Opinion issued October 22, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00804-CR

BRYANT CHRISTOPHER WATTS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Case No. 1503254

MEMORANDUM OPINION

A jury found appellant, Bryant Christopher Watts, guilty of murder, enhanced with two prior felony convictions, and it assessed his punishment at fifty years' confinement. In two points of error, appellant contends that the evidence is

insufficient to support his conviction for murder because the State failed to (1) prove that he committed murder beyond a reasonable doubt and (2) rebut the defense of self-defense beyond a reasonable doubt. We affirm.

Background

Appellant and his brother, Arron Jones, worked at Vivid, a strip club, shining shoes. Mistie Bozant was a dancer at the club. The complainant, Phillip Panzica, known as "Flip," was Bozant's boyfriend.

On the night of March 18, 2016, Jones and Bozant agreed to hang out together after she finished work. Appellant arrived at the club around 10:30 p.m. Panzica arrived sometime later.

Panzica, Bozant, Jones, and appellant eventually left the club together to go to a party at a Marriott hotel. Panzica drove Bozant's car, Bozant sat in the passenger seat, Jones sat in the rear passenger seat, and appellant sat behind Panzica. When it became clear that they would not be allowed into the party at the hotel, Panzica suggested that the group go to the Star Lounge.

As Panzica was turning left off of Westheimer Road, appellant shot him several times. Appellant dragged Panzica from the car, left him in the middle of the intersection, and told Bozant to get out of the car. Appellant got in the driver's seat, Jones climbed into the passenger seat, and they sped away. A metro bus driver

stopped to render aid to Panzica while one of the passengers called 911. Panzica was later pronounced dead at the scene.

Former Houston Police Department (HPD) Homicide Detective Brian Harris[1] was assigned to the case. Upon arriving at the scene, he saw a body in the middle of the intersection and at least three shell casings and a knife approximately six to eight inches long near the body. Detective Harris took a written statement from Bozant. Bozant identified Panzica as her fiancé and told Detective Harris that the assailants had stolen her car.

On March 19, 2016, Menard County Deputy Sheriff William Burl Hagler was on patrol when he observed a black vehicle speeding over a bridge. When the deputy attempted to initiate a traffic stop, the driver sped up and a high-speed ensued into the next county. The car eventually crashed into a barbeque restaurant in Eola, a small town near San Angelo, injuring an elderly couple. Appellant and Jones emerged from the car, and Deputy Hagler took them into custody for evading arrest.

Officers placed appellant and Jones in separate patrol cars to transport them to Menard County jail. On the way there, appellant told Deputy Hagler that a guy named Flip and a girl had tried to rob him. Appellant said that Flip was armed and

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[1] Harris is currently the Chief Deputy for Harris County Constable's Office Precinct 5.

that he had to shoot Flip when he went for his weapon. The dash cam video from the back seat of Deputy Hagler's patrol car was played for the jury.

Detective Harris arrived in Menard County that evening and interviewed appellant. The video of the interview (State's Exhibit 86A) was shown to the jury. During the interview, appellant told Detective Harris that Flip was acting suspicious and driving in the wrong direction, and that appellant became intimidated. Appellant told Detective Harris that he thought Flip was armed and that appellant shot him when Flip dropped his hands. Detective Harris testified that the investigation uncovered no evidence that Panzica had a gun.

Detective Harris's partner showed two photo arrays to Bozant—one which included a photo of Jones and the other which included a photo of appellant. Bozant picked out Jones and appellant from the arrays and identified appellant as the "shooting man."

Joel Timms, a Texas Ranger with the Department of Public Safety, took photographs and collected evidence from the vehicle. Timms testified that the deputies involved in the high-speed pursuit said they saw something come out of appellant's vehicle several miles before the crash. After two days searching the area, officers recovered a firearm—a Taurus Millennium .45— approximately a half-mile from the crash site. The evidence collected from the vehicle included several articles of clothing, a backpack with four live .45 cartridges, an empty cartridge from the

car's floorboard, and Bozant's purse containing approximately $1,500 dollars in cash. Timms also took DNA swabs from bloodstains found inside the vehicle.

Jones, appellant's brother, testified that he met Panzica about two weeks after Jones began working at the club. On the night in question, Bozant agreed to hang out with Jones and appellant, and Panzica joined them. Jones testified that Panzica offered methamphetamine to appellant, but appellant told Panzica "not to come at [me] like that" because appellant does not do those types of drugs. Jones testified that Panzica was apologetic, and appellant and Panzica were "okay" afterwards.

