AFFIRMED; Opinion Filed August 20, 2012.

Comment [af1]: Page Number
Footer A Included
Use Hotkey ` and then EFA to (E)dit (F)ooter (A)

Comment [af2]: Date Printed:
Header A included,
Use Hotkey ` and then EHA to (E)dit (H)eader (A)
Use Hotkey ` and then DHAT to (D)elete (H)eader (A)(T)ext

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-11-00307-CR

CHARLES ALLEN HARGROVE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause No. F09-25467-J

OPINION

Before Justices Moseley, Lang-Miers, and Murphy
Opinion By Justice Murphy

A jury found Charles Allen Hargrove guilty of the murder of Jose Barrientos, and the trial court assessed punishment, enhanced by prior felony convictions, at twenty-five years in prison. In seven points of error, appellant contends the evidence is insufficient to show his conduct was not justified and that the trial court committed jury charge error. We affirm.

BACKGROUND

Appellant's ex-girlfriend, Myra Kay Reed, lived with her mother and brother's family on Pine Ridge Road in Garland, Texas. Appellant and Barrientos each lived within blocks of Reed. They were all friends at one time and "used to do quite a bit of drinking" together. But both appellant and

Barrientos were in love with Reed. When Reed started exploring a dating relationship with Barrientos, "bad blood" developed between appellant and Barrientos. Reed testified that appellant "hated" Barrientos and "didn't like [Barrientos] being around." She said appellant would call Barrientos names, like "that sorry motherf[]r," comment that he "oughta kill the motherf[]r," and state he was "gonna f[]k him up." Barrientos knew appellant did not like him. Although Reed was no longer dating appellant, she said he was "still coming and going."

Some time before noon on December 23, 2009, appellant went to Reed's house to return the dog they shared. The two ended up sitting in Reed's car talking and drinking beer; they stayed there for "[w]ell over five hours" that day. Reed received multiple phone calls from Barrientos during that time. The first call was just after noon, and they spoke for five or ten minutes. She told Barrientos during the call that she was with appellant. Barrientos called another time after he got home from work and told Reed he was coming over. Reed remembered thinking she should tell appellant to head home at that point. She confirmed that appellant knew Barrientos was coming over.

The next thing Reed knew, the car door opened and appellant stepped out. She said she never saw Barrientos but assumed he was the one who opened the door because "he opened it pretty abruptly." She was "positive," however, that Barrientos did not pull appellant out of the car. Reed thought appellant and Barrientos were just talking and that Barrientos was telling appellant he needed to go home. Reed remained in the car because she "didn't want to know anything about it."

Reed claimed she could not hear or see anything going on outside the car until she saw the porch sensor light come on. When the light caught her eye, she saw Barrientos on the porch wobbling like he was "out of kilter." Scared and aware something was wrong, she ran to the door where she found Barrientos lying on the living room floor. Reed testified that earlier in the day, appellant showed her that he had a knife. He also told Reed "there better not be no shit or I'll hurt

the motherf[]r."

Reed's brother, Cary Easley, was in the house and did not see or hear any of the altercation that happened outside. He testified that when he answered the knock at the door, Barrientos was there "holding his throat, gasping for air" and was "bleeding profusely." As soon as Easley brought Barrientos inside the house, Barrientos collapsed and Easley helped him to the floor. Easley realized Barrientos was severely wounded because he was bleeding from so many places. While Easley and Reed were trying to help Barrientos, appellant tried to come in the house two times. Easley described appellant as not wanting to help Barrientos but "more or less wanting to see what he did." Easley assumed appellant was responsible for what happened to Barrientos. Appellant also had blood all over him but did not appear to be injured. Because he "didn't know what else [appellant] was capable of doing," Easley told appellant to stay outside and called 911. He told police officers that in the past appellant had stated he was not going to put up with Barrientos.

Garland police officer David John Scicluna responded to the 911 call. When he arrived, Scicluna saw a man, whom he later identified as appellant, walking from the front porch of the house; appellant was "completely covered with blood." Scicluna testified he asked appellant "if he was okay" and that appellant responded "he was okay but the guy inside was not." Scicluna described appellant as "pretty calm" and like he was having a normal conversation with Scicluna. Before Scicluna patted down appellant, appellant told him "he had a knife in his front pocket that he had just stabbed the guy with." The knife had a "flip blade" that was about five to six inches long and contained blood on the blade and handle. Scicluna stayed with appellant as other officers and paramedics arrived.

