

NO. 01-24-00305-CR

**IN THE FIRST COURT OF APPEALS
HOUSTON, TEXAS**

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DEBORAH M. YOUNG
Clerk of The Court

GODSON OLAYIWOLA AKRAN,
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

APPELLANT'S BRIEF

On Appeal from Cause No. 18-DCR-083804
268th Judicial District Court of Fort Bend County, Texas

Michael C. Diaz
State Bar No. 00793616
125 E. Cedar Street Suite C
Angleton, Texas 77515
Tel: (281) 489-2400
mjoeldiaz@sbcglobal.net
ATTORNEY FOR APPELLANT

ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. Rule 38.1(a), appellant certifies that the following is a complete list of the parties to the final judgment and the names and addresses of counsel in the trial and on appeal:

APPELLANT:

Godson Olayiwola Akran

APPEAL:

Michael C. Diaz

125 E. Cedar Street, Suite C
Angleton, Texas 77515 Trial

TRIAL:

Michael C. Diaz

125 E. Cedar Street, Suite C
Angleton, TX 77515

Cary Faden-Trial

Sarah Loera-Trial

COUNSEL FOR THE STATE OF TEXAS:

Fort Bend County District Attorney's Office

Brian M. Middleton

Sunni Mitchell-Trial

Veronica Alvarado-Trial

Marissa Chapa-Trial

301 Jackson Street, Room 101

Richmond, Texas 77469

TRIAL JUDGE:

The Honorable Steve Rogers

Presiding Judge 268th District Court

Fort Bend County, Texas

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument in this case. Pursuant to the TEX. R. APP. P. 9.4(g) and 38.1(e), Appellant requests oral argument to benefit this Court for the following reason:

**THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT
THE APPELLANT'S CONVICTION.**

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STATEMENT OF THE CASE

On November 5, 2018, Godson Olayiwola Akran, Appellant, was indicted for the felony offense of Murder. (CR 1 at 29). The offense was alleged to have been committed on or about August 16, 2018. (CR 1 at 29). On April 10, 2024, Appellant plead not guilty to the indictment. (RR 3 at 8). On April 11, 2024, the Appellant was found guilty by the Jury. (RR 6 at 62). On April 16, 2024, Appellant was assessed a forty-five (45) year sentence in the Texas Department of Criminal Justice for the offense of murder. (RR 7 at 51).

On April 16, 2024, Appellant timely filed his notice of appeal. (CR 1 at 246).

ISSUE PRESENTED

Point of Error 1:

The evidence was legally insufficient to support the appellant's conviction.

STATEMENT OF FACTS

On August 16, 2018, after leaving a club, the Appellant showed up at Lola Briggs (hereinafter "Briggs") house at 3:00 in the morning. (RR 4 at 47). Briggs and the Appellant had an existing relationship, and two children. (RR 4 at 47). Around 4:30 a.m. Deputy Thomas Hibbs ("Hibbs") was dispatched to 3731 Daintree Park Court in the Tamarron neighborhood, in Fort Bend County, Texas in response to a stabbing. (RR 3 at 58). Upon arrival he saw a black female screaming that somebody had been stabbed inside the residence and that the suspect had left

the residence northbound on Daintree. (RR 3 at 59). Deputy Hibbs entered the residence and observed a black male in the living room area, motionless, on his back with a stab wound in his upper chest area. (RR 3 at 60 & 64). Since the suspect was not at the location, Deputy Hibbs proceeded to check the area for a knife, going up and down the streets looking in front yards, but did not find a weapon. (RR 3 at 62-63).

That same day, August 16, 2018, between 5 a.m. and 5:30 a.m., Michelle Coleman, (hereinafter “Coleman”), saw emergency vehicles going by the road in the Tamarron neighborhood. (RR 3 at 23 & 27). Coleman sat and observed the emergency vehicles for a bit, when she saw a Mercedes pull into the parking lot incorrectly. (RR 3 at 28). Later, the silver Mercedes was identified to be Samara Merrick’s (hereinafter “Merrick”) car. (RR 4 at 22). Coleman also saw a man on the phone wearing jeans and a polo shirt walk out from the side of the archway towards the Mercedes that had just arrived in the clubhouse parking lot. (RR 3 at 23, 26 & 28-30). The man got in the Mercedes and the vehicle departed. (RR 3 at 26).

While Officer Donald Hess was driving westbound on Tamarron Parkway, he observed the silver Mercedes speeding which passed him going eastbound. He thought this was suspicious, so he made a U-turn and initiated his emergency lights to conduct a stop. (RR 3 at 43-44). Hess initiated a stop in the 3200 Block of FM

1462 and waited for backup to arrive, detaining both the female driver and the black male passenger until a Fort Bend County Sheriff's Deputy arrived. (RR 3 at 45). Officer Hess described the male passenger as intoxicated but cooperated with him. (RR 3 at 46).