Jones testified that when the plan to go to the party at a Marriott hotel fell through, appellant told Panzica that if they were not going to the party, Panzica could drop appellant and Jones off and they could go home. Panzica suggested they go to the Star Lounge instead. Appellant responded that he did not know how he could get into the lounge because he was carrying a weapon. Panzica told appellant not to worry because he went there all the time with his gun, and they let him enter.

Jones testified that appellant asked to get out of the car at least three or four times. Jones testified that Panzica began to turn around in his seat as he came to a stop in the middle of the intersection when appellant shot him. Appellant told Bozant to get out of the car several times, but she did not move. Jones then told Bozant "please get out of the car so the same doesn't happen to you," and Bozant got out. Jones climbed into the front passenger seat and they drove away.

Harrison Obaski, a Metro bus driver, saw a car speed away and a woman crying for help. When Obaski stopped the bus, he saw a body in the middle of the road and the woman told him, "help me, they shot my boyfriend." Obaski testified that when he asked her what happened, "she said . . . they were in the vehicle and they were having a[n] argument and they shot him from the back and threw him from the vehicle."

Kimberly Zeller, a firearms examiner with the Houston Forensic Science Center, testified that she examined a .45 firearm (State's Exhibit 79), two fired jacketed bullets (State's Exhibit 67), three fired cartridge cases (State's Exhibit 66), unfired ammunition, and a magazine to determine whether the fired bullets and cartridge cases were fired from the .45. Zeller compared the fired bullets and fired cartridge cases to her test fires from the .45 and concluded that they were fired from the .45.

Dr. Roger Milton, an assistant medical examiner at the Harris County Institute of Forensic Sciences, testified that Panzica sustained twelve gunshot wounds[2]—six to the right upper shoulder and neck area and six to his left hand—and that four bullets were recovered from his body. Dr. Milton testified that Panzica's toxicology results were positive for amphetamine, benzoylecgonine (a metabolite of cocaine),

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[2] The wounds consisted of entry, exit, and re-entry wounds.

and methamphetamine. He further testified that methamphetamine and cocaine are powerful stimulants that affect behavior.

Justin McGee, an HPD crime scene investigator, took photographs of the evidence found at the scene. McGee testified that a knife was found close to Panzica's body as well as a holster attached to the left side of his waist. The button on the holster was unfastened. McGee testified that Panzica could have unfastened the button, or it could have become unfastened when appellant dragged Panzica onto the street.

The jury found appellant guilty of murder as charged. During the punishment phase, appellant pleaded true to two felony enhancement allegations of aggravated assault and bribery. Finding the enhancements true, the jury assessed appellant's punishment at fifty years' confinement. This appeal followed.

Discussion

In two points of error, appellant contends that the evidence is insufficient to support his conviction because the State failed to (1) prove that he committed murder beyond a reasonable doubt and (2) rebut the defense of self-defense beyond a reasonable doubt.

A. Standard of Review

We review appellant's challenge to the sufficiency of the evidence under the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307 (1979). *See Brooks v.*

State, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). We examine all of the evidence in the light most favorable to the jury's verdict to determine whether any "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 318–19; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Evidence is insufficient under this standard in four circumstances: (1) the record contains no evidence probative of an element of the offense; (2) the record contains a mere "modicum" of evidence probative of an element of the offense; (3) the evidence conclusively establishes a reasonable doubt; and (4) the acts alleged do not constitute the criminal offense charged. *See Jackson*, 443 U.S. at 314, 318 n.11, 320; *Laster v. State*, 275 S.W.3d 512, 518 (Tex. Crim. App. 2009); *Gonzalez v. State*, 337 S.W.3d 473, 479 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd).

The jury may reasonably infer facts from the evidence presented, credit the witnesses it chooses, disbelieve any or all of the evidence or testimony proffered, and weigh the evidence as it sees fit. *See Canfield v. State*, 429 S.W.3d 54, 65 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). In a sufficiency review, we must consider the "combined and cumulative force" of the circumstances pointing toward guilt. *See Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We may not substitute our judgment for that of the jury by re-evaluating the weight and credibility of the evidence. *Brooks*, 323 S.W.3d at 900. An appellate court presumes

that the factfinder resolved any conflicting inferences in favor of the verdict and defers to that resolution. *See Jackson*, 443 U.S. at 326.

