Page's system. (6 RR 166). Goddard's blood alcohol level was .038. (6 RR 174). The toxicology report for Jackson was negative for alcohol and drugs. (6 RR 178). Marijuana was not tested for during the autopsies. (6 RR 179). Two projectiles were recovered that were deformed.

Donna Eudaley, a manager of the firearms section at the Houston Forensic Science Center testified concerning the firearm recovered and the cartridges and projectiles recovered. Ms. Eudaley stated that she was a supervisor and firearms examiner prior to the manager position. State Exhibit 224 is a listing of cartridges cases and numbers in this case.

From the examination of the cartridges recovered on October 20th, Ms.

Eudaley identified three firearms discharged the cartridges. Three cartridges were associated with one firearm and five associated with a second firearm. There was one cartridge that was associated with a third gun. (6 RR 207). State Exhibit 226 involved a firearm.

Cartridges 002-01, 0002-02 and 002-05 were entered into the NIBIN system. They were matched to three different firearms. State Exhibit 222 is a firearm that she worked on in this case. A firearm tested in February 2021 was linked to the firearms evidence collected at the scene of the shooting in the instant case. (6 RR 212). State Exhibit 222, a Ruger, was identified as being the weapon that fired cartridges 002-05- 002-09. (6 RR 215).

Aretha Page, the mother of Jai'Lyn Page identified her son through pictures in State's Exhibit 245 and 246. (6 RR 230). She stated that investigators never interviewed her about her son. Ms. Page said that her son was 19 years old when he died. Ms. Page further stated that after high school, Jai'Lyn went to nursing school and then had two children. (6 RR 230). She knew that her son and Goddard were friends. (6 RR 233).

Appellant testified on his behalf. (6 RR 236). At the time of the shooting, he was under 21 years old. He stated he grew up in Wharton, Texas and

moved to Rosenberg when he was in the 3rd grade. He attended George Ranch High School. (6 RR 239). In high school, he worked at Kroger for two years and he played sports. When he graduated from high school, he attended Wharton County Community College. Appellant also worked for the Boys and Girls Club coaching kids.

Appellant testified that in November 2019, he was shot and was in the hospital for two days. (6 RR 243). A couple days after he was released from the hospital, he had to return to the hospital where he stayed for two weeks. It took several months for him to recover. At the time of the trial, he was working at Amazon warehouse. (6 RR 244).

Appellant explained his long standing relationship with Bryce Goddard and Sir Mitchell. (6 RR 244-247). Appellant stated that even though he knew them in high school, they were hanging round the same group of friends while he was into other things. (6 RR 246).

The State objected to Appellant testifying about being shot in November 2019. (6 RR 250). Appellant argued that it was relevant to show the relationship with the victims. The Court queried whether that applied to Jai'Lyn Page. Appellant stated "that's going to be an assumption the jury's

going to have to make". (6 RR 250). The State argued that it was not relevant because 38.36 applied to relationship between the accused and the victim and not to the accused relationship with other people. Appellant argued because Appellant's self-defense claim was based on him being attacked by multiple assailants, his relationship to "everybody who's involved in that forms in his mind certain relevant facts and circumstances in the past." The trial court stated that if Jai'Lyn Page was not involved in the shooting of Appellant in November, the Court was going to sustain the State's objection. (6 RR 251). Appellant stated that he was trying to shoot Mitchell and shot Page instead so his relationship with Mitchell became relevant.

Appellant, then, in front of the jury, was allowed to testify that he had been shot in November 2019. He cooperated with the police but did not know who shot him at the time of that police interview. (6 RR 253). After he recovered from the shooting, he was interviewed by a man named John Davis who went by Real Toon TV. Appellant thought the interview was going to be about his music but instead he was interviewed about being shot. (6 RR 254).

After the interview was posted on YouTube, Appellant started receiving messages on Snapchat and Instagram. Mitchell and his brother Tyrone and

Goddard sent him threatening message. (6 RR 257). After receiving those threats, Appellant began his own search on social media for Goddard, Mitchell and Tyrone to see with whom they were hanging. The trial court sustained the State's objection that evidence pertaining to the group that Goddard, Mitchell and Tyrone belonged to was not relevant. (6 RR 257).

Appellant explained that he began carrying a gun after he was shot. (6 RR 262). He stated that he "was afraid whoever had shot me was going to try to finish the job." (6 RR 262). Appellant also explained as to why he was at the club on October 20, 2020. He stated he hid the gun in his crotch when he entered the club. He further stated that he did not know it was illegal for him to bring a gun to the club.

When he got into the club, he and his brother went toward the stage to watch the performers. As he was looking at the stage, Goddard approaches them. Goddard attempted to stare them down and mugged them. (6 RR 273). Appellant told Demontae that Bryce had passed them.

Appellant started to get nervous. (6 RR 274). He didn't leave because he did not want to ruin the night and he did not think that too much would go on in the club. Appellant left the area that they were standing near the bar and

returned and stood with the people with whom he came.

Appellant begins to look around the club so that he could be aware of his surroundings. (6 RR 275). He saw Goddard approach the bar area where he previously had been standing. Appellant then saw Mitchell and Page join Goddard at the bar. (6 RR 276).

Appellant did not know Page well. He knew him from seeing photos of him and Mitchell on Instagram. Appellant watched as Mitchell looked in his direction. Mitchell started "mouthing" at Appellant and started threatening him.

Appellant stated that Mitchell began to taunt him – trying to get him to fight. Mitchell's threats became more animated. (6 RR 280). Appellant was concerned that he might have a gun. The trial court sustained the State's relevance objection to the question posed to Appellant "From your past experiences with these guys?" (6 RR 281).

Appellant was focused on Mitchell and Page. As the security guard grabbed him, he saw Mitchell lift up his shirt as if he was flashing a gun. (6 RR 282). Mitchell's movement toward him scared him.

Appellant stated that before Goddard, Mitchell and Page came over to

him, they were standing with several other men. Appellant thought that they were all together.

After the shooting, Appellant stated that he and Demontae stayed with Demontae's grandmother while they tried to find a lawyer to represent them. When they found a lawyer they turned themselves in.