Investigator Glenn St. Hilaire, with the Fort Bend County Sheriff's Department responded to Hess' location the silver Mercedes was stopped. (RR 3 at 182-183, 199). St. Hilaire took photos of the Appellant and identified specific characteristics about him that he believed were going to be related to the evidence. (RR 3 at 183). St. Hilaire described the Appellant's clothing as having blood spatter on them and spread across the back of Appellant's shoulder and back of his ear. (RR 3 at 184). St. Hilaire also saw blood spatter inside of the Mercedes and on a watch that was inside the car. (RR 3 at 187). After responding to 3200 Block at FM 1463, St. Hilaire went to the crime scene where the victim's, Taofeek Anifata, (hereinafter "Taofeek"), body was located. (RR 3 at 199 & 209). While there, St. Hilaire observed blood spatter in the kitchen area. (RR 3 at 199 & 209).

Detective David Williams (hereinafter "Williams") arrived at the crime scene and learned that Taofeek had already been pronounced dead. (RR 4 at 10). Williams observed Taofeek in the kitchen area, with lacerations that were consistent with knife wounds. He did not find any knives or other weapons near the victim. (RR 4 at 15). While Williams was conducting interviews at the scene, one

of the children told him that the weapon was in a kitchen drawer near the sink. (RR 4 at 16). The knife handle was found in the drawer while the blade was recovered during Taofeek's autopsy. (RR 4 at 16 & 49).

After leaving Briggs's residence, Williams went to the scene where the Appellant and Merrick were located. (RR 4 at 22). Williams interviewed the Appellant and described the Appellant as being cooperative. (RR 4 at 27 & 34). The Appellant admitted to having a knife in his hand because the victim was making him angry. (RR 4 at 28-29). During Williams's interview, the Appellant did not mention that Taofeek had used force against him before he grabbed the knife. (RR 4 at 29). Williams did not observe any injuries on the Appellant, but while testifying he agreed that not every person defending himself had to wait to get hit. (RR 4 at 24 & 35). Williams learned that the Appellant had called 911 and attempted to pour water on Taofeek, to wake him up, because he did not believe Taofeek was dead. (RR 4 at 46). When the Appellant found out that Taofeek had died, he began crying uncontrollably. (RR 4 at 35).

Although Dr. Kikuchi conducted the autopsy, Erin Barnhart ("Barnhart"), testified regarding the autopsy. (RR 5 at 94). After reviewing Dr. Kikuchi's report, she testified that there were two stab wounds. (RR 5 at 97). The first wound, although significant because it was to the ascending aorta, would not knock someone down immediately. A person could potentially survive one to two

minutes after the injury. (RR 5 at 109-110). Even with a significant bleed, a person with this type of injury could possibly continue to fight and lift up a chair for approximately a minute. (RR 5 at 109-110). The second wound was determined to be to the stomach since the knife blade was found there, and found not to have caused any damage to Taofeek organs. (RR 5 at 97 & 110).

At trial, the following testimony was presented from the witnesses who were present during the incident occurring on August 16, 2018:

Brian Adejo Testimony

Brian Adejo, nicknamed Timi (hereinafter “Timi”), was 13 years old in August of 2018. (RR 3 at 74). Timi’s little brother, Dara, shared a room with him, while Dami, his sister, had her own room and slept with the nanny. (RR 3 at 82). Timi had been asleep that night and awoke when he heard arguing downstairs. (RR 3 at 83). The Appellant was trying to take his brother and sister out of the house at 3 a.m. (RR 3 at 131). He noticed his little brother was no longer in bed with him, so he went downstairs, and stood on the landing between the stairs. (RR 3 at 84-85). From there, Timi could see the victim and Appellant arguing in the hallway. (RR 3 at 85). However, Timi did not know what they were arguing about, because some of the arguing was in Yoruba, a language Timi did not understand. (RR 3 at 86). Timi remembered that Appellant stated “[he was] not going to fight [victim] in front of his kids” and described Taofeek as being bigger than the Appellant. (RR 3