The case was assigned to Detective David Landis, who was the primary investigator. By the time Landis arrived at the scene, appellant was in custody and Barrientos had been taken by

paramedics. In an attempt to figure out what happened, Landis proceeded to speak with everyone except appellant, who was "in a state of intoxication." He also did not take Reed's statement because she had been drinking too much; she provided a statement the next day at the police station. Pictures were taken of appellant at the scene and also at the police station. One picture showed an abrasion on appellant's left hand, which Landis testified was consistent with "scratching his knuckles or throwing a punch."

Landis testified that the street where the car was parked had a heavy concentration of blood. The blood droplets continued in a trail across the street, through the grass, and up to the front porch. Reed's car also had blood droplets and smears. The jacket Barrientos was wearing had been removed by the paramedics and left at the scene. It had about a dozen different cuts on the sleeve up to the shoulder, and there were stab wounds on both sides of the jacket.

Landis interviewed appellant the next day and also obtained his written statement. The interview recording was admitted into evidence without objection. During the interview, appellant admitted he and Barrientos had "some bad blood" and that they had a "mutual dislike of each other because [Barrientos was] banging [his] girlfriend." Landis thought these comments sounded like anger and jealousy. Appellant did not remember much about what happened. He told Landis that "somehow an altercation got started" and Barrientos hit him. He said he tried to fight back with Barrientos "getting the best of [him]," and the next thing appellant knew he "pulled the knife and stuck [Barrientos]." Appellant did not remember how or where the altercation started, what Barrientos did when he first arrived, or getting out the knife. He also did not "really remember doing the stabbing" or how many times he stabbed Barrientos, stating he did not know "if it was something that happened because [he] was scared." Appellant told Landis he was "just defending [himself] because [Barrientos] was fixing to hurt [him]."

Landis read appellant's written statement to the jury, which included the following description of the fight:

> We were still in the car drinking and an altercation got started between me and [Barrientos]. We were standing on the sidewalk and [Barrientos] hit me in the face. I tried to fight back but was to[o] drunk to defend myself[.] At some point we were fighting in the grass. He was on top of me and I somehow managed to get a knife out of my pocket and stab him.

Landis testified appellant was "adamant" in his belief that he acted in self-defense. Even though appellant had a black eye and an abrasion on his forehead, Landis said he did not seem like the victim. Barrientos was stabbed twelve times, one of which was in the back. Landis explained that if someone is acting in self-defense, the person would not be "stabbing somebody in the back" but rather, "it seems like somebody would be retreating or going away to be stabbed in the back." Barrientos also was unarmed and had no defensive wounds. Based on the blood patterns, Landis thought "it looked like [Barrientos] was stabbed very soon after [appellant got] out of the car and then repeatedly stabbed." Appellant also never mentioned that he thought Barrientos was armed. Landis testified that no witness, including appellant, said that appellant was pulled out of the car by Barrientos.

Dr. Tracy Dyer, the medical examiner, testified to Barrientos's twelve stab wounds. Dyer described the "neck stabs" as "significant" injuries, causing lots of blood loss. Another stab wound punctured Barrientos's stomach and caused "spillage" of his stomach contents into his abdomen. She testified this wound alone could have been lethal. Dyer explained the wounds were in various locations on Barrientos's body, which showed that the two people were in different positions at different portions of the struggle. She further explained that when wounds are diverse, such as the ones sustained by Barrientos, it leads to the belief that "there was probably somebody trying to get away from a knife blade." She testified the stab wound in the back was not consistent with being on

top of somebody. Dyer saw no major injuries or bruising to Barrientos's hands or knuckles.

The trial court charged the jury on the law of self-defense, and the jury convicted appellant of murder as charged in the indictment.

Sufficiency of the Evidence

Raising a sufficiency challenge in his first point of error, appellant asserts the evidence creates a reasonable doubt as to whether the stabbing was justified.

Legal Standards

A defendant raising justification as a defense to prosecution under penal code section 2.03 bears the burden of producing some evidence to support the defense. *See* TEX. PENAL CODE ANN. §§ 2.03(c), 9.02, 9.31, 9.32 (West 2011); *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003). The State, however, bears the ultimate burden of persuasion to disprove the defense beyond a reasonable doubt. *Zuliani*, 97 S.W.3d at 594–95; *Saxton v. State*, 804 S.W.2d 910, 913 (Tex. Crim. App. 1991). A jury's guilty verdict "is an implicit finding rejecting the defendant's self-defense theory." *Saxton*, 804 S.W.2d at 914.