Appellant further testified that he knew Goddard and Mitchell and after he was shot, he became afraid of them. He did not know Page but he knew about him through Page's relationship with Mitchell. Appellant started looking at Mitchell's Instagram page because he was afraid of Mitchell and wanted to know who Mitchell hung out. (7 RR 22). Appellant saw lots of pictures and videos of Page, Goddard and Mitchell together.

When Appellant saw Goddard at the club on October 20th, he believed that Mitchell and Page would be there also. (7 RR 23). Appellant also saw them with two or three other guys. Appellant did not leave because he felt it was safer inside the club then outside the club. (7 RR 24).

Appellant testified that when Mitchell saw Appellant, Mitchell became more and more agitated and began moving his body in an aggressive manner. (7 RR 24). Based on things that Mitchell said that night and his past

relationship with him, Appellant was afraid for his life. (7 RR 25).

In November 2019, when he got out of the hospital, Appellant tried to identify the people involved in shooting him. (7 RR 42). Appellant testified that after an interview he gave that was posted on YouTube, he learned that a guy named Baby Trap or Jesse Coleman shot him and that Baby Trap was associated with Page Goddard and Mitchell. (7 RR 53, 54).

Appellant's last witness was Kevin Croft, who is the principal at Nacogdoches High School. He was the assistant principal at George Ranch High School. Mr. Croft met Appellant the first day that he began work at George Ranch. Mr. Croft was the discipline manager for the entire school. (7 RR 70). Mr. Croft stayed in touch with Appellant while he was in high school and afterwards. Mr. Croft knew Appellant's friends. He stated that Appellant did not cause trouble in school and that he had a reputation for peacefulness. (7 RR 73). Appellant stood out in high school in a good way. He stated that he hung out with a good group of kids played sports.

Through Det. Elsbury, the State introduced the YouTube interview of Appellant. (7 RR 78-79).

Issue Number One Restated

Trial court abused its discretion in sustaining the State's objection to Appellant's testimony concerning the group that Bryce Goddard, Sir Mitchell, and Tyrone Mitchell were hanging out with. (6 RR 257).

Issue Number Two Restated

Trial court abused its discretion in sustaining the State's objection to Appellant's investigation to determine the person who shot him in November 2019 and his relationship to Goddard, Page and Mitchell. (6 RR 251).

Issue Number Three Restated

Trial court abused its discretion by sustaining the State's objection to Appellant's testimony that he had been attacked by Sir Mitchell along with others at a gas station one month prior to the October 20, 2020 shooting at the DD Sky Club.

Issue Number Four Restated

Trial court abused its discretion in sustaining State's objection to testimony concerning Page's gang affiliation and pictures of Page in social media with a gun.

A. Summary of the Argument

The trial court excluded evidence that was relevant to explain the reasonableness of Appellant's belief that deadly force was immediately necessary to prevent Mitchell, Goddard and Page from causing Appellant to suffer serious bodily injury or death. The trial court erroneously ruled that

Appellant's relationship and acts committed by Goddard and Mitchell were not relevant because article 38.36 applied only to acts committed by Page. The trial court ignored the plain language of article 38.36 which makes evidence relevant that explained the relationship that Appellant had with Page, including his knowledge of him as the named complainant and then Page's relationship with Goddard and Mitchell. That specific relationship, coupled with specific conduct known to Appellant by Page as well as Mitchell's and Goddard's specific conduct toward Appellant was admissible to establish the reasonableness of Appellant's belief that deadly force was immediately necessary because of Mitchell's aggressive behavior as supported by Page's and Goddard's conduct. Article 38.36 must be viewed through the prism of the law of parties when self-defense against multiple assailants is presented as a defense. The trial court's ruling conflicts with the specific language of the jury isntructions submitted.

B. Statement of Facts in Support of Issues One, Two, Three and Four

As previously stated, the trial court sustained the State's relevance objection to the question posed to Appellant "From your past experiences with these guys?" (6 RR 281).

A hearing was held outside the presence of the jury regarding the exclusion of evidence by the trial court that Appellant proffered. (7 RR 5). Trial counsel stated that there were two events that would be admissible "toward the defendant's reasonable belief that he was in danger at the time this happened." (7 RR 5).

First, even though evidence was presented that Appellant had been shot in November 2019, Appellant was not allowed to present the details of the shooting and his investigation in search of the person who shot him. He was allowed to testify that he believed that a man named Coleman shot him and he was associated with Goddard, Page and Mitchell. Trial counsel proffered that after the YouTube interview about the shooting was aired, Appellant received threats on social media from a certain group of people who he knew as the 104 Pirus, a gang located in the Richmond/Rosenberg area and that Goddard, Mitchell and Mitchell's brother Tyrone were members of the gang. (7 RR 6). Appellant wanted to introduce a video of Goddard and Tyrone Mitchell talking about being gang members showing pistols and machine guns. (7 RR 6). Appellant also received threats from Goddard and Mitchell.

Second, trial counsel proffered that a month before the shooting,

Appellant and his brother Demontae stopped at a gas station located on Crabb River Road. Appellant went into the gas station to buy snacks and drinks and discovered Mitchell with several other people in the gas station. Mitchell began to threaten him and wanted to fight him. Unprovoked, Mitchell assaulted him with the help of the others. Demontae and a security guard stopped everything and Appellant got away. (7 RR 8). Appellant further proffered:

> That incident is especially important because in the nightclub when L.D. and Demontae are up against the wall and being verbally assaulted, at first by Sir Mitchell and then Goddard and Page coming at them, L.D. believes that he could be safe there and doesn't leave at first because the last time he left a public place, he was jumped by at least Sir Mitchell and now two other cohorts who the jury could assume were part of this gang. And he stays there and everything escalates.

(7 RR 8).

Appellant argued that based on his defensive theory of self-defense from multiple assailants the evidence was admissible as Jai'Lyn Page was one of the assailants in the club. Appellant would testify that before October 20th, Appellant saw Page's rap video which showed him with a gun. Appellant watched the video because of Sir Mitchell. Mitchell had been threatening Appellant. Appellant went to Mitchell's Instagram account where all kinds of photos were tagged. Appellant wanted to see who were the people associated

with Mitchell including Page. Appellant saw a lot of pictures with Goddard, Mitchell and Page together. (7 RR 10).

