IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. PD-0242-19

WILLIAM ROGERS, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRTEENTH COURT OF APPEALS
REFUGIO COUNTY

RICHARDSON, J., delivered the opinion of the Court in which HERVEY, NEWELL, WALKER, SLAUGHTER, and MCCLURE, JJ., joined. YEARY and SLAUGHTER, JJ., filed a concurring opinion. KELLER, P.J., and KEEL, J., dissented.

OPINION

Appellant was originally charged in a two-count indictment for Burglary of a Habitation predicated on either the intent to commit a felony, or attempting and having

committed a felony.[1] Count I alleged that Appellant possessed the intent to commit Aggravated Assault in Paragraph A. Paragraph B alleged that Appellant completed the commission of the Aggravated Assault. Count II alleged in Paragraphs A and B a similar scheme but with the intent to Murder and the commission of Attempted Murder.[2] From the same incident but by a second indictment, Appellant was separately charged with Aggravated Assault with a Deadly Weapon. During a pretrial hearing, the State informed the trial court that they would: (1) waive and abandon Count I Paragraph A, and all of Count II, and (2) proceed solely on Count I Paragraph B—Burglary of a Habitation based on the commission of Aggravated Assault as charged in the first indictment.[3] The State also proceeded on the second indictment alleging Aggravated Assault and both were tried together.[4] Appellant was convicted of both Burglary of a Habitation with the underlying commission of Aggravated Assault, and Aggravated Assault with a Deadly Weapon.[5] Appellant was sentenced to 40 years for the Burglary and 20 years for the Aggravated Assault to be served concurrently.[6]

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[1] There has been some confusion generated by the correct-but-simplified wording of the burglary charge that began at sentencing and continued through the appellate process. Here, we detail the initial charges and how they developed to clear up any misunderstandings.

[2] (1 CR 8).

[3] (3 RR 15–16).

[4] (1 CR 59–60; 4 RR 5–6).

[5] (13 RR 41–42).

[6] (13 RR 41–42; 1 CR 294–95).

On his first appeal, the Thirteenth Court of Appeals found that the Burglary conviction subsumed the Aggravated Assault conviction and thus, vacated the latter.[7] The court of appeals also held, without deciding error first, that the trial court's failure to instruct on any defensive issues was harmless. We granted review and unanimously held that if error existed, it was harmful error.[8] And we remanded for the court of appeals to decide whether the trial court erred in refusing to instruct the jury on self-defense and necessity.[9] The court of appeals then concluded that there was no error and that Appellant failed to provide any evidence that would entitle him to a jury instruction on self-defense or necessity.[10]

Following the court of appeals' opinion after remand in January 2019, we granted review for the second time. Having already decided harm unanimously, the only remaining legal issue is whether the error analysis was flawed. After a thorough review of the case, we conclude that the trial court erred by refusing to grant the requested defensive charge of self-defense and, as we previously held, that Appellant was harmed at every stage of the process.

BACKGROUND

[7] *Rogers v. State*, 527 S.W.3d 329 (Tex. App.—Corpus Christi-Edinburg 2018).

[8] *Rogers v. State*, 550 S.W.3d 190, 196 (Tex. Crim. App. 2018).

[9] *Id*. at 193–94.

[10] *Rogers v. State*, No. 13-15-00600-CR, 2019 WL 150644, at *4 (Tex. App.—Corpus Christi-Edinburg Jan. 10, 2019).

Prior to jury selection, the State filed a pretrial motion in limine seeking to exclude facts that went to the heart of the Appellant's defense. Specifically, the State sought to prevent Appellant from raising any defensive issues during voir dire, opening statements, cross-examination, and even during Appellant's own testimony in the event he decided to testify. Despite a complete lack of testimony to support the State's motion, the trial court agreed with the State and ordered Appellant to comply with that motion and ruling. Appellant properly objected, and the trial court erred by overruling it.