Because the State bears the burden of persuasion to disprove defensive theories, we review the sufficiency of the evidence under the *Jackson v. Virginia* standard. *See Smith v. State*, 355 S.W.3d 138, 144 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) (applying standard to jury's rejection of self-defense claim); *see also Saxton*, 804 S.W.2d at 914 (distinguishing standard of review for defensive claims in which State bears burden of persuasion and affirmative defenses in which defendant bears burden of proof). Under that standard, we examine all the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979). When the sufficiency claim involves self-defense, we also must determine whether a

rational trier of fact could have found against appellant on the self-defense issue beyond a reasonable doubt. *Saxton*, 804 S.W.2d at 914. We defer in our review to the fact finder's determinations of the witnesses' credibility and the weight to be given their testimony because the fact finder is the sole judge of those matters. *Jackson*, 443 U.S. at 326; *Brooks v. State*, 323 S.W.3d 893, 899–900 (Tex. Crim. App. 2010) (plurality op.).

Applicable Law

A person commits murder if he intentionally or knowingly causes the death of an individual, or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. TEX. PENAL CODE ANN. § 19.02(b)(1), (2) (West 2011). Justification for using force against another exists "when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force." *Id.* § 9.31(a). Deadly force is justified when and to the degree the person reasonably believes that deadly force is immediately necessary to protect himself against another's use or attempted use of deadly force. *Id.* § 9.32(a)(2)(A). A "reasonable belief" is a belief that would be held by an ordinary and prudent person in the same circumstances as the actor. *Id.* § 1.07(a)(42).

Analysis

The only issue in this case was whether appellant's self-defense claim was credible. Appellant argues that evidence shows he acted reasonably and that he had the right to protect himself with deadly force from Barrientos's conduct. He relies on (1) Easley's testimony acknowledging that appellant appeared curious rather than aggressive or upset when Easley would not let him inside the house; (2) the fact of Barrientos's intoxication; (3) his interview with Landis during which he explained the "love triangle" and why it was a "bad idea" for Reed to tell Barrientos she was with appellant; (4) his statements to Landis that Barrientos punched him in the face, appellant tried to

fight back, and he somehow was able to get his knife out; and (5) his statements to Scicluna that he acted in self-defense. Appellant emphasizes his statements to Landis and Scicluna. He told Landis he was defending himself against Barrientos because Barrientos was "fixing to hurt" him, and his written statement says Barrientos first punched him in the face when they were on the sidewalk. Appellant had a black eye the next day. Appellant also tried "to get across" to Scicluna that he was defending himself when Scicluna arrived at the scene. Appellant asserts this evidence is sufficient to preclude the State from overcoming the statutory presumption that appellant was acting upon the reasonable belief that Barrientos was attempting to murder him.

The jury, however, heard evidence that Barrientos was stabbed twelve times, including one time in the back. Landis testified that a stab wound to the back does not suggest self-defense; it was evidence of someone retreating. Similarly, Dyer testified that the various locations of Barrientos's wounds suggested that Barrientos was trying to get away from the knife. Appellant's own statements to Landis and Scicluna that appellant emphasizes were the only evidence of appellant's self-defense claim, and those were contradicted by the physical evidence. In addition to Barrientos's stab wounds, Landis testified to the "heavy concentration" of blood in the street, not the grass where appellant said he first pulled the knife. The location of the blood and blood trail suggested to Landis that Barrientos was stabbed very soon after appellant got out of the car and then was stabbed repeatedly. Dyer testified that Barrientos would have had significant blood loss with some of the wounds. And Barrientos had no defensive wounds, such as abrasions to his hands or knuckles, to suggest he was fighting. Landis also testified that Barrientos was unarmed and appellant never mentioned he thought Barrientos had a weapon. Nor did appellant state at any time that he actually saw Barrientos with a weapon. In contrast, appellant was carrying a knife, which he showed to Reed earlier in the day and told her "there better not be no shit or I'll hurt the motherf[]r."

Other than physical evidence, appellant's statements to the police also are the only evidence of what happened during the altercation. Neither Reed nor Easley saw or heard anything. Appellant told Landis that he did not remember much of what happened or how it happened. And at no time did appellant say Barrientos started a fight by pulling or yanking appellant out of the car. Appellant told Landis something made him get out of the car; Reed testified only to the door opening abruptly and appellant stepping out.

