NUMBER 13-18-00190-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI–EDINBURG

**MARON DWAYNE TAYLOR
A/K/A MARON D. TAYLOR A/K/A
MYRON DAWAYNE TAYLOR A/K/A
MARVO DWAYNE TAYLOR A/K/A
MARON TAYLOR A/K/A MYRON
DWAYNE TAYLOR,** **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

**On appeal from the Criminal District Court
of Jefferson County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Longoria and Perkes
Memorandum Opinion by Justice Perkes**

Appellant Maron Dwayne Taylor a/k/a Maron D. Taylor a/k/a Myron Dawayne Taylor a/k/a Marvo Dwayne Taylor a/k/a Maron Taylor a/k/a Myron Dwayne Taylor appeals his conviction of aggravated assault with a finding of family violence.[1] *See* TEX. PENAL CODE ANN. § 22.02(b)(1). Following a guilty verdict by the jury, appellant pleaded true to a habitual felony offender enhancement, and he was sentenced to thirty years' confinement in the Texas Department of Criminal Justice, Institutional Division. *See id.* § 12.42(c)(1). By a single issue, appellant argues the trial court erred in denying his requested jury instruction on self-defense. We affirm.

I. BACKGROUND

On February 25, 2017, law enforcement officers were dispatched to the residence of the complainant and father of appellant, Henry Taylor (hereinafter Taylor). Detective Sadie Guidry with the Port Arthur Police Department testified she found Taylor straddling appellant inside the laundry room when they arrived. Neither men were in possession of any weapons. After speaking with the men individually, Guidry opined that appellant had been "the aggressor in this situation," and appellant was arrested.

A. Complainant's Testimony

Taylor testified that appellant unexpectedly returned to the residence following a verbal altercation, which had transpired earlier that same morning. "I didn't even know he was in the house. That's when he hit me in the back." Taylor said appellant used a baseball bat to assault him, blind-siding him while he was in the laundry room. The two "tussl[ed]" until Taylor managed to "flip" his son. Taylor testified he put appellant in a

[1] This case is before the Court on transfer from the Ninth Court of Appeals in Beaumont, pursuant to a docket equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001.

"choke hold" and asked appellant's aunt, who was in the other room, to call the police. Taylor held his son down until police arrived. After initially denying medical care, Taylor was later transported to the hospital, where he underwent emergency surgery.

B. Surgeon's Testimony

Dr. David Parkus, director of trauma surgery at St. Elizabeth Hospital and Taylor's operating surgeon, testified that Taylor was declared in "critical condition" upon his arrival. CAT scan imagery revealed that Taylor "had a lacerated spleen and his abdomen was completely full of blood." Dr. Parkus opined that without surgical intervention, Taylor "would have died" that day. Dr. Parkus testified that the injuries he observed, which also included a broken rib, were the result of "significant" blunt force trauma and were consistent with Taylor's reported allegations of being hit repeatedly with a bat.

C. Appellant's Testimony

Appellant provided an entirely different depiction of events resulting in his father's hospitalization. Appellant said he spent the night at his father's house and was awoken by his father trying to steal money out of his pockets. His father then kicked him out of the residence around 4 a.m., and appellant returned at approximately 10 a.m. to retrieve his belongings—which included clothing still in the dryer. Appellant testified that he was in the laundry room when he was confronted by his father, who was asking for more money. "He kept [saying], 'I know you got some money. Why you won't give me no money? I just gave you $100.' And I told him, 'I don't have no more money, Daddy.' By that time[,] he got mad at me." According to appellant, Taylor then picked up a bat and swung at appellant, striking him in the face. Appellant testified that amidst a struggle, he and his father ran into several objects, including the door, door handle,

washing machine, and nearby shelf. Appellant said he eventually tripped on a pair of pants, and once he was on the floor, his father climbed on top of him and "started choking [him] with [the bat]." Appellant claimed his father threw the bat behind him once officers arrived.

