No. 01-24-00165-CR

In The Court of Appeals
For the 1st District of Texas

Demontrion Terreil Albert,
Appellant

v.

The State of Texas,
Appellee

On Appeal from Cause Number 1740082
From the 248th District Court of Harris County, Texas

Brief for Appellant

ORAL ARGUMENT NOT REQUESTED

Alexander Bunin
Chief Public Defender
Harris County, Texas

Amanda Koons
Assistant Public Defender
Harris County, Texas
State Bar of Texas No. 24110105
1310 Prairie St., 13th floor
Houston, Texas 77002
Phone: (713) 274-6700
EFax: (832) 927-0687
amanda.koons@pdo.hctx.net

IDENTITY OF PARTIES AND COUNSEL

APPELLANT:	Demontrion Albert TDCJ #02511073 Garza West Unit 4250 Highway 202 Beeville, TX 78102
TRIAL PROSECUTORS:	Steve Walsh SBOT NO. 24090770 Bethany Belisle SBOT NO. 24095480 Assistant District Attorneys Harris County, Texas
DEFENSE COUNSEL AT TRIAL:	Jerome Godinich SBOT NO. 08054700 Attorney at Law 801 Congress Street, Suite 200 Houston, Texas 77002
PRESIDING JUDGES:	Hon. Hilary Unger
APPELLANT'S COUNSEL:	Amanda Koons Assistant Public Defender State Bar No. 24110105 1310 Prairie St., 13th floor Houston, Texas 77002 (713) 274-6700

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STATEMENT REGARDING ORAL ARGUMENT

Appellant does not request oral argument. However, should the State of Texas or the Court request oral argument, Appellant requests the opportunity to participate in oral argument.

STATEMENT OF THE CASE

On February 20, 2024, the trial court found Appellant guilty of aggravated robbery with a deadly weapon after a bench trial. The offense was alleged to have occurred on or about February 8, 2021. On February 23, 2024, the court assessed punishment at 70 years TDCJ. Notice of Appeal was filed on February 23, 2024.

ISSUES PRESENTED

1A. Whether Appellant was deprived of the effective assistance of counsel when trial counsel failed to familiarize himself with the law of self-defense before presenting a confession-and-avoidance defensive theory.

1B. Whether Appellant was deprived of the effective assistance of counsel when trial counsel convinced the trial judge in a bench trial not to consider the law of self-defense when Appellant would have been entitled to such consideration and trial counsel argued for an acquittal based upon this defense.

STATEMENT OF FACTS

A shooting occurred at the A to Z convenience store at 7997 West Airport on February 8th, 2021 (4 R.R. 92-93). The complainant, Marcus Jefferson, was outside the A to Z store with two gunshot wounds when law enforcement arrived (4 R.R. 98). At the scene and at the hospital after, Mr. Jefferson informed law enforcement that he could not describe the shooter (3 R.R. 10-11). The complainant testified that he was trying to arrange a legitimate business purchase of vending machines when his friend "Dre" sent an unknown man in a Chrysler 300 to meet him before Dre was meant to arrive with a U-haul of machines (4 R.R. 24, 41-42). Mr. Jefferson claimed the unknown man wouldn't let him get in his car to have a conversation, but he testified that he got his money from his trunk, then accidentally dropped his earbud on the ground and picked it up (4 R.R. 42-44). He testified that after he stood up, the unknown man suddenly said "give me the bag" (4 R.R. 45). He replied "I'm not giving you shit," then he testified that the man brought up a gun and shot him immediately before speeding off (4 R.R. 45-46).

The state's case-in-chief was fraught with problems. Though their complainant initially told law enforcement that he could not describe the person who shot him, he subsequently "identified" Demontrion Albert and three other dissimilar men in four different photo lineups presented by police (4 R.R. 68-

74). Detectives had struggled to develop a suspect, generating at least four unfruitful leads from evidence found in the car abandoned after the shooter left the parking lot and wrecked into another vehicle (4 R.R. 149, 5 R.R. 34, 52, 57-59). Detectives never contacted or attempted to locate "Dre" (5 R.R. 80).

