NO. 01-24-00554-CR

IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS

CHRISTOPHER BERNARD HOLLAND,
APPELLANT

V.

THE STATE OF TEXAS
APPELLEE

ON APPEAL FROM CAUSE NUMBER 96101-CR
FROM THE 412TH DISTRICT COURT OF BRAZORIA COUNTY, TEXAS

APPELLANT'S BRIEF

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ORAL ARGUMENT RESPECTFULLY REQUESTED

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PRESIDING JUDGE:	Hon. Justin Gilbert 412th District Court Brazoria County, Texas

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STATEMENT OF THE CASE

Appellant was charged in cause number 96101-CR of Aggravated Assault – Serious Bodily Injury, alleged to have been committed on or about January 20, 2021. (C.R. at 7). On May 6, 2024, the case was called to jury trial. (2 R.R. 1).

On May 8, 2024, the jury found Appellant guilty in cause number 96101-CR (C.R. 116; 4 R.R. 47). On the same day, the court assessed punishment and sentenced the Appellant to fifty (50) years in the Institutional Division of the Texas Department of Criminal Justice. (C.R. at 122-23; 4 R.R. 73). Appellant filed a motion for new trial on May 23, 2024, and the motion was denied on July 2, 2024. (C.R. at 125-36). The trial court certified that Appellant has the right to appeal. (C.R. at 118). Appellant timely filed his notice of appeal on July 22, 2024. (C.R. at 139-40).

STATEMENT REGARDING ORAL ARGUMENT

Appellant requests oral argument because the Court of Appeal's decision would be significantly aided by oral argument. TEX. R. APP. PROC. 38.1(e); 39.7.

ISSUES PRESENTED

ISSUE: THE TRIAL COURT ERRED IN FAILING TO INSTRUCT THE JURY AS TO SELF-DEFENSE AND APPARENT DANGER.

STATEMENT OF FACTS

Lieutenant Craig Bacote was employed at the Clemens Unit of the Texas Department of Criminal Justice in January of 2021. 3 R.R. at 20-21. He has worked for TDCJ for ten years, and in corrections for approximately 28 years. *Id.* at 20. On January 20, 2021, Lt. Bacote responded to a call for help outside of a cell. *Id.* at 22. Upon arrival, he asked the picket officer to open the cell door. *Id.* There were two inmates inside. One was the Complainant lying on the floor in a pool of blood. *Id.* at 24-26. The other, Appellant, was standing alongside next to the bunks. *Id.* at 24. At trial, Lt. Bacote authenticated the photographs of the cell taken shortly after the incident, State's Exhibits 1 through 9. 3 R.R. at 25. Lt. Bacote asked the standing inmate what he did, to which the standing inmate said, "Lieu, he stole my shit." *Id.* at 29. The responding staff, including Bacote, put the inmate who was lying down on a backboard, lifted him up, and carried him down the stairs to the unit infirmary. *Id.* at 30. The staff then proceeded to call 911 and wait for EMS to arrive. *Id.* at 31. Bacote described the Complainant making a "sleep apnea noise" and with bruises to his face and upper body. *Id.* Lt. Bacote further testified on cross-examination that in his experience he has seen other inmates get into fights, and that the fights are often between "cellies." 3 R.R. at 33. Lt. Bacote further testified that "snitching," or telling

the supervisor about something, some activity that's not supposed to be going on that's prohibited," is viewed as something improper and dangerous in the inmate population. *Id.* at 34. Bacote also testified that TDCJ is presently understaffed and does not respond to all inmate complaints. *Id.* at 36.

Corrections Officer Yemi Ojo was working at the Clemens Unit of TDCJ in January of 2021. 3 R.R. at 39. Officer Ojo was performing "count," which is where the unit officials count the inmates in the dorm and cell to ensure that everyone is where they are supposed to be. *Id.* at 40. Once Ojo arrived at the cell shared by Appellant and Complainant, he also saw what Bacote described. *Id.* at 41-42. Ojo shined his light on the Complainant on the floor and Complainant did not respond. *Id.* at 42. Officer Ojo initiated the original call for help. *Id.* at 42.

Casey Kelly was the responding paramedic with Sweeney West Brazos EMS. 3 R.R. at 57, 63-65. Kelly received the call to respond to the unit at 11:13 PM on January 20, 2021. *Id.* at 63. By the time Kelly arrived to the Clemens Unit and made it through security, it was 11:44 PM. *Id.* at 64. When he arrived, he described the Complainant as unresponsive with significant head trauma, including a one-inch laceration above the left eye and soft spot to his forehead. *Id.* at 65, 70. Kelly also described bruising to the neck and chest area and blood and fluid coming out of Complainant's nose and ears. *Id.* at 66, 70. Kelly attempted to have Life Flight come to the scene to transport Complainant due to what Kelly described as a need for a "Level 1 trauma center," *Id.*

at 68. Life Flight declined due to the weather, so Kelly transported Complainant to the nearest hospital, Brazosport. 3 R.R. at 69, 71.