at 120-121). Timi could see that both Appellant and the Taofeek were riled up, but his mom and Odoms were trying to deescalate the situation. (RR 3 at 86-87, 90). The Appellant had Dami, and took her to the stair area, then went back to the kitchen to go where Taofeek was. (RR 3 at 96-97). Timi recalled that Taofeek and the Appellant were arguing back and forth, and that Taofeek grabbed a chair, while the Appellant grabbed a knife. Taofeek threw a chair and then both men started fighting, throwing punches at each other. (RR 3 at 101). When asked whether he remembered the Appellant getting a knife out of the drawer that he opened, Timi did not answer. He stated that although he had been shown a video of his prior statement and reviewed what he stated that in the video, everything happened so quickly. (RR 3 at 99). In the video from August 16, 2018, Timi remembers saying that the Appellant charged Taofeek, and punched him. (RR 3 at 99). Timi was now saying that he could only remember that the chair was thrown by Taofeek and both men were punching and weaving, and then Taofeek fell. (RR 3 at 101). After the victim fell, they were still punching one another and the Appellant was holding the knife with the blade pointing downwards. (RR 3 at 101-102, 134-135). Timi could remember his mom screaming, and Odoms being downstairs. (RR 3 at 107). Timi's mom yelled that Taofeek was dead, and Appellant said, no, he's fine and then went to get water and poured it on Taofeek. (RR 3 at 128). The Appellant was attempting to get the victim to wake up by giving him some water and then asked

Timi for his phone to call 911. (RR 3 at 108). After he called 911, the Appellant left the house. (RR 3 at 111).

Samara Merrick's Testimony

Merrick was dating the Appellant in August of 2018. (RR 3 at 139-140). On August 16, 2018, Merrick woke up and noticed that the Appellant was not in bed. (RR 3 at 146). After checking her phone, she realized that she had a missed call from the Appellant, so she returned his call but could not get through. (RR 3 at 149). At some point that night, the Appellant sent Merrick his location, and she went to pick him up. (RR 3 at 149 & 151). When Merrick began seeing the emergency vehicles, she called the Appellant to ask what was going on, and he responded that "he thought he killed someone". (RR 3 at 159-160). After Merrick picked up the Appellant, he told her that he had caught someone in bed with his baby mama. (RR 3 at 161). Shortly after, Merrick was pulled over. (RR 3 at 162).

Lola Briggs

Briggs met the Appellant in 2012, through a family friend; they became friends, started to date, and married and had two children, Dara and Dami. (RR 4 at 65). When Dara was about one year old there was some infidelity that begin, which Briggs confronted him with, but they would still live together. (RR 4 at 67). After having Dami in April of 2016 the couple stayed together until Dami was about eight months old. (RR 4 at 68). Because Briggs frequently traveled for work and

was separated from the Appellant, she brought in a live-in nanny, Odoms, to her residence at 3731 Daintree Park. (RR 4 at 69-70). Although the Appellant did not live there, or had a key, the Appellant and Briggs always kept in communication and the Appellant was always in contact with their children. (RR 4 at 71, 74).

After Briggs's relationship with the Appellant ended, she began a relationship with Taofeek, while still having a physical relationship with the Appellant. (RR 4 at 79, 81).

On August 15, 2018, when Briggs got home, her kids were already in bed. (RR 4 at 83). At Approximately 3 a.m., Taofeek called Briggs to let her know that he was coming over to get something to eat and then leave. (RR 4 at 84). Taofeek was in the kitchen getting something to eat when there was a knock at the door, which sounded as though someone was beating on the door. (RR 4 at 85). Briggs was surprised because she was not expecting anyone. (RR 4 at 85-86). Then she heard a knock on the window. (RR 4 at 85-86). When Briggs went to check to see who was at the door, it was the Appellant. (RR 4 at 86). She was surprised as he had not called her or let her know that he was going over. (RR 4 at 86). The Appellant was telling Briggs to "open the door...[he] need[ed] to charge [his] phone". (RR 4 at 87). Taofeek wanted to know why the Appellant was there at that time of night. (RR 4 at 87). Briggs opened the door to give the Appellant a charger then closed and locked the door. (RR 4 at 87-88). After that, Briggs and Taofeek