Ultimately Demontrion Albert's fingerprint was pulled from a soda can on the passenger side door of the wrecked Chrysler (5 R.R. 33). His presence near the area of the shooting was confirmed by GPS readouts of his court-ordered ankle monitor from another case (5 R.R. 109).

Another of the State's problems was their Complainant's credibility. Mr. Jefferson failed to admit that he possessed and fired his a gun when he gave his version of events on February 9, February 22, and June 26 of 2021 (5 R.R. 72). Detective Junilray Cimeni revealed that Mr. Jefferson didn't admit to having or using a gun in the altercation until he was confronted with a direct question on September 17, 2021 (5 R.R. 73)

Surveillance video presented by the state showed that a "bystander" hid Complainant's gun for him minutes after the shooting (4 R.R. 104). Officer Shane Samples recovered a black pistol from where he observed it being hidden on video (4 R.R. 106). The previously hidden gun was a 9-millimeter firearm (4 R.R. 117). Crime scene investigators observed multiple shell casings from a nine-millimeter firearm scattered in the area where Mr. Jefferson was standing

as the man in the Chrysler pulled away, and only one 40-millimeter casing at the edge of the parking lot in the direction the other car fled before crashing (4 R.R. 116-117). Crime scene investigators also observed multiple bullet defects on the driver's and passenger's side of the vehicle that fled and crashed (4 R.R. 119), including one "right above the window on the driver's side of the vehicle" (4 R.R. 124). No bullet defects were observed in Mr. Jefferson's parked vehicle.

At the end of the State's case-in-chief, Defense Counsel moved for a directed verdict, which the court denied (5 R.R. 118-19).

When the defense case-in-chief began, Mr. Albert took the stand and chose to testify. He admitted several things: that he was at the A to Z on February 8th, 2021 (5 R.R. 128); that he was there to carry out a drug deal with Mr. Jefferson on behalf of "Dre" (5 R.R. 130); that he was participating "Dre's" plan to rip Mr. Jefferson off with fake drugs (5 R.R. 131); that he attempted to steal Mr. Jefferson's money bag and flee (5 R.R. 147); and that his theft and flight both failed when the car he was driving reversed into a curb, "froze", then he tried to give the money bag back (5 R.R. 148-49). Mr. Albert testified that Mr. Jefferson pulled out a gun and shot into the car very near his head (5 R.R. 149-50). He testified that after Mr. Jefferson fired multiple shots at him, he pulled away from the A to Z and took a gun from under his leg to defend himself, shooting as he drove away with his head down (5 R.R. 150-51).

Mr. Albert walked through surveillance video nearly frame-by-frame explaining what was happening in each moment. Crime scene evidence corroborated Mr. Albert's version of events the arrangement of the fired casings in the parking lot, pills in the wrecked Chrysler (4 R.R. 120), and the "bullet defects" near the drivers' window and various other parts on both sides of the car.

In the end, the court found Mr. Albert guilty of aggravated robbery. After several more days of testimony which focused on an unrelated murder accusation, the court sentenced Mr. Albert to 70 years in prison.

SUMMARY OF THE ARGUMENT

In a discussion with the trial judge about the law that should apply to this case, Defense Counsel made an incorrect statement of self-defense law that revealed two related errors: that counsel had unprofessionally pursued a confession and avoidance strategy without being reasonably informed of the law of self-defense, and that counsel argued against Mr. Albert's interest by using his incorrect recollection of the law to convince the judge *not to* consider the self-defense law even though self-defense was at the core of Mr. Albert's sole path to acquittal.

There was some evidence that would support the consideration of the law of self-defense in Mr. Albert's case. Mr. Albert himself testified that he did

attempt to steal money from the complainant, but that he had reversed into a curb, froze, and offered to give the money back before the complainant took out and fired a gun at close range near his head. It was only after the complainant fired a gun near Mr. Albert's head that he took out a gun and fired back while fleeing the parking lot where the incidents occurred. This was some evidence that the shooting was a separate incident from the theft, and that self-defense could have applied to the shooting.

