

**Affirmed and Opinion filed August 10, 2023.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-19-00591-CR**

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**ROBERT EARL HART, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 182nd District Court  
Harris County, Texas  
Trial Court Cause No. 1524656**

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**OPINION**

On remand from the court of criminal appeals, we address appellant’s issue 3, the sole remaining issue in this case, in which appellant asserts the trial court erred when it failed to include, *sua sponte*, an instruction on sudden passion in the court’s charge on punishment as part of the law of the case in the punishment phase of the trial. *See Hart v. State*, 631 S.W.3d 458, 461 (Tex. App.—Houston [14th Dist.] 2021), *rev’d and remanded*, No. PD-0795-21, 2023 WL 3082506 (Tex. Crim. App. Apr. 26, 2023).

“[T]he jury is . . . bound to receive the law from the court and be governed thereby.” Tex. Code Crim. Proc. Ann. art. 36.13. The trial court must submit a written charge “distinctly setting forth the law applicable to the case.” Tex. Code Crim. Proc. Ann. art. 36.14. An “unrequested defensive issue is not the law applicable to the case.” *Taylor v. State*, 332 S.W.3d 483, 487 (Tex. Crim. App. 2011) (citing *Posey v. State*, 966 S.W.2d 57, 62 (Tex. Crim. App. 1998)); *see also Wooten v. State*, 400 S.W.3d 601, 605 (Tex. Crim. App. 2013) (citing *Posey*, 966 S.W.2d at 62) (reasoning that Code of Criminal Procedure article 36.14’s requirement to raise written objections to charge would be rendered meaningless if court ruled otherwise). The question raised by appellant in issue 3 is whether sudden passion is a defensive issue. Appellant acknowledges that if sudden passion is a defensive issue, then the trial court had no sua sponte duty to include the instruction and there is no error.

Although in an unpublished opinion lacking precedential value, this court has previously held that sudden passion is a defensive issue on which there is no duty on a trial court to sua sponte instruct a jury. *Haynes v. State*, No. 14-99-00533-CR, 2001 WL 306434, at \*4 (Tex. App.—Houston [14th Dist.] Mar. 29, 2001, pet. ref’d) (not designated for publication) (citing *Posey*, 966 S.W.2d at 62). Our sister courts of appeal have similarly concluded that sudden passion is a defensive issue. *See Jones v. State*, 613 S.W.3d 274, 275 (Tex. App.—Austin 2020, pet. ref’d); *Simpson v. State*, 548 S.W.3d 708, 710 (Tex. App.—Houston [1st Dist.] 2018, pet. ref’d); *Newkirk v. State*, 506 S.W.3d 188, 192 (Tex. App.—Texarkana 2016, no pet.) (collecting cases); *Swaim v. State*, 306 S.W.3d 323, 325 (Tex. App.—Fort Worth 2009, pet. ref’d); *see also Beltran v. State*, 472 S.W.3d 283, 290 (Tex. Crim. App. 2015) (discussing sudden passion as defensive issue).

The language of the Penal Code itself reflects that sudden passion is a defensive issue: “At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause.” Tex. Penal Code Ann. § 19.02(d). A defendant must then “prove[] the issue in the affirmative by a preponderance of the evidence.” *Id.* We agree with our sister courts and reaffirm in accordance with the language of the Penal Code that sudden passion is a defensive issue. Therefore, the trial court had no sua sponte duty to include the sudden passion instruction in the jury charge, and trial court did not err.

We overrule issue 3. Having overruled appellant’s sole remaining issue on remand, we affirm the trial court’s judgment as challenged on appeal.

/s/ Charles A. Spain  
Justice

Panel consists of Justices Wise, Bourliot and Spain.

Publish—Tex. R. App. P. 47.2(b).