began arguing because he wanted to know why the Appellant was there. (RR 4 at 88). Normally, Taofeek knew when the Appellant was at Briggs's house and when he would leave. (RR 4 at 88). Briggs was attempting to prove to Taofeek that she did not know the Appellant was coming to her house by showing Taofeek her phone. (RR 4 at 89). When Briggs looked at her phone, she saw that there was a missed call from a friend of the Appellant, who told her that he had just dropped the Appellant off. (RR 4 at 89). Taofeek was very upset. (RR 4 at 89). After approximately 10 minutes of arguing, Taofeek left Briggs' house and then she locked the front door. (RR 4 at 91, 93). Briggs did not see the Appellant when Taofeek left. (RR 4 at 92). Before Briggs could make it to her bedroom, she heard the doorbell ring again. Taofeek had come back. (RR 4 at 93). While Briggs let Taofeek in, the Appellant came through the front door as well and stated to Taofeek, "like, okay, I don't understand, why are you here?" (RR 4 at 94-95). The Appellant made his way upstairs to get his kids. (RR 4 at 94-95). Briggs tried grabbing the kids from the Appellant, and kept asking him what he was doing, and where was he trying to take the kids. (RR 4 at 96). She repeatedly asked the Appellant and Taofeek to leave. (RR 4 at 97). Odoms had been awakened and was trying to reason with the Appellant by asking him what he was doing, as she had never seen him that way. (RR 4 at 99). The Appellant responded that he did not want to cause any trouble or anything, he just wanted to take his kids. (RR 4 at 99).

Taofeek and the Appellant started arguing and Taofeek challenged the Appellant to fight. (RR 4 at 99, 151). The Appellant kept telling Taofeek that he was not going to fight in front of his kids. (RR 4 at 151). The Appellant tried explaining that if he was a bad person, he would have done something to Taofeek's car when he was outside which angered Taofeek. (RR 4 at 101). Taofeek began saying derogatory things about the Appellants mother. (RR 4 at 103-105). Briggs wanted everyone to leave. The Appellant tells Taofeek that he was going to know what it felt like for someone to sleep with his wife. (RR 4 at 106). During this time, the Appellant had his two-year old in his arms and went upstairs to put her to sleep. (RR 4 at 152). As the Appellant was going down the stairs, Taofeek told him to come, and put up his fist. (RR 4 at 155). Briggs called her mother in an attempt to get the men to calm down, since in their culture an elderly person that has been called to the table is likely to be listened to. (RR 4 at 111). Prior to calling her mom, Briggs stated that the Appellant had called someone to pick him up. (RR 4 at 139). While on the phone with Briggs's mother, the Appellant and Taofeek were calm. After she hung up the phone, Taofeek told the Appellant, "come" as if he wanted to fight. The Appellant grabbed a knife and went towards Taofeek, Briggs tried running towards the men to stop them and before she got there, Taofeek had thrown a chair at the Appellant. The men started fighting and punching each other. (RR 4 at 116-117 & 119-123 & 158). When Taofeek fell to the ground, Brian started screaming that he

was dead. The Appellant was saying that he was not dead, so he started trying to wake Taofeek up by tapping him and giving Taofeek water. (RR 4 at 123). Briggs did not know when 911 was actually called but she knew that once Taofeek fell to the ground he did not seem responsive. (RR 4 at 124). The Appellant told the operator from 911 that Taofeek had fainted and prior to leaving the house told Briggs that the ambulance was on its way. (RR 4 at 126 & 164).

Fayama Odoms

Odoms recalled that she was taking care of the children, when Briggs came in around 7 p.m. to 8 p.m. that night with Taofeek. (RR 4 at 169). The children were put to bed around 9 p.m. to 10 p.m., and then she went to bed around 10 p.m. (RR 4 at 170-171). Odoms was awakened by the doorbell ringing around 4 a.m. She did not see anyone, so she went back to sleep, and was later awakened by a knock. (RR 4 at 172).

When Odoms came out of the room, she heard Briggs asking the Appellant why he came over without letting her know. (RR 4 at 173). She knows that the Appellant never showed up unannounced at three in the morning. Briggs would normally let her know that the Appellant was coming to take the kids. (RR 4 at 173). She recalls that after the Appellant came through the front door, Taofeek followed. (RR 4 at 199). She described the two men yelling loudly at each other in the Yoruba language that she did not understand. (RR 4 at 177). At one point, she

heard Taofeek say “let’s do it, let’s fight”, and then they continued to speak in Yoruba. (RR 4 at 187). Odoms took Taofeek to Briggs’s room to talk to him, trying to convince him to stop, but Taofeek kept going back to where the Appellant was. (RR 4 at 180). While in the room, she would tell Taofeek to relax. (RR 4 at 212). Odoms tried to keep Taofeek in Briggs’s room, but he kept going out. (RR 4 at 212). Odoms was standing in the living room, when she saw the Appellant run straight to the drawer and open it taking a knife out, and run towards Taofeek. (RR 4 at 182). As the Appellant was running towards Taofeek, Taofeek stood up grabbed the chair, as though he was going to fight with it, and said he wanted to fight, then Taofeek slipped and fell on the floor. (RR 4 at 182). Fayama testified that she did not see Taofeek throw the chair at the Appellant, it just landed on the floor when Taofeek fell. (RR 4 at 184). Odoms saw the Appellant stab Taofeek, when he fell on the floor and, then ran when she saw the blood. (RR 4 at 185).