Trial counsel stated that the criminal activity of theft disqualified Mr. Albert from raising self-defense and convinced the trial judge not to consider that law of self-defense. Based on trial counsel's deficient conduct in failing to understand the law of self-defense and in arguing against his client's only available defense to the trial court, Mr. Albert suffered prejudice.

ARGUMENT AND AUTHORITIES

Ineffective assistance of counsel generally

This Court must look to the totality of the representation and the particular circumstances of this case in evaluating the effectiveness of counsel. *Ex parte Felton*, 815 S.W.2d 733, 735 (Tex. Crim. App. 1991). In doing so, the Court must apply the two-pronged *Strickland* test handed down by the United States Supreme Court to the claim of ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52 (1985); *see Strickland v. Washington*, 466 U.S. 668 (1984).

Counsel's representation is ineffective when Appellant first shows that counsel's performance fell below an objective standard of reasonableness in light of prevailing professional norms, then can also show that but for counsel's unprofessional error, there is a reasonable probability that the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-88. Reasonable probability means a "probability sufficient to undermine confidence in the outcome." Id. at 694.

This second Strickland prong carries a lower burden of proof than the preponderance of the evidence. See *Bouchillon v. Collins*, 907 F.2d 589, 595 (5th Cir. 1990); *Strickland*, 466 U.S. at 694. An appellant need not show that counsel's deficient performance more likely than not altered the outcome of the case. *Milburn v. State*, 15 S.W.3d 267, 269 (Tex. App. –Houston [14th Dist.] 2000, pet. ref'd). Rather, prejudice from counsel's deficient performance is judged by whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Ex parte Amezquita*, 223 S.W.3d 363, 366 (Tex. Crim. App. 2006); *Ex parte Briggs*, 187 S.W.3d 458, 466 (Tex. Crim. App. 2005).

When "there is a record sufficient to demonstrate that counsel's conduct was not the product of a strategic or tactical decision," trial counsel is not afforded the court's ordinarily strong presumption that their conduct fell within

the wide range of reasonable professional assistance. *State v. Morales*, 253 S.W.3d 686, 697-698 (Tex. Crim. App. 2008). Even in the absence of a record setting forth counsel's reasons for the challenged conduct, a single egregious error of omission or commission by counsel may constitute ineffective assistance. *McKinny v. State*, 76 S.W.3d 463, 470-71 (Tex. App. – Houston [1st Dist.] 2002, no pet.). When no reasonable trial strategy could justify trial counsel's conduct, counsel's performance falls below an objective standard of reasonableness as a matter of law, regardless of whether the record adequately reflects trial counsel's subjective reasons for acting as he did. *Andrews v. State*, 159 S.W.3d 98, 102 (Tex. Crim. App. 2005).

This case presents just the type of record that demonstrates beyond a preponderance of the evidence that trial counsel was ineffective. *See Cannon v. State*, 252 S.W.3d 342, 349-50 (Tex. Crim. App. 2008); *Andrews v. State*, 159 S.W.3d at 102..

POINT OF ERROR 1A

MR. ALBERT WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL PRESENTED AND ARGUED A CONFESSION-AND-AVOIDANCE DEFENSE WITHOUT BEING REASONABLY INFORMED OF THE LAW**.**

A. Facts:

Counsel's second question to Mr. Albert about the events of February 8th elicited a confession to his presence at the filling station and involvement in the

shooting of Marcus Jefferson (5 R.R. 127-8). At this moment, counsel gave up earlier arguments about the shooter's identity (R.R. Vol. 3) and the sufficiency of the evidence presented in the State's case-in-chief (5 R.R. 118-19). Mr. Albert's testimony centered around his participation in the arrangements and details of the events up to and after the shooting. He admitted to attempting to steal Mr. Jefferson's money bag (5 R.R. 147). He admitted to attempting and failing to flee because his car was in reverse (5 R.R. 148-49). He admitted to firing a gun towards Mr. Jefferson but, crucially, he testified that he had not taken his gun out from under his leg until Mr. Jefferson fired a gun into his car and near his head (5 R.R. 149-151).