Testimony in Front of the Jury

Appellant's testimony in front of the jury entitled him to the requested defensive charge of self-defense. Appellant testified that he had been engaged in a lengthy affair with Complainant's wife, Sandra Watson. It was Sandra who had given Appellant the passcode and key to her family home during their relationship. Appellant testified that he had entered the house on the day in question at Sandra's request to feed her cats. He parked his truck about a half-mile down the road, placed his .45 caliber handgun in his pocket, walked to the house, entered with the key provided by Sandra, and disengaged the house alarm. After feeding the cats, Appellant noticed Complainant approaching the house. Appellant testified he could not open the back door, so he went into the room Sandra described as her "sanctuary room" and tried to exit through a window that Sandra called her "escape route out of the house." In addition to the window being stuck, Appellant could not fit through the window, so he hid in "sanctuary room" closet, where Complainant kept many of his firearms in a gun safe. One of those guns was on top of the safe.

Appellant also testified that, while in the closet, he heard Complainant rummage around the house, before suddenly appearing at the closet door in an aggressive "linebacker stance" brandishing a hunting knife while moving it up and down. Complainant shouted "YOU" in a loud booming voice as he approached Appellant in the closet while still holding his knife. When Appellant came face-to-face with Complainant, who had his hunting knife in hand, Appellant grabbed from the top of the gun safe Complainant's loaded .380 caliber handgun. Appellant testified that at this point, Complainant, still holding the knife, reached forward and grabbed the gun, which discharged below Complainant's waist as they both struggled for the gun.

Appellant and Complainant testified about a struggle that ensued following the gunshot, but those versions are vastly different.[11] Although the trial court had previously stated in the pretrial hearing "that if it gets to where we have an instruction on self-defense, I will give you adequate time to explain that to the panel," that did not happen. When Appellant was questioned about his state of mind at that moment, rather than conduct any additional hearings outside the jury's presence, without any objection from the State, the trial judge ordered the direct examination of the Appellant to stop, excused the jury, and admonished him and his lawyer by stating "you may not venture off into anything that alludes to or invades the province of self-defense." This error on the part of the trial court deprived Appellant of his right to present a complete defense.

[11] *Compare* (10 RR 21–44) (Complainant's testimony) *with* (11 RR 116–214) (Appellant's testimony).

Bill of Exception

Appellant also provided additional testimony in a Bill of Exception. Specifically, Appellant's affair with Sandra Watson lasted from July 2011 until the date of the offense, February 14, 2013. According to Appellant, they exchanged over 70,000 text messages during their relationship. From February 10, 2013, to the date of the offense, Appellant and Sandra exchanged 850 messages, 187 of which were on the date of the offense. Appellant also testified that Sandra's husband, Complainant, had discovered the relationship between Appellant and Sandra two months before the offense by looking at Sandra's Facebook page. While we need not consider the Bill of Exception in this case, we mention it to highlight the actions of the trial judge, which prevented Appellant from putting on a complete defense.

To reiterate, the State sought and succeeded in keeping pertinent information from the jury based on the trial court's motion in limine ruling. That erroneous ruling prevented testimony that further corroborated Appellant was having an affair with Sandra Watson for almost two years, as well as any mention of the contents of text messages and photos of Sandra Watson individually or with Appellant. This evidence also would have corroborated Appellant's claim that he had permission to be at the house on the date in question.

ANALYSIS

Standard of Review

When addressing a trial court's decision to deny a defensive issue in a jury charge, "we view the evidence in the light most favorable to the defendant's requested submission."[12] The usual deference to trial court rulings does not apply.[13]

Appellate courts review a claim of charge error through a two-step process: first determining whether error exists and then conducting a harm analysis if error is found to exist.[14] When the defendant preserves the alleged error, as Appellant has done in this case, the appellate court must reverse if the error caused him to suffer "some harm."[15] This Court previously ruled unanimously that any error in the present case was not harmless.[16]

Appellant was Entitled to a Defensive Instruction on Self-Defense

The Fifth, Sixth, and Fourteenth Amendments to the United States Constitution guarantee the accused in a criminal prosecution the right to "a meaningful opportunity to present a complete defense."[17] Moreover, the U.S. Supreme Court has explained, and this Court has reiterated that "[the] principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at

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[12] *Bufkin v. State*, 207 S.W.3d 779, 782 (Tex. Crim. App. 2006) (citing *Ferrel v. State*, 55 S.W.3d 586, 591 (Tex. Crim. App. 2001)).

[13] *Id*.

[14] *Phillips v. State*, 463 S.W.3d 59, 64–65 (Tex. Crim. App. 2015).

[15] *See id*.

[16] *Rogers*, 550 S.W.3d at 196.