The jury also heard testimony about the "bad blood" that developed between Barrientos and appellant when Reed, who was appellant's ex-girlfriend, started dating Barrientos. Reed specifically told the jury that appellant hated Barrientos, he had commented he "oughta kill the motherf[]r," and had said he was "gonna f[]k him up." The jury also heard that appellant had told Easley in the past that he would not put up with Barrientos. Landis testified consistently that to him appellant's comments during the interview sounded like jealousy and anger.

The jury had before it all of the evidence and resolved any conflicts in that evidence in favor of the State, choosing not to believe appellant's assertion that he acted in self-defense when he stabbed Barrientos twelve times. *See Jackson*, 443 U.S. at 326. From that evidence, the jury could have found beyond a reasonable doubt that Barrientos was not attempting to use deadly force against appellant and consequently, appellant's use of deadly force was not justified. *See* TEX. PENAL CODE ANN. § 9.32(a); *see also Smith*, 355 S.W.3d at 146 (statement of appellant and his witnesses did not conclusively prove claim of self-defense in light of other evidence). We conclude the evidence is sufficient to support appellant's conviction and the jury's implicit rejection of appellant's self-defense claim. *See Saxton*, 804 S.W.2d at 914. We overrule appellant's first point of error.

Jury Charge Errors

Appellant asserts in his remaining six points of error that he was egregiously harmed by errors in the court's charge. We address these points of error under the same standards.

Legal Standards and Applicable Law

The purpose of the jury charge is to instruct the jury on the law that applies to the case and to guide the jury in applying the law to the facts of the case. *See Delgado v. State*, 235 S.W.3d 244, 249 (Tex. Crim. App. 2007); *see also* TEX. CODE CRIM. PROC. ANN. art. 36.14 (West 2007) (trial court shall give jury "a written charge distinctly setting forth the law applicable to the case"). When reviewing claims of jury-charge error, we first determine whether an error actually exists in the charge. *See Barrios v. State*, 283 S.W.3d 348, 350 (Tex. Crim. App. 2009). In making this determination, we examine the charge as a whole, considering the workable relationship between the abstract paragraphs of the charge—the instructions and definitions—and those applying the abstract law to the facts. *Plata v. State*, 926 S.W.2d 300, 302 (Tex. Crim. App. 1996), *overruled on other grounds by Malik v. State*, 953 S.W.2d 234 (Tex. Crim. App. 1997); *Caldwell v. State*, 971 S.W.3d 663, 666 (Tex. App.—Dallas 1998, pet. ref'd). The abstract or definitional portions of the charge help the jury understand the meaning of concepts and terms used in the application paragraphs of the charge. *Caldwell*, 971 S.W.2d at 666. A charge is adequate if it contains an application paragraph that authorizes a conviction under conditions specified by other paragraphs of the charge to which the application paragraph necessarily and unambiguously refers, or contains some logically consistent combination of those paragraphs. *Id.*

If error exists and appellant objected to the error at trial, then we determine whether the error caused sufficient harm to require reversal. *Barrios*, 283 S.W.3d at 350; *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984), *superseded on other ground by rule as stated in Rodriguez v. State*, 758 S.W.2d 787 (Tex. Crim. App. 1988) (if error exists and was preserved, reversal required

if error caused "some harm" to appellant from the error). When, as here, there is no objection to the error at trial, we will not reverse for jury-charge error unless the record shows egregious harm. *Barrios*, 283 S.W.3d at 350.

A defendant is entitled to an instruction on every defensive issue raised by the evidence, whether that evidence is weak or strong, unimpeached or uncontradicted, and regardless of what the trial court may think about the credibility of the defense. *See Allen v. State*, 253 S.W.3d 260, 267 (Tex. Crim. App. 2008). A trial court may refuse an instruction on a defensive theory if the issue was not raised by the evidence. *See Shaw v. State*, 243 S.W.3d 647, 657–58 (Tex. Crim. App. 2007); *Garza v. State*, 829 S.W.2d 291, 294 (Tex. App.—Dallas 1992, pet. ref'd); *see also* TEX. PENAL CODE ANN. § 2.03(c) (defensive jury instruction not submitted to jury unless "evidence [was] admitted supporting the defense"). A defense is supported or raised by the evidence "if there is some evidence, from any source, on each element of the defense that, if believed by the jury, would support a rational inference that that element is true." *Shaw*, 243 S.W.3d at 657–58. The question of whether a defense is raised by the evidence is a sufficiency question that we review as a question of law. *Id.* at 658.