Nevertheless, at the conclusion of trial, defense counsel ultimately argued *against* Mr. Albert's entitlement to the law of self-defense:

> Mr. Godinich: You know judge, I'm going to withdraw [the request to consider the law of self-defense]. Because I just finished a self-defense case and that was - - every time I have a self-defense case it's always you cannot be committing an illegal act at the same time, so okay. I will withdraw that.
>
> The Court: Okay All right. So I will, though, consider theft from a person. (5 R.R. 182).

In closing argument, defense counsel articulated a separate-incidents theory of defense (5 R.R. 184). This sole defense required the court to make two specific findings about the actions to which Mr. Albert had confessed: 1)

that Mr. Albert was guilty of the lesser offense of theft from a person, and 2) that while Mr. Albert had admitted to the elements of the separate offense of aggravated assault, he was justified in shooting back at Mr. Jefferson in self-defense. Counsel recounted the facts to which Mr. Albert had testified and argued, "I am asking the court to find my client not guilty of this offense of aggravated robbery. You know, I simply believe my client was telling the truth." (5 R.R. 186). With the case-in-chief presented by defense counsel, there was no other path to acquittal for the shooting except through the law of self-defense.

B. Applicable law

One of the basic standards of reasonably effective representation is an understanding of the law that applies to a client's defense. It has long been held that a criminal defense lawyer must have a firm command of the facts of the case as well as governing law before he can render reasonably effective assistance of counsel. *Ex parte Welborn,* 785 S.W.2d 391, 393 (Tex.Crim.App.1990). Counsel has a duty to exert his best efforts to ensure that the client's decisions are based on correct information as to the applicable law. *Ex parte Wilson*, 724 S.W.2d 72, 74 (Tex. Crim. App. 1987). "In assessing competence, we [hold] counsel accountable for knowledge, or the ability to attain knowledge, of relevant legal matters which are neither novel nor unsettled." *Ex parte Moody*, 991 S.W.2d 856, 858 (Tex. Crim. App. 1999). The

Sixth Amendment "at a minimum guarantees an accused the benefit of trial counsel who is familiar with the applicable law. . . ignorance of well-defined general laws, statutes and legal propositions is not excusable and may, if it inures to the client's prejudice, lead to a finding of constitutionally ineffective assistance of counsel. *Ex Parte Lewis*, 537 S.W.3d. 917, 921 (Tex. Crim. App. 2017)(internal quotations omitted). When it is apparent from the record that counsel has not fully researched or is unaware of which defenses are available to his client, his conduct clearly falls below the standard of the objective standard of reasonableness. *See Vasquez v. State*, 830 S.W.2d 948,951 at n. 4 (Tex. Crim. App. 1992).

B. Analysis

a. It is apparent from the record that counsel did not understand the law of self-defense:

While discussing the law that applied to this case, trial counsel stated: "every time I have a self-defense case it's always you cannot be committing an illegal act at the same time, so okay. I will withdraw that [request for consideration of self-defense law]." (5 R.R. 182). This understanding of the law is patently incorrect. "Under Texas law, a defendant's engagement in criminal activity at the time of the offense does not preclude a claim of self-defense, but the [factfinder] may consider it in determining the reasonableness of the defendant's belief that the use of deadly force was immediately necessary." *Harris v. State*, 668 S.W.3d 83, 95–96 (Tex. App.—Houston [1st Dist.] 2022, pet. ref'd). It has been long

understood that there is "a significant difference" between the *incorrect* interpretation that other criminal activity "disqualif[ies] the accused from defending his or her use of force," and the *correct* understanding that criminal activity "simply removes the presumption that his or her use of force was reasonable" *Barrios v. State*, 389 S.W.3d 382, 393 (Tex. App.—Texarkana 2012, pet. ref'd). Trial counsel revealed that he had not apprised himself of the law of the case when he stated on the record that he believed that the *incorrect* interpretation above barred his client's self-defense claim.

b. Counsel's failure to understand the law as it applied to this case was prejudicial to Mr. Albert

"[T]o show prejudice, the appellant 'must show there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceedings would have been different.'" *Smith v. State*, 286 S.W.3d 333, 340 (Tex. Crim. App. 2009), citing *Strickland*, 466 U.S. at 694. "Reasonable probability is a probability sufficient to undermine confidence in the outcome, meaning counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id.