Trial counsel argued that the incident at the gas station helped to explain Appellant's state of mind and the basis for his reasonable belief that he was in danger. He stated that the evidence is relevant because of the claim of self-defense against multiple assailants. While Jai'Lyn Page is the charged complainant, the proffered evidence is admissible to show Appellant's reasonable belief of the danger posed by all of the assailants. Further, Page's rap video shows him with a gun which Appellant had seen and Appellant had seen multiple pictures and videos of Page with Goddard and Mitchell. (7 RR 9, 10).

Trial counsel argued that Page was one of the multiple assailants and that he was acting with Goddard and Mitchell. The prior relationship of Appellant with all three was relevant. (7 RR 11). Trial counsel stated that the trial court's prohibition to present the defense deprived him of evidence to prove his reasonable belief that he had a right to self-defense and present a complete defense concerning multiple assailants. (7 RR 13). Appellant further argued that the trial court's exclusion of the evidence undermined Appellant's

ability to present a defense. (7 RR 13).

The State argued that the complainant in the instant case was Page and not Goddard and Mitchell. Therefore, their gang affiliation and their threats to Appellant were not relevant under 38.36. Also, Mitchell's prior assault of Appellant was not relevant because Page was not present.

The trial court ruled that:

1. No evidence would be permitted concerning the gang membership of Page. (7 RR 15);

2. No evidence of the prior assault involving Mitchell attacking Appellant a month prior to the shooting was not admissible under the requirements of 403 and 38.36 because Page was not involved. (7 RR 16);

3. Pictures posted by Page with a gun in May 2020 were not relevant because the pictures were remote;

4. Pictures of Page with Goddard and Mitchell wherein Page is throwing up hand signs that resembling gang signs that were posted to social media were not relevant and inadmissible. (7 RR 16).

Appellant argued that there was evidence that Page was in the gang by his association and the clothing that he was wearing, the red bandanna based

on the testimony of Det. Arnold. (7 RR 17). Appellant also argued that Page's gang relationship is relevant to Appellant's belief that the gang was after him. Counsel stated that this was not a gang on gang situation but rather a gang on Appellant situation. Appellant believed at the time of the shooting that Goddard, Mitchell and Page were in a gang based on their social media presence, that their gang was after him and Appellant knew that because Mitchell assaulted him just one month earlier. (7 RR 18). Trial counsel stated that information provided the basis for his reasonable belief that he was in danger and that the gang was attacking him. (7 RR 18).

C. Court's Jury Instructions

The trial court instructed the jury:

> *You will also consider evidence of the previous relationship, if any, existing between the accused and any other person or persons, with Jailyn Page at the time in question and any conduct words or both of such persons with Jailyn Page at said time*. In considering all the foregoing you should place yourselves in the defendant's position and view the circumstances from his standpoint alone, at the time in question.

(CR 442). (Emphasis added).

The application paragraph of the jury instruction provided:

> Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Le Dadrine Da Prea Hall, did shoot Jailyn Page with a

> firearm as alleged but you further find from the evidence, *as viewed from the standpoint of the defendant at the time that from words or conduct or both of Jailyn Page or other persons with him or any of them*, it reasonably appeared to the defendant that his life or person was in danger and there was created in his mind a reasonable expectation of fear of death or serious bodily injury from the use of unlawful deadly force at the hands of Jailyn Page *or other persons with Jailyn Page or any of them and that acting under such apprehension and reasonably believing* that *the use of deadly force on his part was immediately necessary to protect himself against Jailyn Page's use or attempted use of unlawful deadly force or against the use or attempted use of unlawful deadly force by those persons with Jailyn Page,* he shot Jailyn Page then you should acquit the defendant on the grounds of self defense; or if you have a reasonable doubt as to whether or not the defendant was acting in self defense on said occasion and under the circumstances then you should give the defendant the benefit of that doubt and say by your verdict not guilty.

(CR 442-443) (emphasis added).

D. Argument and Authorities in Support of Issues One, Two, Three and Four

The jury charge authorized the jury to consider Appellant's past relationship with Page **and others acting with him** in determining the reasonableness of his belief that deadly force was necessary. The jury did not hear that evidence.

The uncontradicted evidence presented at trial was that Appellant was attacked by Sir Mitchell, Jai'Lyn Page and Bryce Goddard as Appellant and Demontae were peacefully watching performers at an open mic event at DD

Sky Club on October 20, 2020. The scene video shows that the three men were together in the club as they searched the bar for Appellant. And then, when they locate Appellant, they approached him together in an aggressive and combative manner. The State suggested that Mitchell only wanted to fight Appellant but Appellant brought a gun to a fist fight.

The jury did not hear the threats, the violence perpetrated by Mitchell toward Appellant as well as the apparent gang involvement in Appellant being shot in the past. Nor did the jury see the social media presence of Page that showed him with guns and affiliated him with gangs.

Appellant's belief that he was in danger and that deadly force was necessary depended on the prior relationship between all three men who attacked him. Page, Goddard and Mitchell acted together on October 20th.

The uncontradicted evidence was that Appellant was attacked by multiple assailants. The only question in controversy was whether Appellant had a reasonable belief that deadly force was necessary to protect himself against Jailyn Page's use or attempted use of unlawful deadly force or against the use or attempted use of unlawful deadly force by those persons with Jailyn[6]

[6] Jai'Lyn Page is spelled different ways in the record and the jury charge.

Page, when Appellant shot Jailyn Page as explained in the court's instructions.

Appellant asserts that the evidence excluded by the trial court was relevant and admissible to show Appellant's state of mind and show that his belief that deadly force was necessary and reasonable under the circumstances and based on the information that Appellant had about Page, his relationship to Goddard and Mitchell as well as Appellant's prior relationship with Goddard and Mitchell.

The trial court's analysis and application of article 38.36 was flawed. The trial court based its ruling by stating that Appellant's relationship to Goddard and Mitchell and threats and acts of violence committed by them were not relevant because 38.36 applied only to acts committed by Page and the relationship that Appellant had with Page. And, even though Page acted in consort with Goddard and Mitchell, their relationship with Appellant was irrelevant.

Appellant believes that article 38.36 must be viewed in terms of parties liability when self-defense against multiple assailants is presented from the record.