SUMMARY OF THE ARGUMENT

Testimony by the witnesses, Briggs, Barnhart, and Williams, show the Appellant was justified in using deadly force to protect himself.

Briggs testimony shows that Taofeek was challenging the Appellant to a fight, to which Appellant did not want to fight in front of his children and he was waiting for his ride. Taofeek puts up his fist and threw a chair at the Appellant. On

the way to confront Taofeek, the Appellant picks up a knife in order to defend himself.

Williams testified that a person who is defending himself does not have to wait to get hit, and a chair can cause serious bodily injury. The Appellant could defend himself. Barnhart's testimony also supports the Appellant's claim of self-defense in that it's possible that Taofeek was still struggling with the Appellant right before his death.

The testimony clearly supports the Appellant's claim of use of deadly force to defend himself. The evidence supported that the Appellant's use of deadly force was immediately necessary to protect himself against Taofeek's use of deadly force. Therefore, no rational juror could have found the Appellant guilty of murder in this case.

ARGUMENT AND AUTHORITIES

POINT OF ERROR ONE: THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT THE APPELLANT'S CONVICTION.

SUFFICIENCY

Appellant challenges the legal sufficiency of the evidence to support his conviction. The Court of Criminal Appeals has held that only one standard should be used in a criminal case to evaluate the sufficiency of the evidence to support findings that must be established beyond a reasonable doubt: legal sufficiency. *Brooks v. State*, 323 S.W.3d 893,894-95 (Tex. Crim. App. 2010). Accordingly, the

review of the sufficiency of the evidence in this case is under a rigorous and proper application of the legal sufficiency standard of *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks*, 323 S.W.3d at 906. When reviewing the sufficiency of the evidence, it is proper to view all of the evidence in the light most favorable to the verdict to determine whether the fact finder was rationally justified in finding guilt beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 899; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This Court will defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *Brooks*, 323 S.W.3d at 902 n.19, 907. Appellant argues the evidence is legally insufficient to support his conviction. The Court of Criminal Appeals has held that only one standard should be used to evaluate the sufficiency of the evidence in a criminal case: legal sufficiency. *Brooks v. State*, 323 S.W.3d 893, 894 (Tex. Crim. App.2010). Accordingly, the review of the sufficiency of the evidence in this case under a proper application is the *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), legal sufficiency standard. *Brooks*, 323 S.W.3d at 905.

STANDARD OF REVIEW

When reviewing the sufficiency of the evidence, this Court views all of the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *Id.* at 898. *Dewberry v. State*, 4 S.W.3d 735,740 (Tex. Crim. App.1999); see also *Sharp v.*

State, 707 S.W.2d 611,614 (Tex. Crim. App.1986) (stating the jury may choose to believe or disbelieve any portion of the testimony at trial). The duty as a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App.2007).

Sec. 19.02. MURDER.

(a) In this section:

(1) "Adequate cause" means 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.

(2) "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.

(b) A person commits an offense if the person:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual;

(3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or

attempt, or in immediate flight from the commission or attempt, the person commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual; or

(4) knowingly manufactures or delivers a controlled substance included in Penalty Group 1-B under Section 481.1022, Health and Safety Code, in violation of Section 481.1123, Health and Safety Code, and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance manufactured or delivered by the actor, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

(e) It is a defense to prosecution under Subsection (b)(4) that the actor's conduct in manufacturing or delivering the controlled substance was authorized under Chapter 481, Health and Safety Code, or other state or federal law.

Sec. 9.31. SELF-DEFENSE.

(a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the person against whom the force was used;
and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3) if the actor consented to the exact force used or attempted by the other;

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or

(5) if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was:

(A) carrying a weapon in violation of Section 46.02; or

(B) possessing or transporting a weapon in violation of Section 46.05.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34.

(e) A person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.

(f) For purposes of Subsection (a), in determining whether an actor described by Subsection (e) reasonably believed that the use of force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON.

(a) A person is justified in using deadly force against another:

(1) if the actor would be justified in using force against the other under Section 9.31; and

(2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:

(A) to protect the actor against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(c) 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 as described by this section.