As discussed above, to accept the defense theory, the trial court would have to enter a finding of guilt for the lesser offense of theft from a person to which Mr. Albert confessed. This defense strategy depended on the judge finding specifically that the defendant *had* been engaged in the commission of a separate offense—the theft and failed flight which he described in detail in his testimony. Although the

findings of theft and self-defense were crucial elements of his client's sole available defensive theory, Counsel failed to understand or prepare for how the admission of theft would impact the availability of self-defense for the subsequent, but separate shooting.

When evaluating prejudice, Courts have acknowledged that a confession-and-avoidance strategy carries inherent risks and often leave the defendant with a single path to acquittal and little room for error in the application of self-defense law. *See e.g. Villa v. State*, 417 S.W.3d 455, 464 (Tex. Crim. App. 2013). Counsel took many risks in this case including abandoning defensive issues related to identity and the sufficiency of evidence that were raised pretrial and after the state's case-in-chief. These issues were abandoned as soon as counsel elicited Appellant's confession to his presence at the scene and participation in the incidents of February 8th, offering a version of events that differed from the complainant's.

Without properly researching and understanding the law of self -defense as it applied to his confession-and-avoidance defense, counsel cannot have rendered effective assistance either in advising his client of those risks, or in presenting the defense to the court. *See Ex parte Lewis*, 537 S.W.3d 917, 923 (Tex. Crim. App. 2017) (failure to keep abreast of criminal law aspects implicated in the case kept counsel from accurately advising defendant of the strength of their defense to the charge). Mr. Albert made an extremely weighty decision to testify in his own defense, but his attorney cannot have reasonably informed him of the risks and benefits involved in

that decision when he did not understand how self-defense law would apply to the admissions he was choosing to make on the stand.

POINT OF ERROR 1B

TRIAL COUNSEL WAS INEFFECTIVE WHEN HE CONVINCED THE COURT NOT TO CONSIDER THE LAW OF SELF-DEFENSE WHEN SELF-DEFENSE WAS CENTRAL TO MR. ALBERT'S SOLE PATH TO ACQUITTAL

A. Applicable law

To demonstrate deficient performance based on the failure to request a jury instruction, an appellant must show that he was entitled to the instruction." *Washington v.* State, 417 S.W. 3d 713, 726 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd), citing *Fuentes v. State,* 991 S.W.2d 267, 272 (Tex. Crim. App. 1999). "When an appellant has nothing to lose by requesting a defensive instruction and it would have been error for the trial court to refuse the instruction, [an appellate court] may find deficient performance even without counsel's explanation for failing to request the instruction." *Id.*, citing *Vasquez v. State*, 830 S.W. 2d 948, 951 (Tex. Crim. App. 1992) and *Ex parte Zepeda*, 819 S.W.2d 874, 877 (Tex. Crim. App. 1991).

When the evidence properly raises a confession and avoidance defense, and "and there is no strategically plausible basis for trial counsel's failure to request an instruction directly related to Appellant's singular defense," trial

counsel's error in failing to request such an instruction falls below an objective standard of reasonableness under *Strickland*. *Villa v. State*, 417 S.W.3d 455, 464 (Tex. Crim. App. 2013). In such a case, "that failure in itself undermines confidence in the outcome of the trial and is sufficient to find a reasonable probability that the result would have been different" when the lack of instruction precludes the factfinder from giving effect to the appellant's sole defense. *Id.* at 464.

B. Analysis

a. The court did not consider the law of self-defense.

This case is not about instructing a jury properly; rather it is about the judge in a bench trial considering the law properly after requesting suggestions from counsel. Ordinarily, because there is no written jury charge, "[w]hen trial is to the court without a jury, we must presume that the trial court applied the correct law." *Wallace v. State*, 770 S.W.2d 874, 876 (Tex. App.—Dallas 1989, pet. ref'd). However, the presumption that the judge applied the correct law can be rebutted with statements of the court to the contrary. *Freeman v. State*, 525 S.W.3d 755, 757–58 (Tex. App.—Austin 2017, pet. ref'd)(citing *Ex parte Jackson*, 911 S.W.2d 230, 234 (Tex. App.—Houston [14th Dist.] 1995, no writ).