Throughout Appellant's direct examination, he denied ever using the baseball bat to assault his father. Appellant maintained he never hit his father and attributed any injuries his father sustained to accidental contact with nearby objects.[2] Appellant's testimony did not waiver during cross-examination.

D. Charge Conference

At the conclusion of the guilt/innocence phase at trial, appellant's counsel requested a "self-defense definition" during the charge conference. The exchange, in pertinent part, occurred as follows:

> [Defense counsel]: Your Honor, I reviewed it; and the Defense would be requesting a self-defense definition in this. I think the evidence is proved or shown—at least there's evidence

[2] Appellant testified, in relevant part, as follows:

> Q. How did he get those injuries on his back?
>
> A. From—the door—the door—the door handle was sticking out. I kept running. We ran into the door. We ran into the washing machine. It could have came from anything. We ran into a shelf—there's a shelf right here that sits about so high off the ground (indicating). We kept—we was wrestling.
>
> Q. We heard a lot about a baseball bat yesterday and even saw a picture of it. Did you ever grab a baseball bat and hit your dad?
>
> A. No, sir.
>
> Q. Okay. Why would your dad say you hit him with a baseball bat?
>
> A. I don't know, sir.
>
> Q. Did you ever hit him with a baseball bat?
>
> A. No, sir.

for the jury to consider that the alleged victim in this case was the aggressor and that my client was acting in self-defense.

[State]: Your Honor, there has been no testimony—actually, there has been direct testimony against that. There is a denial that a bat was ever used. . . . We do not believe self-defense would be appropriate.

[Trial Court]: Wouldn't that, [defense counsel], be the legal qualification—or condition of getting a defense? Doesn't the defendant have to admit the conduct as alleged in the indictment, which I think he has—he has flatly denied?

[Defense counsel]: Yes, Your Honor.

[Trial Court]: Okay. Then your request is denied.

A jury found appellant guilty of the allegation as charged, and the trial court imposed the sentence. This appeal followed.

II. DISCUSSION

Appellant claims the trial court erroneously excluded his requested self-defense instruction, and such exclusion was egregiously harmful.

A. Standard of Review & Applicable Law

A trial court has a duty to prepare a jury charge that accurately sets out the law applicable to the specific offense charged. TEX. CODE CRIM. PROC. ANN. art. 36.14; *Green v. Texas*, 476 S.W.3d 440, 445 (Tex. Crim. App. 2015). We review a trial court's decision to deny a defendant's request for an instruction in the jury charge under an abuse of discretion standard. *See Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012); *Wesbrook v. State*, 29 S.W.3d 103, 121–22 (Tex. Crim. App. 2000).

Analysis of an alleged jury charge error requires consideration of dual inquiries: (1) whether error existed in the charge, and (2) if so, whether sufficient harm resulted from

the error to compel reversal. *See Villarreal v. State*, 453 S.W.3d 429, 433 (Tex. Crim. App. 2015) (citing *Ngo v. State*, 175 S.W.3d 738, 744 (Tex. Crim. App. 2005)); *Malone v. State*, 405 S.W.3d 917, 926 (Tex. App.—Beaumont 2013, pet. ref'd). If we determine that no error occurred, our analysis ends. *Kirsch*, 357 S.W.3d at 649.

B. Self-Defense

Self-defense is a "confession and avoidance" defensive issue, which if established, necessitates a jury charge instruction. *Gamino v. State*, 537 S.W.3d 507, 511 (Tex. Crim. App. 2017); *see* TEX. PENAL CODE ANN. § 9.31 (stating generally that "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"). To be entitled to an instruction on self-defense, a defendant has the burden of producing "*some* evidence that he intended to use force against another and he did use force, but he did so only because he reasonably believed it was necessary to prevent the other's use of unlawful force." *Ex parte Nailor*, 149 S.W.3d 125, 132 (Tex. Crim. App. 2004) (emphasis added). It need not matter if evidence proffered is "weak or strong, unimpeached or uncontradicted." *Allen v. State*, 253 S.W.3d 260, 267 (Tex. Crim. App. 2008) (quoting *Hamel v. State,* 916 S.W.2d 491, 493 (Tex. Crim. App. 1996)).