(d) For purposes of Subsection (a)(2), in determining whether an actor described by Subsection (c) reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

In this case, the Appellant argues that the evidence is insufficient to support his conviction because the evidence clearly shows that the Appellant was justified in using deadly force to protect himself. The evidence supported that the Appellant's use of deadly force was immediately necessary to protect himself against Taofeek's use of deadly force. Therefore, no rational juror could have found the Appellant guilty of murder. Specifically, the following witnesses support Appellant's argument:

ERIN BARNHART

The Medical Examiner, Erin Barnhart ("Barnhart"), testified to the autopsy that was conducted on Taofeek because Dr. Yoshiyuki Kikuchi was no longer with the medical examiner's office that conducted the autopsy. (RR 5 at 94). Having reviewed the report and his findings, she testified that there were two stab wounds, since the knife blade was found in the stomach, that must have been the second wound. (RR 5 at 97). The first wound was to the ascending aorta, which resulted in significant bleeding, *but a person could survive one to two minutes*. (RR 5 at 109). *Even with a significant bleed, an individual could still raise a chair, and retreat*. (RR 5 at 109-110). *Barnhart testified that if there were a struggle, that a*

person could continue the struggle, such as a fist fight or fight for a brief period of time, in the range of a minute. (RR 5 at 110).

DAVID WILLIAMS

(Diaz) Q. So a person defending himself, does he have to wait to get hit?

(Williams) A. Not in every case, no, sir. Q. Not in every case. Right. (RR 4 at 35).

(Diaz) Q. You got the measurements of Mr. Akran, right, at the jail. You learned his height, his weight. Did you get the measurements of Taofeek?

(Williams) A. I did not. The medical examiner will have those measurements.

(Diaz) Q. Did you come to find out that he was much bigger than Godson Akran?

(Williams) A. At the scene, he appeared to be more filled out, thicker. (RR 4 at 35-36).

(Williams) A. Yes, sir. Yes, sir. (Diaz) Q. Okay. The chair. The chair. Godson mentioned that Taofeek had a chair. Right? And he threw it at him. Right?

(Williams) A. Yes, sir. (Diaz) Q. Okay. Did you -- did -- did you see the chair in there when you were -- did your -- your inspection of the house and so forth?

(Williams) A. There were four chairs at that table. One was laying on its side. And the one near the head of the victim had blood on the seat. (Diaz) Q. Okay.

(Williams) A. It's possible that the chair that was laying on its side was the one that was thrown. (Diaz) Q. Okay. Did you get -- did you recover that chair? (Williams)

A. No. We photographed it. (Diaz) Q. Did you recover it? (Williams) A. I don't

think so. No, sir. (Diaz) Q. Okay. That's -- that's a piece of evidence, wouldn't it be, if that were the case it was thrown? (Williams) A. Yes, sir. (Diaz) Q. Okay. But you didn't recover it. The jury can't see or feel or see that chair, other than what's in the picture. Right? (Williams) A. Correct. (Diaz) ***Q. Okay. And if somebody was hit with a chair, depending on where you're hit, that could cause serious bodily injury, couldn't it? (Williams) A. Yes, sir. (Diaz) Q. Okay. So if Taofeek was grabbing this chair and threw it at Godson, because you know you just testified it could cause serious bodily injury and Godson could defend himself potentially. Right? (Williams) A. Yes, sir.*** (Diaz) Q. Okay. As far as the area where the breakfast table is, sir -- Detective, there was blood on the wall. Right? (Williams) A. Yes, sir. (Diaz) Q. On the blinds? (Williams) A. Yes, sir. (Diaz) Q. And on the chair, as you indicated? (Williams) A. Yes, sir. (RR 4 at 37-39).

(Diaz) Q. Okay. And we don't know how the blood got on the walls, do we? (Williams) A. From the victim. (Diaz) Q. From the victim? (Williams) A. Yes. (Diaz) Q. Or we -- we know Godson had blood on himself, too. So it could have came from Godson. Right, potentially? (RR 4 at 41).

(Diaz) Q. Okay. Now also, you observed Mr. Akran there when he was pulled over; is that correct? (Williams) A. Yes, sir. (Diaz) Q. And you observed his -- did you see his earlobe where there was blood in there? (Williams) A. Yes, sir. (Diaz) Q. Did you notice there was blood in his inner ear? (Williams) A. Yes, sir.

(Diaz) Q. It was kind of coagulated, kind of caked on there. Right? (Williams) A. Yes. (Diaz) Q. Did you determine how that could have happened? (Williams) A. Through contact with the victim. (Diaz) Q. He would have to get up close to the victim. Right? (Williams) A. Yes. (Diaz) Q. Almost like a struggle, like they were grabbing each other, I'm guessing? (RR 4 at 43-44).