Relevant Background

Appellant requested an instruction under penal code section 9.32(b)(1)(B) that "the person's belief that deadly force was immediately necessary is presumed to be reasonable . . . if the person knew or had reason to believe that the person against whom the deadly force was used unlawfully and with force removing or attempting to remove him with force from his vehicle." He argued he was entitled to the instruction because Reed told an officer that appellant was "yanked" from her car. He also claimed he was entitled to the instruction because appellant "was in a place, he was entitled to be and had no duty to retreat." The State opposed the request, arguing there was no evidence

appellant was yanked from the car; rather, the issue was raised in a question by defense counsel to which the witness answered "no." The trial court denied appellant's request based on lack of evidence to support the instruction. The State agreed the charge should include an instruction regarding "no duty to retreat" under subsection 9.32(c).

The trial court's charge on the law of self-defense covered instructions on when a person is justified in using force or deadly force under penal code sections 9.31(a) and (b) and 9.32(a)(1)(2)(A), as well as an instruction on the duty to retreat under penal code section 9.32(c). *See* TEX. PENAL CODE ANN. §§ 9.31(a), (b), 9.32 (a)(1)(2)(A), (c).

Omitted Instructions

In his second, fourth, and sixth points of error, appellant contends the trial court failed to instruct the jury under various subsections of penal code section 9.32, which concerns deadly force used in self-defense. *See generally id.* § 9.32. He specifically complains about the trial court's failure to instruct the jury on (1) the presumption of reasonable belief as set forth in subsection (b) (point of error two); (2) the independent theory of self-defense under subsection (a)(2)(B) that a person is justified in using deadly force against another to prevent the other's imminent commission of murder (point of error four); and (3) when the failure to retreat should not be considered by the jury as described in subsection (d) (point of error six).

A defensive issue is not applicable to the case unless the defendant timely requests the issue or objects to the omission of the issue in the jury charge. *See Posey v. State*, 966 S.W.2d 57, 62 (Tex. Crim. App. 1998). And a trial court is not required sua sponte to instruct the jury on a defensive theory, even if the issue is raised by the evidence. *Id.*; *Jackson v. State*, 288 S.W.3d 60, 63 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd). Stated differently, a trial court's failure "'to give instructions not asked for'" by a party is not error. *Posey*, 966 S.W.2d at 64 n.14 (quoting *Walker v.*

State, 823 S.W.2d 247, 249–50 n.2 (Tex. Crim. App. 1991) (Clinton, J., concurring)).

The record here suggests nothing to indicate appellant requested an instruction under the complained-of subsections. When the trial court asked at the conclusion of the charge conference if there was anything else for the record, appellant's counsel stated "No, ma'am." Consequently, appellant did not preserve these points for our review. *See Jackson*, 288 S.W.3d at 64.

To the extent appellant's request for an instruction under subsection 9.32(b)(1)(B) can be construed to encompass the general instruction under subsection (b) he now asserts he was entitled to in his second point on appeal, we conclude his complaint has no merit. Appellant claims the facts gave rise to the presumption that he reasonably believed deadly force was immediately necessary and therefore the trial court erred by failing to instruct the jury on the presumption of reasonable belief as required by subsection (b).

This defense was not raised by the evidence. Appellant's belief that deadly force was immediately necessary is presumed to be reasonable under section 9.32(b) if he (1) knew or had reason to believe that Barrientos unlawfully and with force, entered or attempted to enter appellant's vehicle and removed or attempted to remove him from the vehicle; (2) did not provoke Barrientos; and (3) was not otherwise engaged in criminal activity. *See* TEX. PENAL CODE ANN. § 9.32(b). Appellant has pointed to no evidence, and we have found none, that appellant was removed from the vehicle. He also cites no evidence from which it could be rationally inferred that he did not provoke Barrientos. Thus, the trial court did not err by refusing to instruct the jury on this defensive theory. *See id.* § 2.03(c); *Shaw*, 243 S.W.3d at 657–58.

We overrule appellant's second, fourth, and sixth points of error.

Submission of Application Paragraph for Murder Without Including Self-Defense

Appellant complains in his third point of error that the trial court erred because it submitted

an application paragraph for murder without including the law of self-defense in the same paragraph. He acknowledges that the trial court gave the jury instructions on self-defense. His complaint is that the trial court erred "by failing to order the charge in a logical [manner]." He claims that once the issue of self-defense is raised by the evidence, "self-defense becomes, in essence, an element of murder" and therefore the "application paragraph for murder must logically include the application of the facts to the law of self-defense as well as the other elements of murder." Appellant cites no authority for this proposition, and we have found none, stating that a defensive issue must be contained in the same application paragraph as the charge on the elements of the offense.

