



**IN THE
TENTH COURT OF APPEALS**

No. 10-15-00172-CR

RONALD DARRIN COMBS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 40th District Court
Ellis County, Texas
Trial Court No. 39840CR**

MEMORANDUM OPINION

The jury convicted Ronald Darrin Combs of the offense of aggravated assault with a deadly weapon. The jury found the enhancement paragraphs to be true and assessed punishment at 50 years confinement. We affirm.

Background Facts

Cammie Holley moved in with Appellant at the end of October 2013. She testified that a few weeks later, appellant started getting “mean” with her and started to threaten her. Appellant told Holley he would “knock [her] teeth out” and “crack [her] skull,” and

“leave [her] body in the ditch.” Holley testified that on November 24, 2013, Appellant became angry and assaulted her for several hours. Appellant hit Holley in the head, face, body, shoulder, stomach, and back. Holley testified that Appellant put a knife to her throat and threatened to kill her and leave her body in the ditch. Holley eventually escaped and called 911.

Officer Michael Richardson responded to the 911 call. Holley told Officer Richardson that her boyfriend assaulted her and threatened her with a knife. Deputy Hunter Barnes also arrived on the scene. Holley told Deputy Barnes that Appellant held a knife to her face and threatened to kill her. Deputy Barnes found Appellant passed out inside of the residence, and he had the odor of alcohol on his person. Deputy Barnes found a knife matching the description given by Holley within reach of Appellant.

Jury Note and Jury Poll

In the first issue, Appellant argues that the trial court erred in failing to poll the jury on its deadly weapon finding. In the second issue, Appellant complains that the trial court erred in its response to the jury’s note by failing to correct the jury’s misunderstanding of the law.

Appellant was indicted for the offense of aggravated assault and the indictment alleged that Appellant exhibited a deadly weapon, a knife, during the offense. The jury charge stated that:

Our law provides that a person commits an assault if he intentionally or knowingly threatens another with imminent bodily injury, including the person’s spouse. Such an assault is aggravated assault if the person used or exhibited a deadly weapon during the commission of the offense.

The charge defined deadly weapon as “anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.”

During deliberations, the jury sent a note asking two questions:

1. If we can't agree he threatened her with a knife, where are we?
2. Can we continue thinking his fist is a deadly weapon?

The trial court responded:

Members of the Jury, your “verdict” must be unanimous. Regarding the “deadly weapon” matter expressed in your note, you have received all of the law that applies to this case and further comment in response to your note is not permitted under Texas law. Please read the “Charge of the Court”. Please continue to deliberate.

The jury reached its verdict approximately fifteen minutes after receiving the answer to their questions.

After the jury had reached its verdict, the trial court asked if either party would like the jury polled. Appellant's trial counsel responded that he would like the jury polled, and stated:

I specifically request each member of the jury to be asked if they based their verdict on the fact that the deadly weapon was a knife as stated in the Indictment, or if anyone based their verdict on the fact that it might have been a fist.

The trial court responded, “I will poll the jury. That particular request or wording is respectfully denied.” The trial court polled the jury asking each juror if the verdict read aloud in open court was his or her verdict. Each member of the jury responded, “Yes.”

Appellant argues that the trial court erred in not polling the jury on whether they convicted him based on the use of his fists as a deadly weapon or the use of a knife.

Article 37.05 of the Texas Code of Criminal Procedure provides:

The State or the defendant shall have the right to have the jury polled, which is done by calling separately the name of each juror and asking him if the verdict is his. If all, when asked, answer in the affirmative, the verdict shall be entered upon the minutes; but if any juror answer[s] in the negative, the jury shall retire again to consider its verdict.

TEX. CODE CRIM. PROC. ANN. art. 37.05 (West 2006). The record reflects that the trial court followed the procedure set out in Article 37.05. We find that the trial court did not err in refusing to poll the jury with the specific questions requested by Appellant. We overrule the first issue.

In the second issue, Appellant complains that the trial court erred in its response to the jury's questions. The jury asked whether they could continue thinking his fist was a deadly weapon. Appellant specifically argues that the trial court had a duty to inform the jury in writing that neither the indictment nor the jury charge permitted conviction for aggravated assault based upon the use of Appellant's fists.

The application paragraph of the jury charge specifically instructs the jury to find Appellant guilty of aggravated assault if they determined that he used or exhibited a "knife" during the assault. In response to the note from the jury, the trial court instructed the jury to read the jury charge. We do not find that the trial court erred in responding to the jury's note. We overrule the second issue.

Ineffective Assistance of Counsel

In the third issue, Appellant argues that his trial counsel was ineffective in failing to object to the trial court's response to the jury's note. To prevail on a claim of ineffective assistance of counsel, an appellant must meet the two-pronged test established by the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and adopted by Texas two years later in *Hernandez v. State*, 726 S.W.2d 53, 57 (Tex.Crim.App.1986). Appellant must show that (1) counsel's representation fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052. Unless appellant can prove both prongs, an appellate court must not find counsel's representation to be ineffective. *Id.* at 687, 104 S.Ct. 2052. In order to satisfy the first prong, appellant must prove, by a preponderance of the evidence, that trial counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms. To prove prejudice, appellant must show that there is a reasonable probability, or a probability sufficient to undermine confidence in the outcome, that the result of the proceeding would have been different. *Id.*

Because we find that the trial court did not err in its response to the jury, we find that trial counsel was not ineffective in failing to object to the response. We overrule the third issue.

Conclusion

We affirm the trial court's judgment.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed February 18, 2016

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