B. Elements of Charged Offense

Appellant argues that the evidence is insufficient to support his conviction for murder.[3]

As charged here, a person commits the offense of murder if he (1) intentionally or knowingly causes the death of an individual or (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. *See* TEX. PENAL CODE § 19.02(b)(1), (2). A person acts intentionally with respect to a result of his conduct when it is his conscious objective or desire to cause the result. *Id.* § 6.03(a). A person acts knowingly with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result. *Id.* at 6.03(b). Knowledge and intent are almost always proven by circumstantial evidence and may be inferred from the person's acts, words, and conduct, as well as the surrounding circumstances. *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004). A jury may infer specific intent to kill from use of a deadly weapon in a deadly manner unless it is reasonably apparent that death or serious injury could not result from the use of the weapon. *Adanandus v. State*, 866

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[3] Appellant does not specify the element or elements of the charged offense he contends the State failed to prove.

S.W.2d 210, 215 (Tex. Crim. App. 1993); *see Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). Further, if a deadly weapon is fired at close range and death results, the law presumes an intent to kill. *Womble v. State*, 618 S.W.2d 59, 64–65 (Tex. Crim. App. 1981). A firearm is a deadly weapon. TEX. PENAL CODE § 1.07(a)(17).

We start with the uncontroverted evidence that appellant used a deadly weapon and fired at Panzica who was seated in front of him in the car, resulting in Panzica's death. Jones testified that appellant began shooting Panzica when Panzica stopped the car. The jury heard testimony that Bozant identified appellant from a photo array and told the officer that appellant was the "shooting man." After appellant and Jones were taken into custody in Eola, appellant told Deputy Hagler that he had to shoot Flip when he went for his weapon. During his interview, appellant told Detective Harris that he shot Flip when Flip dropped his hands. The jury heard testimony that Panzica died from multiple gunshot wounds, a number of which were fired from only inches away. This evidence alone is sufficient for the jury to have reasonably found that appellant had the specific intent to kill Panzica. *See Womble*, 618 S.W.2d at 64–65; *Trevino v. State*, 228 S.W.3d 729, 736 (Tex. App.—Corpus Christi 2006, pet. ref'd) (concluding jury could reasonably infer specific intent to kill occupants where evidence showed that defendant fired firearm into occupied vehicle).

The jury could also infer appellant's intent from his actions following the murder. The evidence showed that appellant fled the scene in Bozant's car and drove more than three hundred miles into central Texas where he led officers on a high-speed chase for more than forty miles. A factfinder may draw an inference of guilt from the circumstance of flight. *Clayton*, 235 S.W.3d at 780. The evidence also showed that appellant made efforts to conceal the murder weapon from law enforcement by throwing the firearm from the car during the pursuit. Attempts to conceal incriminating evidence is also a circumstance of guilt. *Guevara*, 152 S.W.3d at 50.

Viewing the evidence in the light most favorable to the verdict, we hold that the evidence was sufficient for a rational juror to find appellant guilty of murder as charged in the indictment beyond a reasonable doubt. We overrule appellant's first point of error.

C. Self-Defense

Appellant also argues that the evidence is insufficient to support his conviction because the State failed to rebut the defense of self-defense beyond a reasonable doubt.

The Penal Code provides that deadly force used in self-defense is a defense to prosecution for murder if that use of force is "justified." TEX. PENAL CODE §§ 9.02, 9.31–9.32. Under section 9.32(a), a person is justified in using deadly force against

another when and to the degree he reasonably believes the deadly force is immediately necessary to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery. *Id.* § 9.32(a)(2)(B). The Penal Code defines "reasonable belief" as "a belief that would be held by an ordinary and prudent man in the same circumstances as the actor." *Id.* § 1.07(a)(42). The law examines "reasonableness" from the perspective of an ordinary and prudent person. *See Mays v. State*, 318 S.W.3d 368, 385 (Tex. Crim. App. 2010).

Section 9.32(b), which establishes a presumption of reasonableness if three criteria are met, provides as follows:

> 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 . . . 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.

Id. § 9.32(b).

