**No. 09-23-00321-CR**

In the Court of Appeals for the
Ninth District of Texas at Beaumont

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**JUSTIN AVERY CLARABUT,**
*Appellant*

vs.

**THE STATE OF TEXAS**

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On Appeal from Cause No. 22-08-09817-CR
Before the 435th District Court of Montgomery County, Texas

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# BRIEF OF TEXAS GUN RIGHTS FOUNDATION AS AMICUS CURIAE IN SUPPORT OF APPELLANT

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CJ Grisham, Esq.
Texas Bar No. 24124533
Lead Attorney, Texas Gun Rights
Law Offices of CJ Grisham, P.L.L.C.
3809 S. General Bruce Dr. #103-101
Temple, Texas 76502
254-405-1726
cj@cjgrisham.com

COUNSEL FOR AMICUS CURIAE

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## INTEREST OF AMICUS CURIAE

Texas Gun Rights Foundation is a 501(c)(3) nonprofit serving as the educational and legal wing of Texas Gun Rights, the largest Texas-based gun rights organization with more than 500,000 members committed to protecting our citizens' Second Amendment-protected rights without compromise.

Our organization strives to educate and inform the people of Texas on the importance of the Second Amendment of the U.S. Constitution and Article 1, Section 23 of the Texas Constitution, and equip them with the tools and knowledge necessary to defend their rights.

Through a variety of educational materials, speaking engagements, and training programs, we empower gun rights activists to mobilize and protect the Second Amendment from all those who seek to undermine it.

We also aim to defend the Second Amendment in the courts and seek to restore rights that have been lost over the years. By bringing Texas Gun Rights' no-compromise tactics to the courtroom, we seek to safeguard the freedoms guaranteed by the Second Amendment to ensure that law-abiding gun owners are protected from any violations of their rights.

## INTRODUCTION & SUMMARY OF THE ARGUMENT

Texas Gun Rights Foundation ("TGRF") is deeply disturbed by the miscarriage of justice that occurred in the case of Appellant, Justin Avery Clarabut, an Army veteran, a concealed handgun license holder, and law-abiding citizen of this State — and the potential impact upholding his conviction will have on Texans' gun rights.

The law in this State has always been clear: a person has a right to defend themselves from apparent danger to the same extent as they would have had the danger been real, provided they acted upon a reasonable apprehension of danger as it appeared to them from their standpoint at the time. *See Jones v. State*, 544 S.W.2d 139, 142 (Tex. Crim. App. 1976).

In this case, the evidence firmly established that Appellant was justified in using deadly force to defend himself against the apparent danger created by the complainant, Brent Purvis' relentless pursuit of Appellant into and through Appellant's neighborhood to his own home where a person's right to use force to protect themselves is sacrosanct. More importantly, there was no evidence presented by the State that comes anywhere close to proving beyond a reasonable doubt that Appellant's use of force was not justified or not reasonable.

Instead, the State obtained this wrongful conviction by arguing in closing arguments to jurors that we should not accept a world where you "can shoot somebody

on a maybe." Reporter's Record, Vol. 6, p. 28. This is entirely opposite of what the law says, entirely opposite of what we train our members regarding the safe and legal use of their firearms, and stands to set a horrible precedent that tramples on Texas citizens' Second Amendment rights. As Justice Holmes writing for the Court said over a hundred years ago, "Detached reflection cannot be demanded in the presence of an uplifted knife," *Brown v. United States*, 256 U.S. 335, 343 (1921). To uphold this conviction would send a chilling message to lawful gun owners around the State and our organization's members that they cannot use deadly force to defend themselves unless they are confronted with definitive evidence that the other person is armed and dangerous. In the seconds it would take to make that kind of determination, a lawful gun owner could lose their lives and TGRF cannot abide by such an occurrence.

TGRF requests this Court to reverse the judgment in Appellant's case and render a judgment of acquittal.

## ARGUMENT

The Second Amendment provides: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. The United States Supreme Court has held that this Amendment, in conjunction with the Fourteenth Amendment, "protect[s] an individual's right to keep and bear arms for self-defense." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022); *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 767–68 (2010). As the Court indicated in *Heller*, in fact, self-defense is one of the "core" interests protected by the Second Amendment. *Heller*, 554 U.S. at 630.

This "core" interest has been an inherent part of Texas law since its inception. *See*, *e.g. Smith v. State,*15 Tex. App. 338, 346 (Ct. App. 1884) ("It is a well-settled rule of law that if, at the time of the killing, the conduct of the deceased, viewed in the light of all the circumstances, was such as to create in the mind of the defendant a reasonable apprehension of death or serious bodily injury, the defendant would have the right to kill, whether the danger was real or apparent."). As Blackstone said of self-defense:

> Both the life and limbs of a man are of such high value, in the estimation of the law of England, that it pardons even homicide if committed se defendo, or in order to preserve them. For whatever is done by a man, to save either life or member, is looked upon as done with the highest necessity or compulsion.

1 William Blackstone, COMMENTARIES 130.

Equally "core" to this interest protected by the Second Amendment and well-settled in Texas law is the fact that a person has a right to defend themselves from apparent danger to the same extent as he would had the danger been real, provided he acted upon a reasonable apprehension of danger as it appeared to him from his standpoint at the time. *See Smith*, *supra*, at 436; *Jones v. State*, 544 S.W.2d 139, 142 (Tex. Crim. App. 1976). Additionally, Texas Penal Code § 9.32(c) provides that a person who is otherwise lawfully present at the location where deadly force is used "is not required to retreat before using deadly force." TEX. PENAL CODE § 9.32.