Dr. Corey Anderson is an emergency room physician at Brazosport Hospital. 3 R.R. at 77. Dr. Anderson was on duty on the night of January 20, 2021 when Complainant was transported to the emergency room. *Id.* at 79. Dr. Anderson explained that Complainant had a subdural hematoma and some subarachnoid blood and bleeding within the tissue of the brain. *Id.* at 84-85. Dr. Anderson testified that Complainant required an intervention by a neurosurgeon and that they referred Complainant to University of Texas – Medical Branch due to the TDCJ contract with that hospital system. *Id.* at 85-86. Dr. Anderson did not provide a long-term prognosis for Complainant, as patient recoveries vary. *Id.* at 87-88. However, Dr. Anderson opined that head and significant trauma injuries require "quite a long road" of rehabilitation to get to the patient's best level of function. 3 R.R. at 94-95.

Brian Bowers is employed as an investigator by the Office of the Inspector General under the Texas Board of Criminal Justice, the agency responsible for investigating crimes that occur on TDCJ property. 3 R.R. at 97. He responded to a call to investigate the incident on January 20, 2021 on Clemens Unit. *Id.* at 99. Approximately 3 hours after the assault, Bowers interrogated Appellant about the incident. *Id.* at 102, 111. Appellant told Bowers that Complainant stole the drinks that Appellant got from commissary. *Id.* at 104. Appellant also told Bowers that Complainant tried to hit him back and that Appellant was having "mental issues" and

was scared. *Id.* Appellant also mentioned that people were trying to kill him. *Id.* at 118.

Colleen Eckert is also an investigator with the Office of the Inspector General. 3 R.R. at 121. The day after Bowers's interview with Appellant, Eckert conducted a "re-interview" with Appellant. *Id.* at 128. Appellant also told Eckert that he was scared, crying during the interview. *Id.* at 131. Appellant told Eckert that he wanted Complainant to stay on the ground and not get up. *Id.* Eckert also took photographs of Appellant's swollen right hand. *Id.* at 134.

Mary Manuela Barrientos is the complainant's older sister. 3 R.R. at 144. She testified that Complainant went to prison in 2018 for Aggravated Robbery. *Id.* at 146. Mrs. Barrientos testified that before going to prison, Complainant did not require a cane or wheelchair and did not have memory issues or an irregular speech pattern. *Id.* at 148-49. On January 21, 2025, Mrs. Barrientos received multiple calls notifying her that Complainant had been hurt or assaulted. *Id.* at 149. Due to privacy policies, Mrs. Barrientos was not able to obtain information from the hospital. 3 R.R. at 150-51. When Complainant returned to TDCJ, Mrs. Barrientos still could not obtain information or communicate with Complainant. *Id.* at 153-54. Eventually, the Complainant was released to a nursing home until the end of his parole. *Id.* at 154. When Mrs. Barrientos finally met with Complainant at the nursing home, he was "fighting with them and stuff and yelling because he couldn't speak. So, he was just like making a bunch of loud noises with his mouth." *Id.* at 155. Complainant was also

not able to walk on his own and was deemed a fall risk. *Id.* Mrs. Barrientos had Complainant moved to a nursing home in Abilene for further rehabilitation. *Id.* at 157. Mrs. Barrientos further explained that Complainant had previously broken his jaw in a bar fight, and that this incident aggravated those injuries and caused him to have difficulty speaking and chewing. 3 R.R. at 158-59.

Complainant also testified. 3 R.R. at 164. At the time of trial, he had no memory of going to TDCJ or of the incident on January 20, 2021. *Id.* at 166-67. He has now gone through physical therapy and is back on his feet, albeit with the assistance of a cane. *Id.* at 166-67.

The trial court denied the Appellant's request for a jury instruction on self-defense. 4 R.R. at 5, 6, 9. The jury returned a verdict finding Appellant guilty of aggravated assault with serious bodily injury. *Id.* at 47.

At punishment, Investigator Jay Brionez testified. 4 R.R. at 53. Appellant chose not to allow Brionez to fingerprint him. *Id.* at 54. Instead, the State moved to admit the pen packet that included photographs. *Id.* at 55-56. Brionez testified that the man in the photographs was the same as Appellant. *Id.* at 57. Brionez further testified that the tattoos on the man in the photograph matched the tattoos on Appellant's neck. *Id.* Brionez also identified the fingerprints on the prior judgments were the same as the known fingerprints on file for Appellant in the pen packet. 4 R.R. at 59-60. He noted the same date of birth on the judgments and pen packet as well. *Id.* at 64. The trial

court sentenced Appellant to 50 years confinement in the Texas Department of Criminal Justice – Institutional Division. *Id.* at 73.