The court's charge contained an application paragraph on murder, immediately followed by multiple instructions about when the person is justified in using force or deadly force against another, and an application paragraph applying the defensive theory to the facts of the case. The application paragraphs unambiguously applied the law to the facts of the case and are "logically consistent" because they require the jury to determine first whether the State proved the elements of the charged offense beyond a reasonable doubt and if so, then to determine whether appellant's conduct was justified as self-defense. *See Wingo v. State*, 143 S.W.3d 178, 190 (Tex. App.—San Antonio 2004), *aff'd*, 189 S.W.3d 270 (Tex. Crim. App. 2006) (holding trial court did not err in its arrangement of the defense and application paragraphs); *Caldwell*, 971 S.W.2d at 666. Viewing the jury charge as a whole, we conclude the trial court did not err. We overrule appellant's third point of error.

Instruction on Statutory Duty to Retreat

Appellant contends in his fifth point of error that the trial court erred by instructing the jury on the statutory duty to retreat. *See* TEX. PENAL CODE ANN. § 9.32(c). He claims the instruction limited his right to self-defense "by imposing a duty upon him to retreat." He also claims the instruction was an indirect comment on the weight of the evidence. Yet the record of the charge

conference indicates appellant wanted the subsection (c) instruction. He argued he was "in a place, he was entitled to be and had no duty to retreat." His counsel told the trial court the State agreed that the subsection (c) instruction should be included in the charge; the State also told the court that the instruction "should be in there."

If the trial court submits a defendant's requested instruction, he cannot then complain about the instruction on appeal. *McCray v. State*, 861 S.W.2d 405, 409 (Tex. App.—Dallas 1993, no pet.) (citing *Tucker v. State*, 771 S.W.2d 523, 534 (Tex. Crim. App. 1988)). "Even if the charge is later found to be erroneous, the accused can not first invite error and then complain about it on appeal." *Tucker*, 771 S.W.2d at 534. Further, we certainly cannot say appellant suffered egregious harm by the inclusion of the instruction. The instruction benefits a defendant because it removes the duty to retreat from a person who meets the three requirements set forth in the subsection. *See* TEX. PENAL CODE ANN. § 9.32(c). We overrule appellant's fifth point of error.

Instruction on "Reasonable Doubt"

In his final point, appellant attacks the trial court's inclusion of a reasonable-doubt definition in the jury charge. He specifically complains about the following language: "It is not required that the prosecution prove guilt beyond all possible doubt; it is required only that the prosecution's proof excludes all 'reasonable doubt' concerning the defendant's guilt." This Court has rejected appellant's argument repeatedly. *See, e.g.*, *Bates v. State*, 164 S.W.3d 928, 931 (Tex. App.—Dallas 2005, no pet.); *Bratton v. State*, 156 S.W.3d 689, 696–97 (Tex. App.—Dallas 2005, pet. ref'd); *O'Canas v. State*, 140 S.W.3d 695, 702 (Tex. App.—Dallas 2003, pet. ref'd). The court of criminal appeals also has concluded a trial court does not abuse its discretion by giving this same instruction. *See Mays v. State*, 318 S.W.3d 368, 389 (Tex. Crim. App. 2010), *cert. denied*, 131 S. Ct. 1606 (2011); *Woods v. State*, 152 S.W.3d 105, 115 (Tex. Crim. App. 2004). We *again* decline to decide the issue

differently and suggest the costs and expenses of continuing to address this point of error may need to be appropriately assessed. We overrule appellant's seventh point of error.

Having resolved all of appellant's points of error against him, we affirm the trial court's judgment.

MARY MURPHY
JUSTICE

Do Not Publish
TEX. R. APP. P. 47
110307F.U05

Comment [af3]: Judgment - Sent out with Opinion to Internet

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CHARLES ALLEN HARGROVE, Appellant	Appeal from the Criminal District Court No. 3 of Dallas County, Texas. (Tr.Ct.No. F09-25467-J).
No. 05-11-00307-CR V.	Opinion delivered by Justice Murphy, Justices Moseley and Lang-Miers participating.
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered August 20, 2012.

/Mary Murphy/
MARY MURPHY
JUSTICE