[17] *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006).

the foundation of the administration of our criminal law."[18] We noted in *Kimble* that "[t]o implement the presumption, courts must be alert to factors that may undermine the fairness of the fact-finding process."[19]

Likewise, Texas law provides that a judge must provide the jury with "a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury."[20] We have explained that "this law requires the trial judge to instruct the jury on statutory defenses, affirmative defenses, and justifications whenever they are raised by the evidence."[21] We have also said that "[a] defendant is entitled to an instruction on every defensive issue raised by the evidence, regardless of whether the evidence is strong, feeble, unimpeached, or contradicted, and even when the trial court thinks that the testimony is not worthy of belief."[22] The defendant's testimony alone may be sufficient to raise a defensive theory requiring a charge.[23] Even a minimum quantity of evidence is sufficient

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[18] *Kimble v. State*, 537 S.W.2d 254, 254–55 (Tex. Crim. App. 1976) (quoting *Coffin v. U.S.*, 156 U.S. 432, 453 (1895)).

[19] *Id.* at 255.

[20] *Walters v. State*, 247 S.W.3d 204, 208 (Tex. Crim. App. 2007) (quoting TEX. CRIM. PROC. art. 36.14).

[21] *Id.* at 208–09.

[22] *Id.* at 209.

[23] *Warren v. State*, 565 S.W.2d 931, 934 (Tex. Crim. App. 1978).

to raise a defense as long as the evidence would support a rational jury finding as to the defense.[24]

In this case, Appellant requested instructions on self-defense and necessity, and the record reflects that the errors of the trial court undermined fairness in the fact-finding process and violated Appellant's constitutional rights.

Rational Alternative to Criminal Liability

The State contends that the trial court should prohibit a jury from returning an irrational verdict.[25] Thus, the trial court, per the State, should refuse to give a defensive instruction unless "that defense is a rational alternative to the defendant's criminal liability."[26] Consequently, per the State's logic, it is categorically irrational to apply self-defense as a defense to burglary.

The State's theory, however, is dismissive of the fact that Appellant's burglary charge was based on the completed commission of Aggravated Assault. In fact, the court of appeals vacated a separate conviction for Aggravated Assault with a Deadly Weapon because it was subsumed by the instant Burglary conviction based on the same incident.[27] The State's evidentiary requirements, therefore, included proving: (1) Appellant entered

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[24] *Shaw v. State*, 243 S.W.3d 647, 657 (Tex. Crim. App. 2007).

[25] The Office of the State Prosecuting Attorney appeared on this case following this Court's first remand to the court of appeals and raises this argument for the first time on appeal.

[26] State's Br. at 3 (quoting *Shaw v. State*, 243 S.W.3d 647, 658 (Tex. Crim. App. 2007)).

[27] *Rogers v. State*, 527 S.W.3d 329 (Tex. App.—Corpus Christi-Edinburg 2018).

the home of Complainant without consent, and (2) Appellant completed the commission of Aggravated Assault on Complainant.[28] Appellant presented evidence, if believed, that would have negated the first element. This negation by itself would have defeated the burglary charged. Accordingly, if Appellant presented any evidence that tended to defend against the second element of burglary via completed commission of Aggravated Assault, his "defense [would be] a rational alternative to [his] criminal liability." This is because, if believed, it would have independently defeated the offense charged in addition to the lesser-included offense of Aggravated Assault.[29] Here, Appellant—despite the trial judge's rulings—did just that: he supplied the modicum of self-defense evidence "sufficient to raise [the] defense because it could support a rational jury finding as to the defense."[30]

Confession and Avoidance

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[28] (13 RR 41–42).

[29] "Nevertheless, a 'defendant is entitled to an instruction on any defensive issue raised by the evidence, whether that evidence is weak or strong, unimpeached or uncontradicted, and regardless of how the trial court views the credibility of the defense.'" *Maciel v. State*, 631 S.W.3d 720, 723 (Tex. Crim. App. 2021) (quoting *Celis v. State*, 416 S.W.3d 419, 430 (Tex. Crim. App. 2013) (citing *Allen v. State*, 253 S.W.3d 260, 267 (Tex. Crim. App. 2008))); *Shaw v. State*, 243 S.W.3d 647, 658 (Tex. Crim. App. 2007). A defensive issue is raised by the evidence "if there is evidence in the record making a prima facie case for the defense." *Shaw*, 243 S.W.3d at 657. "A prima facie case is that 'minimum quantum of evidence necessary to support a rational inference that an allegation of fact is true.'" *Id*.