SUMMARY OF ARGUMENT

The trial court erred in failing to instruct the jury as to self-defense and apparent danger, where Appellant and Complainant were in an inherently dangerous environment, Appellant gave statements to the effect that he was scared and that he believed that people were trying to kill him, and Complainant was serving time for a violent offense and had a propensity for violence and attempted to strike Appellant.

ARGUMENTS

ISSUE: THE TRIAL COURT ERRED IN FAILING TO INSTRUCT THE JURY AS TO SELF-DEFENSE AND APPARENT DANGER.

The trial court erred in failing to instruct the jury as to self-defense and apparent danger, where both the State and Appellant presented some evidence raising both issues at trial sufficient to present the issue to a jury.

A. Standard of Review

In *Almanza v. State,* the Court of Criminal Appeals held that TEX. CODE CRIM. PROC. Ann. art. 36.19 prescribed the manner in which jury charge error is reviewed on appeal. *Almanza v State,* 686 S.W.2d 157, 171 (Tex. Crim. App. 1977). First, an appellate court must determine whether error exists in the jury charge. Second, the appellate court must determine whether sufficient harm was caused by the error to require

reversal. *Arline v. State,* 721 S.W.2d 348, 351 (Tex. Crim. App. 1986). The degree of harm necessary for reversal depends upon whether the error was preserved. *Id.* Error properly preserved by an objection to the charge will require reversal "as long as the error is not harmless." *Almanza,* 686 S.W.2d at 171. The Court of Criminal Appeals has interpreted this to mean *any* harm, regardless of degree, is sufficient to require reversal. *Arline,* 721 S.W.2d at 351. However, when the charging error is not preserved, a greater degree of harm is required. This standard of harm is described as "egregious harm", which affect "the very basis of the case," deprive the defendant of a "valuable right," or "vitally affect a defensive theory." *Almanza*, 686 S.W.2d at 172.

B. Analysis: Both Self-Defense and Apparent Danger Were At Issue.

A defendant is entitled to an instruction on self-defense if there is some evidence that he intended to use force against another and he did use force, but he did so only because he reasonably believed it was necessary to prevent the other's use of unlawful force. *Ex parte Nailor*, 149 S.W.3d 125, 132 (Tex. Crim. App. 2004) (citing TEX. PEN. CODE § 9.31)). The issue of self-defense must be raised by the evidence, viewed in the light most favorable to the defendant. *Id.* Furthermore, "a defendant is entitled to an instruction on self-defense if the issue is raised by the evidence, whether that evidence is strong or weak, unimpeached or contradicted, and regardless of what the trial court may think about the credibility of the defense." *Elizondo v. State*, 487 S.W.3d 185, 196 (Tex. Crim. App. 2016) (quoting *Ferrel v. State*, 55 S.W.3d 586, 591 (Tex. Crim. App. 2001) (internal citations omitted)). When self-defense is raised by the evidence, it is

"the jury's call whom to believe and what to believe" and "not the trial court's prerogative to preempt the issue" because it thinks Appellant's version is "weak, contradicted, or not credible." *Gamino v. State*, 537 S.W.3d 507, 512-13 (Tex. Crim. App. 2017).

Because self-defense is a justification for one's actions, it necessarily requires admission to the conduct. *Young v. State*, 991 S.W.2d 835, 838-39 (Tex. Crim. App. 1999). An accused need not admit to the specific offense charged, but rather he merely needs sufficiently to admit the conduct alleged to justify the instruction. *Torres v. State*, 7 S.W.3d 712, 715 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). The accused need not testify to show confession and avoidance or raise the issue of self-defense altogether but may rely on other evidence at trial. *Johnson v. State*, 271 S.W.3d 359 (Tex. App.—Beaumont 2008, pet. ref'd) (accused in murder trial entitled to instruction where she did not testify but her written statement admitting to the conduct was admitted into evidence and other witnesses presented testimony about decedent's prior assaultive conduct).

Additionally, the "reasonable belief" as to the necessity of force can be based not only on actual danger, but apparent danger as well. *Jones v. State*, 544 S.W.2d 139 (Tex. Crim. App. 1979). "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor. TEX. PEN. CODE § 1.07(42). A reasonable apprehension of danger—whether actual or apparent—is all that is required before one is entitled to exercise the right of self-defense against his adversary.

Valentine v. State, 587 S.W.2d 399, 401 (Tex. Crim. App. 1979). Although it is the burden of the accused to produce evidence at trial on apparent danger, the testimony of others, including the complainant, may also help raise the issue of apparent danger. *Torres*, 7 S.W.3d at 714-15.