The trial court's ruling limited Appellant's ability to present a defense by

prohibiting him from establishing the basis for his belief of danger was reasonable. Thus, Appellant asserts that the trial court abused its discretion in excluding evidence that explained his "reasonable belief" that deadly force was necessary to protect himself from serious bodily injury or death at the hands of Jai'Lyn Page or Page and others acting with him as set out in the court's jury instructions. The trial court ignored the plain reading of 38.36 that requires the admission of evidence that **helped create his state of mind** that caused him to believe that deadly force was immediately necessary.

More important, the trial court's ruling is inconsistent with the court's jury instruction on self-defense.

1. Standard of Review

This Court must review the trial court's evidentiary ruling for an abuse of discretion. Generally, a trial court's evidentiary ruling will be upheld if it is within the zone of reasonable disagreement. *Davis v. State*, 329 S.W.3d 798, 813-14 (Tex. Crim. App. 2010); *Echavarria v. State*, 362 S.W.3d 148, 153 (Tex. App.—San Antonio 2011).

2. Self-Defense

Under the defense of self-defense, a defendant's conduct is excused if he

formed a reasonable belief that deadly force was immediately necessary to protect himself from another's use or attempted use of unlawful deadly force. *See* Tex. Penal Code Ann. § 9.32 (West 2011). The reasonableness of the belief is measured by the objective standard of an "ordinary and prudent man." *See Id*. § 1.07(a)(42); *see also Davis v. State*, 104 S.W.3d 177, 181 (Tex. App.—Waco 2003, no pet.) ("Although the jury employs an objective standard to determine the reasonableness of the defendant's belief, it must view the facts from the defendant's perspective."); *Echavarria v. State*, *supra*. at 154. Testimony from the defendant himself concerning facts relevant to his mental state at the time of the offense is admissible under Tex Code Crim Proc. article 38.36(a) which provides that when a jury considers whether a defendant acted in self-defense, it must "view the reasonableness of the defendant's actions solely from the defendant's standpoint." *Ex parte Drinkert*, 821 S.W.2d 953, 955 (Tex. Crim. App. 1991) (citing *Bennett v. State*, 726 S.W.2d 32, 37-38 (Tex. Crim. App. 1986)); accord *Hudson v. State*, 956 S.W.2d 103, 105 (Tex. App.--Tyler 1997, no pet.); *Courtney v. State*, 908 S.W.2d 48, 52 (Tex. App.--Houston [1st Dist.] 1995, pet. ref'd). Or as the Court of Criminal Appeals stated in *Bennett*, the reasonableness of the defendant's belief "must be judged

from the standpoint of the accused at the instant he responds to the attack." 726 S.W.2d at 37-38.

The same necessarily applies when a jury determines whether a defendant reasonably believed that the force he used was "necessary to protect himself from multiple assailants." As the Amarillo Court of Appeals has explained, "The [reasonable belief] standard is an objective standard." *Assiter v. State*, 58 S.W.3d 743, 748 (Tex. App.--Amarillo 2000, no pet.). Although the jury employs an objective standard to determine the reasonableness of the defendant's belief, it must view the facts from the defendant's perspective. *See Drinkert*, 821 S.W.2d at 955; *Bennet*t, 726 S.W.2d at 37-38; *Hudson*, 956 S.W.2d at 105; Courtney, 908 S.W.2d at 52; *Davis v. State*, 104 S.W.3d 177, 181 (Tex. App. 2003); *Johnson v. State*, 2022 Tex. App. LEXIS 2102, *23, 2022 WL 963277.

Thus, an accused's reasonable belief is based on the things that he has seen and experienced. As the trial court's instructed the jury:

> *reasonableness of Appellant's belief that he was in danger could depend on the words and conduct of Jailyn Page or other persons with him or any of them*, that created in his mind a reasonable expectation of fear of death or serious bodily injury from Jailyn Page *or other persons with Jailyn Page or any of them and that acting under such apprehension and reasonably believing* that *the use of deadly*

force on his part was immediately necessary to protect himself against Jailym Page's use or attempted use of unlawful deadly force or against the use or attempted use of unlawful deadly force by those persons with Jailym Page. (Emphasis added).

Thus, in a homicide case, when there is evidence of some act of aggression on the part of the deceased which is sufficient to raise an issue as to whether the defendant justifiably caused the death in self-defense, evidence of both the general reputation of the deceased for being of violent or dangerous character, and prior specific acts of violent misconduct committed by the deceased which illustrate his violent character, are generally rendered admissible. *Lowe v. State*, 612 S.W.2d 579 (Tex.Cr.App. 1981); *Beecham v. State*, 580 S.W.2d 588 (Tex. Crim. App. 1979); *Dempsey v. State*, 159 Tex. Crim. 602, 266 S.W.2d 875 (1954); *Henry v. State*, 151 Tex. Crim. 284, 207 S.W.2d 76 (1947); *Meeks v. State*, 135 Tex. Crim. 170, 117 S.W.2d 454 (1938); *Thompson v. State*, 659 S.W.2d 649, 653 (Tex. Crim. App. 1983).

But, based on the charge submitted to the jury, Appellant's reasonable belief that deadly force was necessary was also dependent on the conduct of and relationship existing with Goddard and Mitchell.

This general rule is also consistent with Texas Rules of Criminal Procedure 38.36 provides:

> In all prosecutions for murder, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, *together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense*.

TEX. CODE CRIM. PROC. ANN. art. 38.36 (Vernon Supp. Pamph. 1998)(emphasis added).

The question that the trial court failed to address was how did the excluded evidence impact or illustrate the reasonableness of Appellant's claimed belief that deadly force was immediately necessary. The State and the trial court focused on the first portion of 38.36 that authorized evidence of the relationship between the accused and the victim as limiting admissibility of evidence that provided for the condition of the mind of the accused at the time of the offense.

Appellant asserts that the excluded testimony concerning Page's possession of guns, apparent gang membership and affiliation with Goddard and Mitchell, Mitchell's prior attack on Appellant are admissible under Article 38.36 because they constitute facts known to Appellant at the time of his encounter with Page, Goddard and Mitchell on October 20, 2020, that explains

the condition of his mind that provided the basis for his reasonable belief that deadly force was immediately necessary to protect himself from serious bodily injury or death.