Alternatively, if Appellant was entitled to his requested defensive instruction under the Aggravated Assault charge, it seems rational that he's entitled to the same for any other offense that subsumes the Aggravated Assault charge under the cognate pleadings approach. *See Hall v. State*, 225 S.W.3d 524, 533–34 (Tex. Crim. App. 2007) (adopting the cognate pleadings approach for determining lesser-included offenses).

[30] *Shaw*, 243 S.W.3d at 657.

Parallel to their arguments above, the State also argues that justification defenses adhere to the confession-and-avoidance doctrine. Although this case is under appellate review for the fourth time including twice at this Court, the State asserts the confession-and-avoidance argument for the first time. Under the State's theory, Appellant was not entitled to the requested defensive instruction because he did not admit to every element of the offense.[31]

However, as we have reaffirmed repeatedly, "[a]dmitting to the conduct does not necessarily mean admitting to every element of the offense."[32] Defendant was only required to show that his entitlement to the defensive instruction was "raised by the evidence." He did so by showing a "prima facie case" for his defense—he showed the

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[31] We note that the Office of the State Prosecuting Attorney has advocated for an absolutist approach to the confession-and-avoidance doctrine in numerous cases. *Maciel v. State*, 631 S.W.3d 720 (Tex. Crim. App. 2021); *Rodriguez v. State*, 629 S.W.3d 229 (Tex. Crim. App. 2021); *Jordan v. State*, 593 S.W.3d 340 (Tex. Crim. App. 2020).

[32] *Gamino v. State*, 537 S.W.3d 507, 512 (Tex. Crim. App. 2017); *see Rodriguez v. State*, 629 S.W.3d 229, 233 (Tex. Crim. App. 2021) ("The evidence need not unequivocally show that the defendant engaged in the conduct."); *Maciel*, 631 S.W.3d at 725 ("[T]he confession-and-avoidance doctrine does not require an explicit admission from the defendant that she committed a crime."); *Juarez v. State*, 308 S.W.3d 398, 405 (Tex. Crim. App. 2010) (finding defendant was entitled to a defensive instruction even though he did not admit to the mental state element); *Martinez v. State*, 775 S.W.2d 645, 647 (Tex. Crim. App. 1989) ("Appellant admitted to pulling out the gun, firing it into the air, and having his finger on the trigger when the fatal shot was fired. While appellant specifically denied intending to kill Gonzales, this alone does not preclude an instruction on self-defense."); *Thomas v. State*, 678 S.W.2d 82, 85 (Tex. Crim. App. 1984) (finding entitlement to a necessity defense instruction for aggravated robbery even though defendant denied any intent to deprive the officer of his gun as part of the underlying theft); *Sanders v. State*, 632 S.W.2d 346, 348 (Tex. Crim. App. 1982) (holding that a manslaughter defendant was entitled to the requested self-defense instruction although he denied having any intent to harm the deceased); *Garcia v. State*, 492 S.W.2d 592, 596 (Tex. Crim. App. 1973) (finding defendant was entitled to a self-defense charge even where she stated she did not intend to shoot the gun that killed the victim).

"minimum quantum of evidence necessary to support a rational inference"[33] that he had consent to be in the home and that he shot Complainant with a gun he grabbed at the last second as he was being advanced upon by the knife-wielding Complainant. Furthermore, requiring admission to every element "would violate a court's duty to look at the evidence in the light most favorable to the requested instruction."[34] Doing so would invade the province of the jury as the fact-finder.[35]

Even though it was under an alternative explanation of circumstances, Appellant admitted to being in the house and pulling the trigger of the gun that shot Complainant. The trial court was obligated to view the evidence supporting the defensive charge in a favorable light. "Consequently, in a case of conflicting evidence and competing inferences, the instruction should [have been] given."[36]

Self-defense

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[33] *Shaw*, 243 S.W.3d at 657.