In this case, the trial court invited counsel to suggest "if there [were] any defenses they wanted [the court] to think of" (5 R.R. 180). After initially suggesting that the court consider the law of self-defense, counsel withdrew the request and

convinced the judge not to consider self-defense after all, the trial judge responded "Okay. All right. So I will, though, consider theft from a person." (5 RR. 181)

b. Mr. Albert was entitled to the application of self-defense law to his case

Having agreed to consider theft from a person as a lesser offense, the trial judge acknowledged that the defense had presented sufficient evidence to merit consideration of his separate-offenses defense theory. *See Sweed v. State,* 351 S.W.3d 63, 69 (Tex. Crim. App. 2011)(in an armed robbery case, the defense was entitled to an instruction on the lesser included offense of theft from a person when the alleged assault was a separate event from the theft, i.e. it was interrupted by time or an intervening event).

Having acknowledged that the evidence supported considering the theft and assault separately, it was error to refuse to consider the law of self-defense as it applied to the assault. The use of deadly force is a defense to prosecution for aggravated assault if the use of deadly force is justified. Tex. Penal Code Ann. § 9.32. "An accused has the right to an instruction on any defense raised by the evidence, whether that evidence is weak or strong, unimpeached or contradicted, and regardless of what the trial court thinks about the credibility of the evidence." *Miller v. State*, 312 S.W.3d 209, 213 (Tex. App. – Houston [14th Dist.] 2010, pet. ref'd.). "If a defense is supported by the evidence, then the defendant is entitled to an instruction on that defense, even if the evidence supporting the defense is weak or contradicted, and even if the trial court is of the opinion that the evidence is not credible." *Shaw v. State*, 243 S.W.3d 647, 658

(Tex. Crim. App. 2007) "Whether a defense is supported by the evidence is a sufficiency question reviewable on appeal as a question of law." Id. "In determining whether a defense is thus supported, a court must rely on its own judgment, formed in the light of its own common sense and experience, as to the limits of rational inference from the facts proven." Id. "[A] defensive instruction is only appropriate when the defendant's defensive evidence essentially admits to every element of the offense including the culpable mental state, but interposes the justification to excuse the otherwise criminal conduct." Id. However, "[a]dmitting to the conduct does not necessarily mean admitting to every element of the offense." *Gamino v. State*, 537 S.W.3d 507, 512 (Tex. Crim. App. 2017).

In this case, the evidence, when viewed in the light most favorable to the Appellant, supports an instruction on the defense of self-defense and trial counsel should have insisted that the judge consider such an instruction. There was some evidence that the theft and shooting were separate incidents, and that Mr. Albert could have been acting in self defense by shooting back at Mr. Jefferson who shot at him first.

c. Counsel was incorrect on the law when he abandoned his request for a self-defense instruction.

As discussed above, error exists where it is apparent that counsel has not fully researched or is unaware of which defenses are available to his client. *Vasquez v. State*, 830 S.W.2d 948,951 at n. 4 (Tex. Crim. App. 1992). Counsel

should recognize when "Appellant's testimony [is] sufficient to raise the defense, an that appellant had nothing to lose by requesting a defensive instruction. Without giving the [factfinder] an opportunity to consider a defense, conviction [is]. . . 'a foregone conclusion.'" Id. at 951(internal citations omitted).

The record is not silent about trial counsel's decision to abandon his self-defense request— he stated his reason, which, as discussed above, was based on an incorrect recollection of self-defense law rather than diligent preparation and research of Mr. Albert's available defenses:

> Because I just finished a self-defense case and that was - - every time I have a self-defense case it's always you cannot be committing an illegal act at the same time, so okay. I will withdraw that (5 R.R. 182).