In *Dickey v. State,* 979 S.W.2d 825, 828 (Tex. App.—Houston [14th Dist.] 1998) reversed on other grounds *Dickey v. State*, 22 S.W.3d 490 (Tex. Crim. App.1999), the Fourteenth Court of Appeals discussed the admissibility of an extraneous offense involving a fight with some other guys and their relationship and the suggestion that the instant shooting was gang related. The Court of Appeals noted that the description of a previous fight and information that the accused received from others about the relationship between the parties would be admissible to explain the relationship between appellant, Brown, and Marvis at the time of the offense of the shooting.

As Judge Keller explained, the traditional underlying substantive self defense law is essentially that the principle of parties liability applies to the self-defense context:

> The theory behind the multiple assailants charge is that, **when it is clear that an attack is being conducted by multiple people as a group, a defendant is justified in using force against any member of the group, even if the recipient of that force is not engaging in conduct that would, by itself, justify the use of force (or deadly force as the case may be).** For example, if a defendant were trapped in a

> house with several hostile individuals, some of whom were brandishing firearms and threatening the defendant, the defendant may be justified in using deadly force against a different person who was blocking an exit that would otherwise be a viable path of retreat. The use of deadly force against the person blocking the exit would be justified, even though that person possessed no firearms and made no threatening moves, because of that person's complicity with those who threatened the defendant's life. **The rule concerning multiple assailants is essentially an application of the law of parties to the defendant's assailants.**

Dickey v. State, 22 S.W.3d 490, 493 (Tex. Crim. App. 1999)(PJ Keller concurring) (emphasis added).

The question regarding admissibility evidence is whether there is specific evidence that shows the reasonableness of an accused apprehension of danger is admissible. *See Gutierrez v. State*, 764 S.W.2d 796, 798 (Tex. Crim. App. 1989); *Thompson v. State*, *supra*.; *Dempsey v. State*, 159 Tex. Crim. 602, 266 S.W.2d 875 (Tex. Crim. App. 1954).

In this case, as explained by trial counsel, the proffered evidence was relevant to explain the relationship that Appellant had with Page as the named complainant and then Page's relationship with Goddard and Mitchell. That specific relationship, coupled with specific conduct known to Appellant by Page as well as Mitchell's and Goddard's specific conduct toward Appellant was admissible to establish the reasonableness of Appellant's belief that deadly

force was immediately necessary because of Mitchell's aggressive behavior as supported by Page's and Goddard's conduct.

The facts are quite simple. Appellant was shot in November 2019. In early 2020, he received threats from Mitchell and Goddard. Appellant learned that the man who shot him in November was a member of a gang in which Mitchell and Goddard were members.

Because of Mitchell's and Goddard's threats, Appellant searched social media to learn who were people that Mitchell and Goddard associated with. He wanted to be aware of people who might pose a threat.

Appellant saw pictures posted by Page in May 2020, just four or five months prior to the October 20th shooting, in which Page is shown in possession of a gun. Appellant saw pictures of Page with Mitchell and Goddard making apparent gang signs. Pictures and videos on social media suggested Page, Mitchell and Goddard were members of the same gang. And, Mitchell attacked Appellant within a month of the shooting.

The trial court clearly abused its discretion in excluding the proffered evidence because the evidence showed the reasonableness of Appellant's belief that deadly force was necessary to defend himself from the attack by multiple

assailants. As the Court of Appeals stated in *Espinoza v. State*, 951 S.W.2d 100, 101(Tex. App.—Corpus Christi 1997):

> If the deceased's violent acts are offered to show the reasonableness of the defendant's claim of apprehension of danger, it must be shown that the acts of violence were known to the accused at the time of the homicide. *Thompson*, 659 S.W.2d at 653-64; *Lowe*, 612 S.W.2d at 581; *Stone v. State*, 751 S.W.2d 579, 585 (Tex. App.--Houston [1st Dist.] 1988, pet. ref'd).

3. Harm Analysis

Admittedly, ordinarily the harm analysis that this Court applies when evaluating whether a conviction must be reversed because of a trial court's improper exclusion of evidence is governed by Tex. R. Rule 44.2(b). *Walters v. State*, 247 S.W.3d 204, 219 (Tex. Crim. App. 2007). However, the improper exclusion of evidence may raise a constitutional violation if the evidence forms such a vital portion of the case that exclusion effectively precludes the defendant from presenting a defense. *Potier v. State*, 68 S.W.3d 657, 665 (Tex. Crim. App. 2002); *see also Wiley v. State*, 74 S.W.3d 399, 405 (Tex. Crim. App. 2002) (erroneous exclusion of evidence is a constitutional violation if it "effectively prevents the defendant from presenting his defensive theory," or in other words, if the ruling "goes to the heart of the defense"). In that case, the more stringent standard in Rule 44.2(a) is applied, and this Court must

review the entire record and must reverse the judgment unless this Court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment. Tex. R. App. P. 44.2(a); *Simpson v. State*, 119 S.W.3d 262, 269 n.5 (Tex. Crim. App. 2003); *Saenz v. State*, 474 S.W.3d 47, 54 (Tex. App.2015).

In this case, the jury instructions included an instruction on self-defense and a limited instruction that included defense against multiple assailants. The evidence excluded was applicable to the reasonableness of his belief that deadly force was immediately necessary to prevent the unlawful attack by Mitchell, Page and Goddard. As trial counsel stated that the trial court's exclusion of the proffered evidence deprive the Appellant of the opportunity of submitting evidence to prove his reasonable belief of self-defense of multiple assailants and it deprives Appellant of his constitutional right to present a complete defense concerning multiple assailants. (7 RR 13).

The uncontroverted evidence is that Appellant was attacked by Mitchell, Goddard and Page. The question for the jury was whether Appellant had a reasonable belief that deadly force was immediately necessary to prevent serious bodily injury or death. This Court cannot determine that the exclusion

of the evidence did not effect the jury's judgment beyond a reasonable doubt. A new trial is required.

Issue Number Five Restated

Trial court erred in overruling Appellant's request for a jury instruction at punishment concerning sudden passion arising from adequate cause.