(Diaz) Q. Okay. So he's got blood on him. Right? Akran -- Mr. Akran has blood on him. Right? (Williams) A. Yes, sir. (Diaz) Q. On his shirt, his upper area, right? Excluded to his upper area? It's limited to his upper area? I think there is one spot on his pants. Right? (Williams) A. Yes, sir. (Diaz) Q. But the majority is on his shirt, front side, some on his back. Right? (Williams) A. Yes, sir. (Diaz) Q. His lobe up here. Right? (Williams) A. Yes, sir. (Diaz) Q. Okay. So you've got blood on him. You've got blood in the breakfast table area, all around the walls, floor, chair, everything. Right? (Williams) A. Yes sir. (RR 4 at 45-46).

LOLA BRIGGS

(Diaz) Q. Move to the hallway. And in the hallway, I believe you said Taofeek challenged Godson to some type of fight? (Briggs) A. Correct. (RR 4 at 143).

(Briggs) A. So Taofeek said something about his mom. Which is a big curse. And that's when things just began to escalate. And, you know, that's what the loudness starts and -- (Diaz) Q. Yes, ma'am. Now you mentioned Taofeek

mentioned something about Godson's mom. In -- in -- you know -- is that -- you mentioned it's a curse. What do you mean by that, Lola? (Briggs) A. So, I mean, in English curse -- I mean, maybe the worse curse is, like, maybe a B word or F word. But I want to say, like, where we're from, you know, you using, you know, that type of language is kind of like -- they're like fighting words. It's -- it's like beyond -- you know, it's not something anyone would say to anyone. (Diaz) Q. It's bad? (Briggs) A. It's really bad. (Diaz) Q. To get to that point? (Briggs) A. Right. (Diaz) Q. Is -- is -- is -- you meant those are fighting words. Is that -- (Briggs) A. I mean -- (Diaz) Q. That culture, that region, that area? (Briggs) A. I mean, if anyone was to say that in our culture, I mean, you're going to want to fight. I mean -- or you're going to want to either maybe curse the person back. But it's -- it's -- it's just really, really bad. (Diaz) Q. I understand. (Briggs) A. Yeah. It's -- it's a curse that you just would not want to use. (Diaz) Q. I understand. And -- and you understand these are just words though, right? (Briggs) A. Correct. (Diaz) Q. But in your culture, they mean -- have a significant meaning, I'm guessing? (Briggs) A. Yes. (Diaz) Q. That's like, Hey, you crossed the line maybe? (Briggs) A. Correct. Correct. (Diaz) Q. Okay. So he challenged him -- Taofeek challenged Godson to a fight, then he starts talking about his mom, which is curse from the culture? (Diaz) A. Right. (RR 4 at 144-145).

(Diaz) Q. Okay. And so that lasted 7 minutes. And did -- at that point, did you call your mom? (Briggs) A. Yes. I -- yes. When I felt like it was just --(RR 4 at 147).

(Briggs) A. So when I put her on speaker, and she spoke to Taofeek, you know, basically just saying, you know -- my mom was, like, you know, I'm disappointed that, you know, that you're behaving like this, you know, in front of the kids. And you know -- you know, he said he understands and he was quiet. Then my mom spoke to Godson and he -- she was just, like, you know -- you know, why are you behaving like this? Why are you here? And Godson stated to her that, you know, he came, you know, briefly but he's about the leave. (Diaz) Q. Okay. A. That he's already called his ride to leave. (RR 4 at 148).

(Briggs) A. And -- and then, maybe after I got off the phone with my mom, I want to say -- maybe -- maybe five minutes, maybe -- you know, it started again. They started arguing again. (RR 4 at 149).

(Diaz) Q. You mentioned it started back up. Who started it back up at this time? Or who was doing the talking at this point? (Briggs) A. Right. So Taofeek -- Taofeek said to him -- you know, Taofeek was basically telling him to come --like --(Diaz) -Q. Still? (Briggs) A. Yes. Afterwards which -- I -- I was shocked. You know, he was telling him to come. You know, like, challenging him. You know what, like, come, you know. (RR 4 at 150).

(Diaz) Q. Okay. And you -- I forgot to ask you, but can you describe Taofeek? His height, weight for us, please? (Briggs) A. Taofeek is probably like maybe 6'5. Maybe --maybe 220. (Diaz) Q. Is he bigger than Godson? (Briggs) A. He is. (Diaz) Q. Okay. And so they're going back and forth. Does Godson -- what does Godson do in response to these challenges? (Briggs) A. So Godson is saying to Taofeek, you know, like, I'm not going to fight you now. You know, I'm not going to fight in front of my kids. He's just constantly saying that, you know -- I'm not going to fight now. I'm not going to fight in front of my kids. (RR 4 at 151).