Self-defense instructions can be appropriate even where an accused reasonably, but incorrectly, perceives danger and makes a pre-emptive attack. *Hamel v. State*, 916 S.W.2d 491 (Tex. Crim. App. 1996). In *Hamel*, the accused was entitled to a self-defense where he had information from third parties that the complainant had a history of physical violence, had previously kicked in the door and ransacked the house where appellant was, and was known to have a gun in his car. *Id.* at 492. While Hamel was at the house, complainant showed up, asking Hamel questions in an angry, threatening tone. *Id.* The complainant threatened to shoot Hamel and told Hamel that he was going back to his car to get something with which to shoot Hamel. *Id.* When complainant started to go out the front door, Hamel charged the unarmed complainant and stabbed him in the stomach. *Id.* In the absence of evidence of an actual gun, the trial court refused the jury instruction and the court of appeals affirmed. *Hamel*, 916 S.W.2d at 492-93. Ultimately, the Court of Criminal Appeals reversed, holding that Hamel was entitled to a self-defense jury instruction due to the perceived danger, "even though that perception may be incorrect." *Id.* at 493.

In *Torres v. State*, the Court of Appeals held that the complainant's past history of being "out of control" and physically assaultive justified a jury instruction on apparent

danger. *Torres*, 7 S.W.3d at 715. In *Torres*, the appellant and complainant—who were husband and wife—gave conflicting accounts of the altercation that led to the appellant's assault charge. *Id.* at 713-14. Complainant described appellant as the initial aggressor, and vice versa. *Id.* A good bit of Torres's testimmony focused on previous incidents involving his wife's assaultive conduct, which he testified was on his mind on the night of the altercation. *Id.* at 714. The trial court excluded apparent danger from its self-defense jury instruction, which the Court of Appeals held to be error where the testimony about complainant's history raised the issue of apparent danger. *Torres*, at 714.

This record makes clear that Appellant presented enough evidence to raise the issue of self-defense in response to an apparent danger. Appellant admitted to hitting and kicking Complainant and not wanting Complainant to get up, explaining that he was scared and that people were trying to kill him. At certain points of Appellant's statement, he even became tearful. Every witness who was present at the unit testified that the cell door was locked, preventing Appellant from retreating from any confrontation with Complainant. Appellant, in his statement, told investigators that Complainant tried to strike him. Lt. Bacote testified about his experience with prison life and prison culture; that fights tend to happen between cell mates; and that "snitching," or filing complaints to address grievances is generally disfavored in prison culture. Additionally, Bacote testified that TDCJ was short-staffed on security personnel and that such grievances are known to go unanswered. Complainant's pen

packet was admitted, showing that Complainant was incarcerated for the violent crime of Aggravated Robbery, and Complainant's sister testified that he had previously been in a bar fight and broke his jaw. Multiple witnesses testified and the State in its arguments essentially conceded that prison is a scary, dangerous place. The mere fact that Appellant knew Complainant in the context of the dangerous prison system provided some evidence to show that Appellant reasonably believed that Complainant's act of stealing Appellant's drinks and the subsequent conversation about it were an act of aggression.

All of these facts, viewed in the light most favorable to Appellant, rise to the "some evidence" level sufficient to submit the question of self-defense to the jury.

C. Harm Analysis

As discussed above, where trial counsel requests and is denied a jury instruction, the erroneous denial of the instruction will require reversal "as long as the error is not harmless." *Almanza,* 686 S.W.2d at 171. Specifically, the judgment should be reversed if the error appearing from the record was calculated to injure the rights of the defendant, or if it appears from the record that the defendant has not had a fair and partial trial. *See* TEX. CODE CRIM. PROC. Art. 36.19. "Unless all harm was abated, Appellant suffered some harm." *Miller v. State*, 815 S.W.2d 582, 586 n. 5 (Tex. Crim. App. 1991).

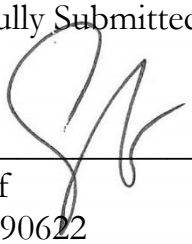
In this case, as with the accused in *Johnson v. State*, 271 S.W.3d 359, 368 (Tex. App.—Beaumont, no pet.), the Appellant admitted to the offense to multiple TDCJ

officials, twice in recorded statements that were admitted at trial. And as in *Johnson*, where the jury was not instructed to consider Appellant's statutory defensive theory that was sufficiently raised by the evidence, the jury had no choice but to convict Appellant. *Id.* This therefore injured Appellant's rights, causing him to suffer some harm. *Id.* at 369. As such, Appellant's judgment should be reversed and the case remanded to the trial court for a new trial.

PRAYER

Appellant asks this Court to reverse the conviction and remand the case to the trial court for a new trial.

Respectfully Submitted,



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