A. Summary of the Argument

Appellant asserts that the trial court erred in refusing to submit a jury instruction at punishment concerning sudden passion. Based on the evidence presented at guilt and was displayed on the scene video, Appellant is entitled to a sudden-passion jury instruction because the record supports inferences that (1) Appellant acted out of terror or fear caused by the sudden appearance of Mitchell, Page and Goddard at the club; (2) Appellant's fear or terror was induced by the specific acts of Mitchell trying to provoke a fight; (3) the shooting occurred as Mitchell was taking off his hoodie and was approaching Appellant; and (4) there was a direct connection between the conduct of Mitchell, Goddard and Page. Appellant's experiencing fear or terror from their acts and the shooting that resulted in Page's death. *SeeWooten v. State*, 400 S.W.3d 601, 605 (Tex. Crim. App. 2013); *McKinney v. State*, 179 S.W.3d 565,

569 (Tex. Crim. App. 2005).

B. Statement of Facts

The evidence introduced during the guilt portion of the trial was offered at punishment. Appellant also testified at punishment. In addition to his testimony during guilt, he stated that at the time of the shooting, he was afraid. (8 RR 111). He was in felt in "terror". (8 RR 111). He stated that he was in fear of his life that night.

The record reflects that Appellant requested the submission of an instruction to the jury regarding sudden passion. (8 RR 131). Appellant argued that the evidence presented establish the Appellant's emotions that he felt was sufficient to render him incapable of cool reflection. (8 RR 131). The State argued that Appellant was not entitled to the instruction because he stated that he was afraid and did not mention "cool reflection." (8 RR 132). The trial court denied the requested sudden passion instruction. (8 RR 132).

C. Argument and Authorities in Support of Issue Five

Appellant asserts that the trial court erred in refusing Appellant's request to include an instruction to the jury at punishment concerning sudden passion. The importance of a sudden-passion jury finding in the punishment

phase reduces the first-degree felony offense of murder to a second-degree felony, which carries a punishment range of two to twenty years. Tex. Penal Code §§ 12.33(a), 19.02(d). A defendant is entitled to a sudden-passion jury instruction if the record "at least minimally" supports the following inferences:

> 1. that the defendant was acting under the immediate influence of passion, such as terror, anger, rage, or resentment;
>
> 2. that his sudden passion was in fact induced by some provocation by the deceased, which provocation would commonly produce such a passion in a person of ordinary temper;
>
> 3. that he committed the murder before regaining his capacity for cool reflection; and
>
> 4. that a causal connection existed "between the provocation, passion, and homicide."

Wooten v. State, 400 S.W.3d 601, 605 (Tex. Crim. App. 2013); *McKinney v. State*, 179 S.W.3d 565, 569 (Tex. Crim. App. 2005).

1. Burden of Proof to Support Instruction

A defendant has the burden to prove the issue of sudden passion arising from an adequate cause at the punishment hearing by a preponderance of the evidence. Tex. Penal Code § 19.02(d).

2. Adequate Cause

The Penal Code defines "adequate cause" as a "cause that would

commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection." Tex. Penal Code § 19.02(a)(1). "The definition of adequate cause . . . is both objective and subjective." *McCartney v. State*, 542 S.W.2d 156, 160 (Tex. Crim. App. 1976). "It is objective because it views the alleged provocation through the eyes of the ordinary man." *Id*. "Evidence of a cause which produced one of the listed responses [anger, rage, resentment, or terror] in the accused because of the accused's susceptibilities is not enough unless the cause would also produce the response in an ordinary person." *Merchant v. State*, 810 S.W.2d 305, 310 (Tex. App.—Dallas 1991, pet. ref'd) (citing *Gonzales v. State*, 689 S.W.2d 900, 903 (Tex. Crim. App. 1985)).

Adequate cause "is subjective because the fact-finder must view from the actor's standpoint in order to determine 'the condition of the mind of the accused at the time of the offense . . . .'" *McCartney*, 542 S.W.2d at 160; *see Merchant*, 810 S.W.2d at 310 (the "subjective analysis requires some evidence of the condition of the accused's mind at the time of the offense").

3. Sudden Passion

"Fear" is defined as "to be afraid of," and "terror" is defined as "a state

of intense fear." *Wooten*, 400 S.W.3d at 606-07. A "mere claim of fear" by a defendant does not, standing alone, establish the existence of sudden passion. *See Id.*; *Daniels v. State*, 645 S.W.2d 459, 460 (Tex. Crim. App. 1983); *Howell v. State*, 757 S.W.2d 513, 516 (Tex. App.—Houston [1st Dist.] 1988, pet. ref'd). "Only such fear, if provoked by the person killed or by someone acting with that person, as would produce a degree of terror that would overcome the rational functioning of the mind could meet the statutory requirements." *Howell*, 757 S.W.2d at 516; *see also Orcasitas v. State*, 511 S.W.3d 213, 225 (Tex. App.—San Antonio 2015, no pet.). "Evidence of the accused's fear is not enough unless the cause of the accused's fear could produce fear that rises to a level of terror which makes a person of ordinary temper incapable of cool reflection." *Merchant*, 810 S.W.2d at 310 (citing *Daniels*, 645 S.W.2d at 460).

Sudden passion "means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation." Tex. Penal Code § 19.02(a)(2). "'Sudden passion' has been described as an excited and agitated state of mind at the time of the killing caused by direct provocation by the victim." *Benavides v. State*, 992

S.W.2d 511, 526 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd) (en banc) (citing *Hobson v. State*, 644 S.W.2d 473, 478 n.10 (Tex. Crim. App. 1983)).

A sudden-passion jury instruction first requires that the record contain objective evidence that direct provocation by the victim or someone acting with the victim occurred at the time of the killing. *Merchant*, 810 S.W.2d at 310. Second, there must be "evidence from which the jury could subjectively decide the accused killed the victim while in an excited and agitated state of mind arising out of the direct provocation. There must be evidence that the accused acted in the throes of actual, subjective passion." *Id*.

4. Self-Defense and Sudden Passion are not mutually exclusive

Sudden passion and self-defense are not mutually exclusive, and a jury's rejection of self-defense does not necessarily preclude a sudden-passion instruction. *See Beltran v. State*, 472 S.W.3d 283, 290 (Tex. Crim. App. 2015). Courts have noted "how hard it is to distinguish between evidence raising self-defense and evidence raising sudden passion." *Benavides*, 992 S.W.2d at 525. "It would be 'a rare instance' when issues of self-defense do not also raise issues of sudden passion," and "trial courts, on request, are now generally well advised to give both instructions." *Id*.