In evaluating a claim of insufficient evidence in the context of a justification defense, we apply the above general sufficiency review principles in conjunction

with sufficiency review principles specific to justification defenses. *See Braughton v. State*, 569 S.W.3d 592, 609 (Tex. Crim. App. 2018). When a defendant raises a claim of self-defense to justify the use of force or deadly force against another, "the defendant bears the burden to produce evidence supporting the defense, while the State bears the burden of persuasion to disprove the raised issues." *Id.* at 608 (citing *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003); *Saxton v. State*, 804 S.W.2d 910, 913–14 (Tex. Crim. App. 1991)). The defendant is required to produce "some evidence that would support a rational finding in his favor on the defensive issue." *Id.* (citing *Krajcovic v. State*, 393 S.W.3d 282, 286 (Tex. Crim. App. 2013)). The State, however, is not required to produce evidence; rather, its burden of persuasion only requires "that the State prove its case beyond a reasonable doubt." *Id.* (quoting *Zuliani*, 97 S.W.3d at 594); *Saxton*, 804 S.W.2d at 913. Thus, "[i]n resolving the sufficiency of the evidence issue, we look not to whether the State presented evidence which refuted appellant's [evidence of a justification defense], but rather we determine whether after viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact would have found the essential elements of [the offense] beyond a reasonable doubt and also would have found against appellant on the [justification]-defense issue beyond a reasonable doubt." *Braughton*, 569 S.W.3d at 609 (quoting *Saxton*, 804 S.W.2d at 914). Further, as with the general sufficiency principles, the trier of fact is the sole judge of the

credibility of defensive evidence, and it is free to accept it or reject it. *Id.*; *Saxton*, 804 S.W.2d at 914. Ultimately, a justification defense is a fact issue that is determined by the jury, and "[a] jury verdict of guilty is an implicit finding rejecting the defendant's [justification]-defense theory." *Braughton*, 569 S.W.3d at 609 (quoting *Saxton*, 804 S.W.2d at 914); *Zuliani*, 97 S.W.3d at 594.

The record reflects that the jury heard appellant's version of events, both through a videotape of his interview with the police and from other witnesses. The record reflects that the jury was fully informed of appellant's assertion that he shot Panzica in self-defense, out of fear for his safety or that of his brother. Appellant requested, and received, a self-defense instruction in the jury charge.

However, the jury also heard testimony from Obaski, the bus driver, who discovered Panzica's body in the middle of the intersection and performed CPR on him. Obaski testified that when he stopped the bus, Bozant said, "help me, they shot my boyfriend." Bozant told Obaski that "they were in the vehicle and they were having a[n] argument and they shot him from the back and threw him from the vehicle." Although appellant told the police that he thought Panzica was armed with a gun and was reaching for it when appellant shot him, the investigation found no gun on Panzica or any other evidence that he had one. The jury, as exclusive judge of the credibility of witnesses, was free to believe or disbelieve appellant about Panzica's actions or to find that he was not reasonable in concluding that Panzica's

actions justified deadly force. *See Hayes v. State*, 728 S.W.2d 804, 808 (Tex. Crim. App. 1987) ("Whether the appellant's beliefs were reasonable and justifiable and whether or not the appellant used more force than necessary under the circumstances were fact questions for the jury to decide.").

Appellant argues that evidence that a knife was found near Panzica's body and that the holster was unfastened shows that Panzica was prepared to draw his weapon and, therefore, appellant was justified in using deadly force in self-defense. However, the jury also heard testimony from McGee, the crime scene investigator, that the knife could have come loose from the holster when appellant dragged Panzica onto the street. The jury is free to accept or reject defensive evidence on the issue of self-defense. *See Braughton*, 569 S.W.3d at 609; *Saxton*, 804 S.W.2d at 914; *see Febus v. State*, 542 S.W.3d 568, 572 (Tex. Crim. App. 2018) ("A jury may accept one version of the facts and reject another, and it may reject any part of a witness's testimony."). Moreover, appellant's flight immediately after the shooting and his attempts to hide evidence suggest that appellant did not believe his actions were legally justified. *See Miller v. State*, 177 S.W.3d 177, 184 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd) (concluding where defendant fled scene after killing complainant but later claimed self-defense, flight was circumstantial evidence of guilt) (citing *Valdez v. State*, 623 S.W.2d 317, 321 (Tex. Crim. App. 1979).

Based on all of the evidence presented at trial, viewed in the light most favorable to the verdict, we hold that a rational jury could have found the essential elements of the offense of murder beyond a reasonable doubt and also could have found against appellant on the self-defense issue. *See Braughton*, 569 S.W.3d at 609. Appellant's second issue is overruled.

Conclusion

We affirm the trial court's judgment.

Russell Lloyd
Justice

Panel consists of Chief Justice Radack and Justices Lloyd and Countiss.

Do not publish. TEX. R. APP. P. 47.2(b).