After counsel withdrew his request for consideration of self-defense, the trial judge agreed that she would not consider self-defense. (5 R.R. 182).

d. Mr. Albert was prejudiced by trial counsel's deficient performance.

"[T]o show prejudice, the appellant 'must show there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceedings would have been different.'" *Smith v. State*, 286 S.W.3d 333, 340 (Tex. Crim. App. 2009), citing *Strickland*, 466 U.S. at 694. "Reasonable probability is a probability sufficient to undermine confidence in the outcome,

meaning counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. "The Court of Criminal Appeals has recognized that the erroneous omission of a confession-and avoidance defense, such as self-defense, 'is generally harmful because its omission leaves the jury [or judge] without a vehicle by which to acquit a defendant who has admitted to all the elements of the offense.'" *Dugar v. State*, 464 S.W.3d 811, 821 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd), quoting *Cornet v. State*, 417 S.W.3d 446, 451 (Tex. Crim. App. 2013). In a bench trial, the judge may consider any applicable lesser or defenses that would have been available for a jury. *Martinez v. State*, 449 S.W.3d 193, 200 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). Although judges are generally presumed to have considered all the applicable law in a bench trial, in this case the judge asked counsel for input, counsel gave incorrect input, and counsel's error convinced the judge *not* to consider his client's only defense. The judge believed she was precluded from giving effect to appellant's defense—since the defense was raised by the evidence, this "in itself undermines [the court's] confidence in the conviction sufficiently. . . that the result of the trial might have been different had the instruction been requested and given." *Vasquez v. State*, 830 S.W.2d 948, 951 (Tex. Crim. App. 1992).

Evidence was presented that would have allowed the judge to determine that Mr. Albert was acting in self-defense in response to a new incident that was initiated by Mr. Jefferson shooting into his car near his head. Without the trial judge's agreement to consider the law of self-defense, the judge as factfinder was left with no avenue to render a judgment of acquittal based on trial counsel's arguments explicitly urging that Appellant's actions were justified because the complainant shot at him first. This made Appellant's conviction a virtual inevitability. Thus, trial counsel's failure to request that the judge consider the law of self-defense prejudiced the outcome of the trial as there was a reasonable probability that the inclusion of such an instruction would have led to a different result.

Mr. Albert was prejudiced by each error individually, but the combination of both errors injured him irreparably—counsel's lack of research and preparation deprived appellant of the understanding necessary to make an informed decision about whether to testify and which defensive strategy to pursue. The strategy that they pursued caused him to waive any other defenses. Finally, by withdrawing his request for consideration of self-defense, counsel closed the door to any possibility that client could have gained any benefit from those sacrifices. These errors led Mr. Albert to confess yet denied him the opportunity of any acquittal that could have come from that confession.

CONCLUSION AND PRAYER

For the reasons stated above, Demontrion Albert prays that this Honorable Court sustain his points of error, reverse the judgement of conviction entered below, and remand to the trial court for a new trial.

Alexander Bunin

Chief Public Defender

Harris County Texas

/s/Amanda Koons

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Amanda Koons
Assistant Public Defender

Harris County, Texas
State Bar of Texas No. 24110105
1310 Prairie St., 13th floor
Houston, Texas 77002
Phone: (713) 274-6952
Fax: (832) 927-0687
Amanda.koons@pdo.hctx.net

CERTIFICATE OF SERVICE

I certify that the foregoing brief was electronically served via Texas e-file on the Harris County District Attorney on the day the brief was filed.

/s/ Amanda Koons
_____
Amanda Koons

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i) (3), undersigned counsel certifies that this brief complies with all form requirements of TEX. R. APP. PROC. 9.4.

Exclusive of the portions exempted by TEX. R. APP. PROC. 9.4 (i)(1), this brief contains 4661 words printed in a proportionally spaced typeface.

/s/ Amanda Koons
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Associated Case Party: DemontrionAlbert

Name	BarNumber	Email	TimestampSubmitted	Status
Amanda Koons	24110105	amanda.koons@pdo.hctx.net	8/15/2024 1:41:19 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jessica Caird	24000608	caird_jessica@dao.hctx.net	8/15/2024 1:41:19 PM	SENT