5. Submission of Instruction

A trial court should give a jury instruction on sudden passion if it is raised by the evidence, even if that evidence is weak, impeached, contradicted, or unbelievable, but the evidence cannot be so weak, contested, or incredible that it could not support such a finding by a rational jury. *McKinney*, 179 S.W.3d at 569. "An appellate court's duty is to look at the evidence supporting the charge of sudden passion, not the evidence refuting it." *Beltran*, 472 S.W.3d at 294.

In *Kitchens v. State*, 2019 Tex. App. LEXIS 10417, *23-29, 2019 WL 6482408, the First Court of Appeals reversed the punishment verdict based on the trial court's failure to submit to the jury an instruction regarding sudden passion. In *Kitchens*, like Appellant in the instant case, testified that he shot the deceased because he was afraid and that he was in danger. The Court of Appeals stated that in reviewing the record as a whole, including the punishment-phase's closing arguments and the jury's fifteen-year sentence, the Court of Appeals concluded that a likelihood existed that the jury could have rejected Kitchens's self-defense claim yet found that he acted with sudden passion. Indeed, the best explanation for the jury's fifteen-year sentence for

a murder captured on video is that the jury concluded that Kitchens did not act in self-defense but that he overreacted to Desoto's threats. And, we are further persuaded that some harm is shown by the fifteen-year sentence, given that the State suggested a thirty-to fifty-year sentence. A likelihood exists that the jury could have assessed an even lower sentence with a punishment range between two to twenty years, rather than one between five to ninety-nine years. *Kitchens v. State*, 2019 Tex. App. LEXIS 10417, *34-35, 2019 WL 6482408.

Applying the principles of *Wooten* to the instant facts, the uncontradicted evidence is that Mitchell provoked the altercation in the club on October 20, 2020. The record reflects that Mitchell accompanied by Page and Goddard, approached Appellant and threaten him. They were in the process of attacking him. The record is clear that Appellant did not respond until Mitchell was right in front of him and removed his hoodie and jewelry. Mitchell was ready for action. And, Appellant acted immediately when he was approached by Mitchell as he repeatedly stated that he was afraid and that Mitchell terrorized him. But for Mitchell's provoking the difficulty as he followed Appellant across the club as seen on the video supports the only conclusion that a sudden passion instruction should have been presented to

the jury.

The immediacy of Appellant's response to Mitchell's attack is evident by Appellant shooting his gun as he is being held by the security guard. His fear of Mitchell was overwhelming.

In the instant case, the jury could easily determine from the video that Appellant reacted to the aggressive behavior of Mitchell and the support given to him by Page and Goddard. And, the fact that the jury without a sudden passion instruction assessed a twenty-five year sentence and a fine of $10,000 suggests that with the appropriate instruction a lessor sentence might have been imposed.

In *Wooten*, the Court of Criminal Appeals outlined the standard of review for charge error premised on the trial court's refusal of a sudden-passion jury instruction:

> When an appellant protests that the trial court erred not to grant his request to charge the jury regarding sudden passion, a reviewing court must first determine whether the complained-of error exists. If the reviewing court agrees that a trial court erred by failing to submit a sudden passion instruction, it then analyzes whether the error harmed the appellant. Harm does not emanate from the mere failure to include the requested instruction. A reviewing court undertakes a harm analysis by following the standards as set out in the Texas Code of Criminal Procedure Article 36.19. If the error is preserved, the record must

> demonstrate that the appellant has suffered "some harm." In an *Almanza* harm analysis, "burdens of proof or persuasion have no place[.]" Harm must be evaluated in light of the complete jury charge, the arguments of counsel, the entirety of the evidence, including the contested issues and weight of the probative evidence, and any other relevant factors revealed by the record as a whole. To assay harm, we focus on the evidence and record to determine the likelihood that a jury would have believed that the appellant acted out of sudden passion had it been given the instruction.

(400 S.W.3d at 606).

Based on the evidence presented and Appellant's objection to the punishment charge, a new punishment hearing should be granted based on the trial court's refusal to submit a sudden passion instruction to the jury.

Issue Number Six Restated

> **Trial court erred in overruling Appellant's requested jury instruction at guilt concerning self-defense arising from apparent danger arising from being attacked by multiple assailants.**

A. Statement of Facts

The record reflects that Appellant requested the following instruction be including at guilt:

> When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force by one or more persons, and there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury

at the hands of such assailants, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself from such attack or attempted attack.

(7 RR 95, Defense Exhibit 4).

The trial court overruled Appellant's requested instruction. (7 RR 96).

The self-defense instruction submitted to the jury included:

Upon the law of self-defense, you are instructed that **a person is justified in using force against another** when and to the degree protect himself **against the other person's** use or attempted use of in response to verbal provocation alone.

A person is justified in using deadly force **against another** if he would be justified in using force against the other in the first deadly force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force.

By the term "reasonable belief" as used herein is meant belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

By the term "deadly force" as used herein is meant force that is intended or known by the persons using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the alleged offense and the previous relationship existing between the accused and Jailyn Page together with all relevant facts and **circumstances going to show the condition of the mind of the defendant at the time of the alleged offense**. You will also consider evidence of the previous relationship, if any, existing between the accused **and any other person, or persons, with Jailyn Page** at said time. In considering all the foregoing, you should place yourselves in the defendant's position and view the circumstances from his standpoint alone, at the time in question.

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Le Dadrine Da Prea Hall, did shoot Jailyn Page, with a firearm, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or **both of Jailyn Page or other persons with him, or any of them**, it reasonably appeared to the defendant that his life or person was in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force at the hands of Jailyn Page or other persons with Jailyn Page, or any of them, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect himself against Jailyn Page's use or attempted use of unlawful deadly force or against the use or attempted use of unlawful deadly force by those persons with Jailyn Page, he shot Jailyn Page, then you should acquit the defendant on the grounds of self-defense; or if you have a reasonable doubt as to whether or not theDefendant was acting in self-defense on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict not guilty.

If you find from the evidence beyond a reasonable doubt that at the time and place in question the defendant did not reasonably believe that he was in danger of death or serious bodily injury, or that the defendant, under the circumstances as viewed by him from his standpoint at the time, did not reasonably believe that the degree of force actually used by

> him was immediately necessary to protect himself against Jailyn Page's use or attempted use of unlawful deadly force or against the use or attempted use of unlawful deadly force by those persons with Jailyn Page, then you should find against the defendant on the issue of self-defense.