(Diaz) Q. Okay. Now, Godson takes your daughter --y'all's daughter -- upstairs. How long was he gone upstairs? (Briggs) A. I mean -- maybe -- maybe five minutes. I think at this point, because of the whole arguing and everything, you could probably tell that maybe my daughter was kind of like agitated because she was kind of like --(RR 4 at 154).

(Diaz) Q. So Godson comes back down. What does Godson do at this point? (Briggs) A. So then, when Godson comes back down, so Taofeek is telling him to come, you know. Like he should come. He should come, you know. And he put up his fist. Then, Godson -- that's when I seen Godson running towards him. And when he starts running towards him, I start running towards them. But I don't make it to them. (RR 4 at 155).

(Diaz) Q. And where does the chair come into play, Lola? (Briggs) *A. So when Taofeek tells him to come, Taofeek picks up the chair and he threw the chair at him.* (RR 4 at 156). (Briggs) A. *And when the chair was thrown, that's when Godson went to him and they started fighting.* (RR 4 at 157).

Briggs testified that Taofeek started talking about the Appellant's mother as well as challenging the Appellant to a fight. The Appellant did not want to fight in front of his children. In addition, at the time, the Appellant was waiting for his ride. Even after talking with Briggs' mother, Taofeek continued challenging the Appellant to fight. Moreover, the comments which Taofeek made about the Appellant's mother were very disrespectful in their culture. The Appellant wanted no part of this as he took his daughter to her bedroom upstairs. When the Appellant comes downstairs Taofeek is still challenging the Appellant. At this point, Taofeek puts up his fist and throws a chair at the Appellant. On the way to confront Taofeek, the Appellant picks up a knife in order to defend himself. Briggs also testified that Taofeek is maybe 6'5" and maybe 220, and bigger than the Appellant.

Williams' testimony supports the Appellant's argument. Williams testified that a person who is defending himself does not have to wait to get hit. Furthermore, Williams was asked "if somebody was hit with a chair, depending on where you're hit, that could cause serious bodily injury", which he answered in the affirmative. Williams was also asked "if Taofeek was grabbing this chair and threw

it at Godson, which could cause serious bodily injury, could Godson defend himself”, to which Williams also answered in the affirmative. The Appellant also argues that there was a continued struggle as evidenced by the blood spatter on the walls and chairs in the kitchen area. Williams also testified that the Appellant had blood on his person as well as blood in his ear.

Barnhart’s testimony also supports the Appellant’s claim of self-defense in that it’s possible that Taofeek was still struggling with the Appellant right before his death. She testified a person could survive one to two minutes, even with a significant bleed, an individual could still raise a chair, and retreat. Barnhart testified that if there were a struggle, that a person could continue the struggle, such as a fist fight or fight for a brief period of time, in the range of a minute.

The testimony clearly supports the Appellant’s claim of use of deadly force to defend himself. The evidence supported that the Appellant’s use of deadly force was immediately necessary to protect himself against Taofeek’s use of deadly force. Therefore, no rational juror could have found the Appellant guilty of murder in this case.

CONCLUSION AND PRAYER

WHEREFORE PREMISES CONSIDERED, Appellant, GODSON OLAYIWOLA AKRAN, respectfully asks that the judgment of the trial court be reversed and that a judgment of acquittal be entered or in the alternative that

Appellant's sentence be set aside and for such other and further relief to which Appellant may be justly entitled.

[Signature on the Next Page]

Respectfully submitted,

/s/ **Michael C. Diaz**

MICHAEL C. DIAZ

State Bar No. 00793616

mjoeldiaz@sbcglobal.net

125 E. Cedar Street Suite C

Angleton, Texas 77515

(281) 489-2400 Telephone

Attorney for Appellant,

Godson Olayiwola Akran

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Brief is computer-generated, with those portions required to be counted containing 8045 words according to the word-count function of the application used to create it and complies with the word-count requirements of Rule 9.4, Texas Rules of Appellate Procedure. It is printed in 14-point typeface, except for the footnotes, which are printed in 12-point typeface.

/s/ *Michael C. Diaz*
MICHAEL C. DIAZ

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been served on the opposing counsel of record listed below by electronic service on Thursday, January 23, 2025.

Fort Bend County District Attorney's Office
Brian Middleton
Email: @.gov

/s/ *Michael C. Diaz*
MICHAEL C. DIAZ

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Mike Diaz on behalf of Michael Diaz

Bar No. 793616

mjoeldiaz@sbcglobal.net

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Brian Middleton		Fbcda.eservice@fortbendcountytexas.gov	1/23/2025 2:29:14 PM	SENT