

Reverse and Remand; Opinion Filed October 6, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00134-CR

**CHRISTOPHER A. GERLICH, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the County Court at Law No. 4
Collin County, Texas
Trial Court Cause No. 004-82738-2019**

MEMORANDUM OPINION

Before Justices Schenck, Smith, and Garcia
Opinion by Justice Schenck

Christopher A. Gerlich appeals his conviction for assault causing bodily injury to a family member. In his first of two issues, he argues the trial court erred by failing to include an instruction in the jury charge regarding consideration of whether appellant failed to retreat. The State concedes the charge is erroneous as urged in the first issue, appellant properly preserved his request, and that he suffered some harm. The State further requests this Court reverse appellant's conviction and remand the case for a new trial.

In view of the absence of a present adversarial controversy between the parties as to the proper disposition of this appeal, we reverse the trial court's judgment and remand this case for further proceedings. *See* TEX. R. APP. P. 44.2.

/David J. Schenck/

DAVID J. SCHENCK
JUSTICE

DO NOT PUBLISH
Tex. R. App. P. 47
200134F.U05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CHRISTOPHER A. GERLICH,
Appellant

No. 05-20-00134-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at
Law No. 4, Collin County, Texas
Trial Court Cause No. 004-82738-
2019.

Opinion delivered by Justice
Schenck. Justices Smith and Garcia
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 6th day of October, 2021.