If, however, through the defendant's own testimony or the testimony of others, he denies performance of the assaultive acts alleged or claims he acted without the requisite mental state, a defendant is not entitled to a self-defense instruction. *See Gamino*, 537 S.W.3d at 511 (explaining that to receive a self-defense instruction, a defendant must admit to the alleged conduct even if the defendant does not cede to the State's version

of events); *see also Anderson v. State*, 11 S.W.3d 369, 372 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd) ("Self-defense is a justification for one's actions, which necessarily requires admission that the conduct occurred." (citing *Young v. State*, 991 S.W.2d 835, 838 (Tex. Crim. App. 1999))).

B. Analysis

On appeal, appellant asserts that he "unequivocally stated he was acting in self-defense, giving cogent reasons as to how he believed he was attacked by complainant." Appellant provides no citation to the record, and a review of the record reveals no such testimony. Rather, appellant's testimony consistently indicated that (1) he was attacked by his father unprovoked, (2) he did not engage in any assaultive conduct in response,[3] and (3) any injuries that appellant's father sustained were in no way attributable to appellant's conduct.[4] Appellant in no way admits to performing the assaultive acts as alleged or acting with the requisite mental state. *See Gamino*, 537 S.W.3d at 511; *East v. State*, 76 S.W.3d 736, 738 (Tex. App.—Waco 2002, no pet.) (explaining that "[t]o rely on 'self-defense,' the defendant must first admit committing the conduct which forms the basis of the indictment"). Because appellant's testimony does not amount to a justification of assaultive conduct, but rather exists as an explicit denial of such conduct, no self-defense instruction is warranted. *See Gamino*, 537 S.W.3d at 511; *see also VanBrackle v. State*, 179 SW.3d 708, 715 (Tex. App.—Austin 2005, no pet.) ("[A]

[3] Appellant does not contend that "wrestling" with his father amounted to assaultive conduct executed in self-defense. *See Shaw v. State*, 243 S.W.3d 647, 659 (Tex. Crim. App. 2007) ("[A] defensive instruction is only appropriate when the defendant's defensive evidence essentially admits to every element of the offense *including* the culpable mental state[.]") (emphasis in original).

[4] We note that appellant, in his reiteration of the case facts on appeal, concedes this point: "The complainant's injuries came from striking into several things during their struggle. At no time did appellant ever grab a baseball bat and hit his father."

defendant is not entitled to a jury instruction on self-defense if, through his own testimony or the testimony of others, he claims that he did not perform the assaultive acts alleged."); *see, e.g.*, *Ex parte Nailor*, 149 S.W.3d at 133 (finding appellant was not entitled to an instruction on self-defense where appellant was charged with causing injury to complainant but claimed complainant was struck by a falling object, reasoning that appellant's testimony was deemed a "denial" of allegations, "rather than an admission of those elements with a legal justification for them"); *cf. Johnson v. State*, 271 S.W.3d 359 (Tex. App.—Beaumont 2008, pet. ref'd) (holding the trial court's denial of defendant's requested self-defense instruction was reversible error because defendant's admittance that she intentionally stabbed victim to stop him from jumping on her or hitting her constituted some evidence of self-defense).

Due to the foregoing facts and authority, we cannot say that the trial court abused its discretion in refusing to instruct the jury on self-defense. *See Kirsch*, 357 S.W.3d at 649. In finding no error, our analysis ends. *See id.* We overrule appellant's sole issue on appeal.

III. CONCLUSION

We affirm the trial court's judgment.

GREGORY T. PERKES
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the 9th
day of January, 2020.