(CR 441-443).

B. Argument and Authorities in Support of Issue Six

Appellant asserts that the trial court erred in overruling his requested jury instruction regarding apparent danger arising from the of his being attacked by multiple assailants. The rule is that a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force. Tex. Penal Code § 9.31(a). A person is justified in using deadly force against another if he would be justified in using force, and he reasonably believes deadly force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly force. Tex. Penal Code § 9.32(a). The evidence does not have to show that the victim was actually using or attempting to use unlawful deadly force because a person has the right to defend himself from apparent danger as he reasonably apprehends it. *Hamel v. State*, 916 S.W.2d 491, 493 (Tex. Crim. App. 1996). "A person is

justified in using deadly force against another . . . when and to the degree the actor reasonably believes the deadly force is immediately necessary. . . to protect the actor against the other's use or attempted use of unlawful deadly force," if the actor's actions would be justified under Section 9.31 of the Texas Penal Code. Tex. Penal Code Ann. § 9.32(a)(West 2011). Also, "the Court of Criminal Appeals has held that a defendant is entitled to a charge on the right to defend against multiple assailants if there is evidence, no matter how weak or contradicted, the defendant believed himself to be in danger of attack from more than one person." *Mata v. State*, 939 S.W.2d 719, 722 (Tex. App.—Waco 1997, no pet.) (citing *Frank v. State*, 688 S.W.2d 863, 868 (Tex. Crim. App. 1985)).

"Restricting the charge to the right of self defense against only the [victim] is error if there is evidence that more than one person assailed the defendant." *Id*. (citing *Frank*, 688 S.W.2d at 868; *Sanders v. State*, 632 S.W.2d 346, 347-48 (Tex. Crim. App. [Panel Op.] 1982).

Regardless of the strength or credibility of the evidence, a defendant is entitled to an instruction on any defensive issue that is raised by the evidence. *Hamel*, 916 S.W.2d at 493. A defensive issue is raised by the evidence if there

is sufficient evidence to support a rational jury finding as to each element of the defense. *Shaw v. State*, 243 S.W.3d 647, 657-58 (Tex. Crim. App. 2007).

This Court must review the evidence in the light most favorable to the defendant's requested defensive instruction. *Gamino v. State*, 537 S.W.3d 507, 510 (Tex. Crim. App. 2017) (citing *Bufkin v. State*, 207 S.W.3d 779, 782 (Tex. Crim. App. 2006)). A trial court errs to refuse a self-defense instruction if there is some evidence, viewed in the light most favorable to the defendant, that will support its elements. *Gamino*, 537 S.W.3d at 510.

When the evidence viewed from the defendant's standpoint shows an attack or threatened attack by more than one assailant, the defendant is entitled to a multiple assailants instruction. *Frank v. State*, 688 S.W.2d 863, 868 (Tex. Crim. App. 1985). As Presiding Judge Keller wrote:

> The theory behind the multiple assailants charge is that, when it is clear that an attack is being conducted by multiple people as a group, a defendant is justified in using force against any member of the group, even if the recipient of that force is not engaging in conduct that would, by itself, justify the use of force (or deadly force as the case may be). For example, if a defendant was trapped in a house with several hostile individuals, some of whom were brandishing firearms and threatening the defendant, the defendant may be justified in using deadly force against a different person who was blocking an exit that would otherwise be a viable path of retreat. The use of deadly force against the person blocking the exit would be justified, even though that person

> possessed no firearms and made no threatening moves, because of that person's complicity with those who threatened the defendant's life. The rule concerning multiple assailants is essentially an application of the law of parties to the defendant's assailants.

Dickey v. State, 22 S.W.3d 490, 493 (Tex. Crim. App. 1999) (Keller, J., concurring); *Pena v. State*, 2021 Tex. App. LEXIS 825, *3-4, 2021 WL 402079.

The issue may be raised even as to those who are not themselves aggressors as long as they seem to be in any way encouraging, aiding, or advising the aggressor. *Black v. State*, 145 S.W. 944, 947 (Tex. Crim. App. 1912); *see also Petty v. State*, 126 Tex. Crim. 185, 70 S.W.2d 718, 719 (Tex. Crim. App. 1934) (evidence viewed from defendant's standpoint showed danger of attack or threatened attack by more than one assailant, and the jury should have been instructed that he had the right to defend against either or all of them); *Cartwright v. State*, 16 Tex. Ct. App. 473, 487-88 (1884) (error for the jury charge to restrict self-defense to the victim when evidence showed that two others appeared to be acting with the victim).

While the instruction do mention others acting with Page, the instruction do not make it clear how the jury is to consider the attack by multiple assailants. In *Sanders v. State*, 632 S.W.2d 346 (Tex. Crim. App. [Panel Op.]

1982), Sanders was hit in the head with a pool cue and chased into the parking lot by several men who were yelling racial epithets at him. He fired three shots in their direction, killing one of them. *Id*. at 346. Sanders was entitled to a multiple assailants instruction even though the deceased had not personally attacked him. *Id*. at 348.

Thus, "multiple assailants" does not require evidence that each person defended against was an aggressor in his own right; it requires evidence that the defendant had a reasonable fear of serious bodily injury from a group of people acting together.

If there is evidence of more assailants than one, the charge must inform the jury that the accused can defend against either, and it is error to require the jury to believe or find that there was more than one assailant attacking the accused." *Black*, 145 S.W. at 947; *see also Dickey v. State*, 22 S.W.3d at 493.

Prayer

Wherefore premises considered Appellant prays that this Court reversed the judgment of the trial court and remand this cause to the trial court for a new trial.

Respectfully submitted,

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Certificate of Service

This is to certify that a true and correct copy of the attached and foregoing Appellant's Brief has been served on Harris County Assistant District Attorney Jessica Caird at caird_jessica@dao.hctx.net via electronic filing on January 27, 2025.

/s/ Stanley G. Schneider
Stanley G. Schneider

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I certify that this document contains 14,215 words exclusive of the those portions excluded pursuant to Tex. R. App. P. 9.4 (i)(1).

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