[34] *Rodriguez*, 629 S.W.3d at 233; *see Liskosski v. State*, 3 S.W. 696, 698 (Tex. Ct. App. 1887) ("Any theory legitimately arising out of the evidence in a case imposes upon the court the duty of submission by appropriately instructing upon the law governing it; and this, without regard to the strength or weakness of the supporting facts. Uniform with the previous rulings of this court is the doctrine here declared, viz.: The charge of the court must make a pertinent application of the law covering every theory arising out of the evidence; that the duty is not dependent upon the court's judgment of the strength or weakness of the testimony supporting the theory, it being the prerogative of the jury to pass upon the probative force of the testimony.").

[35] *Rodriguez*, 629 S.W.3d at 231 ("Credibility is for the jury to decide; the courts' only role is to determine if there is some evidence—even if weak, inconsistent, or contradictory—that a rational jury could find supports the defense.").

[36] *Id*.

Under self-defense, "a person is justified in using force against another 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."[37] Additionally, under Section 9.32:

> A person is justified in using deadly force against another:
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> (1) if the actor would be justified in using force against the other under Section 9.31; and
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> (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
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> (A) to protect the actor against the other's use or attempted use of unlawful deadly force; or
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> (B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.[38]

This "use or attempted use of unlawful force" language is present in both Sections 9.31(a) and 9.32(a)(2)(A) of the Penal Code. Section 9.31 lays out the standard for the use of force in self-defense. However, the use of deadly force in defense of a person is governed by Section 9.32.[39] Similar language appears in both Sections 9.31(a) and 9.32(a)(2)(A), but the latter contains an additional, alternate prong in the form of Section 9.32(a)(2)(B).

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[37] TEX. PENAL CODE § 9.31 ("Self-Defense").

[38] TEX. PENAL CODE § 9.32 ("Deadly Force in Defense of Person").

[39] *See Ferrel*, 55 S.W.3d at 591–92; *see also Werner v. State*, 711 S.W.2d 639, 644–45 (Tex. Crim. App. 1986), *holding modified by Hamel v. State*, 916 S.W.2d 491 (Tex. Crim. App. 1996).

Furthermore, and perhaps most important here, Section 9.32(c) provides that "[a] person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section."

As we explained above, a defendant's testimony alone may be sufficient to raise a defensive theory requiring a charge.[40] Appellant's testimony provides such evidence.[41] The court of appeals mischaracterized his testimony by stating that "there was no evidence that appellant reasonably believed that the use of force was immediately necessary to avoid imminent harm or to protect himself against [Complainant's] use or attempted use of unlawful force." The examples below make clear that Appellant raised evidence that would entitle him to a self-defense instruction.[42]

Testimony was presented to jury that showed the following:

(1) Appellant knew the names of Sandra Watson's cats, described their bowls and the location of the food in great detail, and fed them fifteen to twenty times.

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[40] *Warren*, 565 S.W.2d at 934.

[41] *See Booth v. State*, 679 S.W.2d 498, 502 (Tex. Crim. App. 1984) ("We hold that the jury was entitled to accept or reject [appellant's] defensive theory" where appellant testified, though contradicted by other evidence, in support of his claim).

[42] The State describes our prior opinion as treating the encounter "as though the aggravated assault happened on a street or at a party." State's Br. at 9. The State also uses a similar one-sided view of the evidence to argue that there was no harm, or that our previous *unanimous opinion* finding harm should be reexamined. *Id.*; *Rogers v. State*, 550 S.W.3d 190, 196 (Tex. Crim. App. 2018). We reaffirm, however, that there was harm because a comprehensive review of the evidence shows that both the trial court and the court of appeals on remand ignored their time-honored obligation to "view the evidence in the light most favorable to the requested instruction." *Rodriguez*, 629 S.W.3d at 233; *Liskosski*, 3 S.W. at 698.

Appellant also testified this included the day in question because he placed them outside with food in them. Complainant also testified that he noticed the cat bowls were not in their usual spots because he regularly brought them back inside at night to prevent racoons from stealing their food.

(2) Appellant testified that had received a key, as well as the alarm code, to the house, from Sandra Watson.

(3) Detective De Leon testified that Appellant provided him the key to the house while he was being interviewed by the Detective on the day of the incident. Detective De Leon, per his testimony, then relied on the key to access the house so that the scene could be photographed and examined by police.

(4) Appellant and Sandra Watson had exchanged approximately 850 text messages and two phone calls the four days prior to and thru the day of the incident. About 187 of those text messages occurred on the day of the incident.