One of the biggest concerns that TGRF has about Appellant's case is that the evidence unequivocally established that Appellant made every effort to escape from the complainant's aggressive actions toward him and retreated though he had no duty to. Those undisputed, aggressive actions made by the complainant against Appellant included the complainant trying to intentionally strike Appellant's vehicle with his own, Reporter's Record, Vol. 3, p. 74, getting out of his vehicle and walking over toward Appellant's vehicle while stopped at an intersection, *id.* at 77–78, pursuing Appellant through Appellant's own neighborhood, State's Exhibit 8, and then finally pulling up to Appellant's home after Appellant parked in his driveway. *Id.* In short, Appellant did more than what the law requires of him and is more than what we would expect from our organizations' members.

Appellant, at that point, was justified in exiting his vehicle with his lawfully owned and possessed handgun to confront the complainant and try to get him to stop his continued assault against him. *See* TEX. PENAL CODE § 9.04 ("The threat of force is justified when the use of force is justified by this chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force."). This action is also what we would expect from our organization's members.

More importantly, under those circumstances, Appellant had justifiable reason to believe that the complainant was attempting to commit the offense of murder, thereby raising the presumption that Appellant's action in using deadly force against the complainant was reasonable. *See* TEX. PENAL CODE § 9.32(b)(1)(C). Additionally, although Appellant was not inside his habitation at the time he used deadly force, under those circumstances, TGRF views his actions as reasonable to defend himself against a possible attempt by the complainant to unlawfully and with force enter Appellant's occupied habitation or vehicle had Appellant attempted to retreat to either of those locations. *See* TEX. PENAL CODE § 9.32(b)(1)(A).

The State in this case, despite having the burden to prove beyond a reasonable doubt that Appellant's use of self-defense was not reasonable, failed to do anything to overcome that burden. *See Braughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim.

App. 2018). Instead of relying upon any evidence, they instead utilized a problematic argument.

TGRF takes serious issue with the arguments made by the State in closing arguments to the jurors that we shouldn't accept a world where you "can shoot somebody on a maybe." Reporter's Record, Vol. 6, p. 28. While the prosecutor argued, "I'm telling you fellow citizens of Montgomery County, you do not want to live in that world," *id.*, TGRF, the organization we support, Texas Gun Rights, and its over 500,000 members do not want to live in a world where a person like Appellant cannot use deadly force to defend themselves under circumstances like those he faced. To do so would create a world where criminals' values outweigh those of their victims.

Our organization's members are taught on the lawful use of firearms and are taught repeatedly, as Ken Lewis testified for Appellant, that if you wait for another person to pull out a firearm, you are going to end up either seriously injured or dead first. *See* Reporter's Record, Vol. 4, p. 104. Just as Justice Holmes writing for the Court said over a hundred years ago that "[d]etached reflection cannot be demanded in the presence of an uplifted knife," *Brown v. United States*, 256 U.S. 335, 343 (1921), the same principle applies when a person like Appellant is confronted by an individual like the complainant. The complainant intentionally attempted to strike Appellant's vehicle with his own, exited his vehicle and walked over toward

Appellant's vehicle while stopped at an intersection, chased Appellant through Appellant's own neighborhood, until finally pulling up to Appellant's home after Appellant parked in his driveway. When a person like the complainant reaches toward the floorboard of his vehicle after a similar, continued pursuit of another to their own home, no person including Appellant should have to wait before using deadly force to protect themselves.

Upholding Appellant's conviction would send a chilling message not just to Texas Gun Rights' members but to lawful gun owners around the State that they cannot use deadly force to defend themselves unless they are confronted with definitive evidence that the other person is armed and dangerous. In the seconds it would take to make that kind of determination, a lawful gun owner could lose their lives and TGRF cannot abide by such an occurrence.

Governor Abbott said it best when he proclaimed that "Texas has one of the strongest 'Stand Your Ground' laws of self-defense that cannot be nullified by a jury." *See* Press Release, May 16, 2024 (available at https://gov.texas.gov/news/post/governor-abbott-pardons-daniel-perry-following-board-recommendation).

TGRF firmly believes that the jury got it wrong in this case. It is counting on this Honorable Court to correct this miscarriage of justice, disapprove of the prosecutor's attempt to obtain a conviction by arguing that a person should not be allowed to defend themselves on a "maybe," and avoid setting a dangerous precedent and

sending a chilling message that no Texan can use deadly force defend themselves unless they are confronted with definitive evidence that the other person is armed and dangerous. Our organization views this as an infringement on our Second Amendment rights and the "core" interest of being able to use firearms to act in self-defense to protect ourselves, our family, and our property.

We respectfully request that this Court reverse the judgment of the trial court and vacate Appellant's conviction.

Respectfully submitted,

CJ GRISHAM, ESQ.
TEXAS BAR NO. 24124533
LEAD ATTORNEY, TEXAS GUN RIGHTS
LAW OFFICES OF CJ GRISHAM, P.L.L.C.
3809 S. GENERAL BRUCE DR. #103-101
TEMPLE, TEXAS 76502
254-405-1726
CJ@CJGRISHAM.COM

*COUNSEL FOR AMICUS CURIAE*

## CERTIFICATE OF SERVICE

This is to certify that a copy of this brief has been served on to the attorney for the State, Kyle Jones, Montgomery County District Attorney's Office, pursuant to Texas Rule of Appellate Procedure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on February 26, 2025.

*/s/ C.J. Grisham, Esq.*

## CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rules of Appellate Procedure 9.4(i)(1), 9.4(i)(2)(B), and 9.4(i)(3), undersigned counsel hereby certifies that this computer-generated document contains 2,325 words as calculated by the word count feature contained within the program used to prepare said document, namely, Microsoft Word 365.

*/s/ C.J. Grisham, Esq.*