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P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

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12/9/2020 **COA No. 01-19-00804-CR**

WATTS, BRYANT CHRISTOPHER Tr. Ct. No. 1503254 PD-1036-20

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

1ST COURT OF APPEALS CLERK
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Deana Williamson, Clerk

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Deana Williamson, Clerk

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Deana Williamson, Clerk

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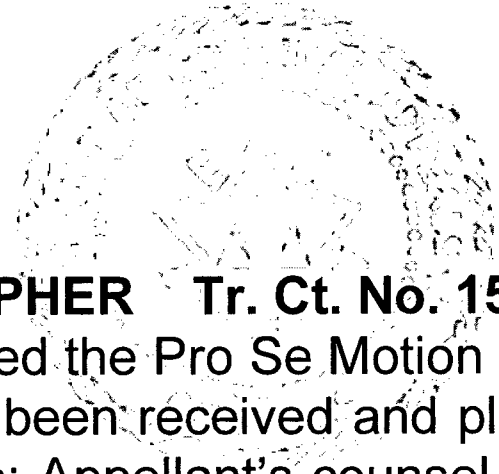

5/13/2021

WATTS, BRYANT CHRISTOPHER Tr. Ct. No. 1503254 PD-1036-20

The Court has this day received the Pro Se Motion for Rehearing. The rehearing is untimely. The rehearing has been received and placed in your file. No action will be taken on this matter. [Note: Appellant's counsel, Sharon Slopis, filed petition for discretionary review in the above referenced case.]

Deana Williamson, Clerk

BRYANT CHRISTOPHER WATTS
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Deana Williamson, Clerk

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APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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OPINION OF THE FIRST COURT OF APPELS OF HOUSTON TEXAS

On October 22, 2020 the First Court of Appeals of Houston Texas issued an Opinion regarding Bryant Christopher Watts, Appellant v The State of Texas, Appellee, Case No. 01-19-00804-CR appealed from the 179th District Court of Harris County, Texas Trial Court Cause No. 1503254.

The First Court of Appeals of Houston, Texas reviewed the above numbered action were the record reflects through video evidence and eyewitness testimony the State's evidence was insufficient to support Appellant's Murder Conviction under the standard enunciated in Jackson v Virginia 443 U.S. 307(1979). Were the record reflects the evidence conclusively establishes a reasonable doubt and the acts alleged do not constitute the criminal offense charged. (Record reflects Appellant acted in Self-Defense as described in Texas Penal Code Section 9.31-9.32(b)) (See Texas Penal Code Sec. 20.04 AGGravated Kidnapping)

The First Court of Appeals of Houston, Texas Weighed their Opinion on State applied Case law that allows the trier of fact [Jury] to be the Sole Judge of the Credibility of defensive evidence and to be free to accept or reject it. (Saxton v State 804 S.W.2d at 914)

The Court of Appeals for the First District of Texas AFFIRMED the Judgement of the 179th District Court of Harris County, Texas.

Verdict of the 179th District Court of Harris County, Texas

On September 30, 2019 THE STATE of TEXAS brought Bryant Christopher Watts, Appellant to trial for Cause No. 1503254 Bryant Christopher Watts v The State of Texas in the 179th District Court of Harris County, Texas for the Charge of Murder. On October 7, 2019 a Jury found Appellant Bryant Christopher Watts Guilty of Murder and Sentenced Appellant to 50 years of Confinement in the Texas Department of Criminal Justice.

ORDER OF THE COURT OF CRIMINAL APPEALS OF AUSTIN, TEXAS

On October 28, 2020 Appellate Counsel Sharon Slopis, Texas Bar number 18511300, filed a Petition for Discretionary Review on behalf of Bryant Christopher Watts, Appellant to The Court of Criminal Appeals of Austin, Texas. The Petition for Discretionary Review was accepted by The Court of Criminal Appeals in Austin, Texas on October 29, 2020 and numbered PD-1036-20.

On March 28, 2021 Appellant wrote a letter to the Court of Criminal Appeals in Austin, Texas to find out the status of the review of his Petition for Discretionary Review. The Court of Criminal Appeals in Austin, Texas responded with a letter and docket sheet on April 23, 2021 informing Appellant that Appellant's Petition for Discretionary Review was REFUSED December 9, 2020.

ORDER OF THE COURT OF CRIMINAL APPEALS OF AUSTIN TEXAS

On April 30, 2021 Bryant Christopher Watts, Appellant filed a Motion for Rehearing with the Court of Criminal Appeals of Austin Texas. On May 13, 2021 the Court of Criminal Appeals of Austin Texas DENIED The Motion For Rehearing as Untimely.