(5) Appellant explained that "the dimming of the light is [Complainant] jumping in front of the door holding a knife and he just shouts 'You' very loudly and he's in kind of a linebacker stance, he's got his knees bent and he's moving the knife up and down in his right hand."

(6) Appellant described that he took a step back as the Complainant started moving into the closet. Only then did he grab the Complainant's gun.

Under the State's logic, however, if one party is using lawful force under 9.31 and 9.32, the other party *per se* cannot be. Thus, per the State, if Complainant's use of force was lawful, then Appellant's response is rendered unlawful because his use of force can never be justified. We do not believe Sections 9.31 nor 9.32 can be used to make such reflexive renderings in the way the State proposes.[43] Section 9.31(a) only applies to situations concerning the *actor* where both predicate conditions are met: (1) the actor *reasonably believes* use of force is immediately necessary; *and* (2) the actor *reasonably*

[43] Under the law of distribution, the phrase "reasonably believes" must be applied to "immediately necessary" and all components of both subsections (A) and (B).

believes the other's person's use or attempted use of force is unlawful.[44] The statute remains silent on the actions and reasonable beliefs of the "other." We, therefore, cannot agree with the State's proposition that if one party is acting reasonably, the other can never be. Even under our standards of review, we acknowledge that "[r]easonable men may disagree" and can still remain reasonable.[45] Thus, in the context of whether Appellant had reasonable beliefs to satisfy each predicate condition, the question should have been left to the jury as the fact-finder.

We are also not certain, contrary to the State's presumption, that Complainant was automatically justified as a matter of law to utilize deadly force against Appellant, simply because he never gave Appellant consent to be there. First, Texas law does not blanket authorize the use of deadly force against trespassers—especially in the middle of the afternoon.[46]

Second, the State's position on consent is diametrically opposed to Fourth Amendment case law on apparent and actual authority.[47] The State's brief would have one believe that:

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[44] The State also ignores the other prong under Section 9.31(a)(2): "to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery." Here, Appellant testified that he believed Complainant was about to assault him with a knife (a.k.a. Aggravated Assault with a Deadly Weapon).

[45] *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990). This is not to say that all people who disagree are reasonable.

[46] *See* TEX. PENAL CODE § 9.42 ("Deadly Force to Protect Property").

[47] "The Fourth Amendment recognizes a valid warrantless entry and search of premises when police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, authority over the area in common with a co-occupant . . . ." *Georgia v. Randolph*, 547 U.S.

1. Appellant was never asked by Complainant's wife on the date in question to stop by the house and feed the cats;
2. Appellant had not exchanged thousands of text messages with her—many on the day of the offense;
3. Appellant had not been given both the key and alarm code to the home; and
4. Complainant's step-daughter had not heard her mother ask Appellant to go to the house.

In the State's version of events, Complainant's wife simply had no authority to give Appellant consent to enter. Taking the State's theory to its logical conclusion, Complainant would have had an automatic right to shoot an invitee including any manner of repair or serviceperson who was legally there under the Complainant's wife's consent. This result would be unreasonable.[48] It is disingenuous on the State's part to convince the trial court pretrial, without any evidence, that defendant was not entitled to put on any of this evidence and then take the position this evidence never existed on appeal.[49] It is irrational and

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103, 106 (2006); *Hubert*, 312 S.W.3d at 560. Actual authority gives rise to a valid consensual search where the third party "and the absent, non-consenting person share common authority over the premises or property. . . . [C]ommon authority is shown by mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." *Hubert*, 312 S.W.3d at 560–61; *see Burge v. State*, 443 S.W.2d 720, 722 (Tex. Crim. App. 1969) ("[I]t is well established in this State that a wife may consent to the search of her husband's premises where the consent is given without coercion."). "The fact that the relationship between the defendant and the third party has grown antagonistic will not necessarily vitiate consent." *Hubert*, 312 S.W.3d at 561.

[48] TEX. GOV'T CODE § 311.021 ("In enacting a statute, it is presumed that . . . a just and reasonable result is intended; . . . .").

[49] (3 RR 19–21; 8 RR 12–17; 11 RR 64–65).

inconsistent with the federal and Texas Constitutions, because it deprived him of putting on any defense.

Third, the evidence also raises questions on whether *Complainant's actions* were reasonable under Section 9.31. Appellant testified that although he had the right to be there, he tried to escape an awkward confrontation with his paramour's husband by leaving the house. Failing to escape, he tried to avoid discovery by hiding in Sandra's "sanctuary room" closet—somewhere he thought Complainant was least likely to go.[50] Upon discovery, according to Appellant, Complainant shouted "YOU!" while standing in a "linebacker" stance only roughly three feet away holding a knife with the tip pointed up.[51] Since Complainant was blocking the entrance, Appellant testified that he tried to retreat further (half step back) into the "sanctuary room" closet. Appellant further claimed that Complainant, while wielding the knife, came "fairly quickly" into the closet.[52] Thus, Appellant's accounting implicitly alleged that he reasonably believed Complainant's initiating use of force was unlawful. Because Appellant's facts and conclusion vary wildly from Complainant's testimony, the State's *per se* presumption of Appellant's unlawfulness was unjustified—it required a determination from the fact-finder to resolve the question.

Based on his testimony before the jury viewed under the most favorable light, Appellant was entitled to the defensive charges requested under the standards set out in

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[50] (11 RR 122–26).

[51] (11 RR 131).

[52] (11 RR 132–33).

Section 9.32(a)(2)(B) and Section 9.32(c).[53] Appellant's testimony successfully raised a defensive issue, and "the jury was entitled to accept or reject that defensive theory": he had permission to be in the home, and he used deadly force in defense of his person to prevent his imminent murder.[54]

As this Court held in its prior opinion, the trial court placed an embargo on the defensive issues, and in doing so, prevented Appellant from presenting his defense at every step of the proceedings—during voir dire, opening statements, while testifying, while attempting to create a bill of exception, and while requesting the self-defense charge.[55] The Bill of Exception included the following evidence:

(1) Appellant and Sandra Watson exchanged thousands of text messages.
(2) Sandra Watson's daughter traveled to testify that she heard her mother ask Appellant to feed the cats, but she was only permitted to testify in the Bill of Exception.
(3) Appellant explained that he feared for his life, though he was not permitted to say so in front of the jury.

Excluding such evidence was error on the part of the trial court judge. Likewise, while Appellant was testifying, the trial judge went to great lengths to make certain no discussion of self-defense would come in despite acknowledging that Appellant had consent from one

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[53] *Bufkin*, 207 S.W.3d at 782 (citing *Ferrel*, 55 S.W.3d at 591). We make no decision at this time whether the testimony in the Bill of Exception, interrupted and excluded by the trial judge, and not heard by the jury, would independently raise that issue, but it further bolsters the appellant's claim that the trial judge prevented the appellant from presenting a complete defense during every step of the proceedings, even during the Bill of Exception.

[54] *Booth*, 679 S.W.2d at 502.

[55] *Rogers*, 550 S.W.3d at 196.

homeowner, Sandra Watson, to be in the house.[56] That too was error. Appellant was given less than 25 minutes to create a bill of exception. These circumstances deprived Appellant of a meaningful opportunity to present a complete defense. Having decided Appellant is entitled to a self-defense instruction, this Court need not address necessity today.

CONCLUSION

Both the trial court and court of appeals erred in this case. Accordingly, we reverse the decision of the court of appeals and remand to the trial court for further proceedings consistent with this opinion.

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[56] The trial judge stated:

> This is further explanation for the defense of this Court's position on the issue of self-defense or fearing for your life. I have advised Mr. Garcia that he cannot go into that and he cannot elicit testimony about whether Mr. Rogers was afraid of the situation that he found himself in in the Watson home for this reason. Mr. Rogers made a conscious decision on the morning of the 14th before he ever left Victoria, Texas to go to the home of David Watson without David Watson's consent. He did have Mrs. Watson's consent I'm convinced, but he also knew at that time that Mrs. Watson would not be present at the time he was at the home and he knew there was a possibility that David Watson could be there because David Watson was loose in the general public. The fact that he went to his home knowing that he did not have David Watson's consent and was, unfortunately, confronted by David Watson in that action takes away from him the right to claim self-defense because he created the situation that he found himself in and he cannot be in any way found to be defending himself once he creates the situation. So I'm advising you in the presence of your client and your co-counsel that you may not venture off into anything that alludes to or invades the province of self-defense. It's not self-defense by any definition, especially under Texas law.

(11 RR 139–40).