

FOURTEENTH COURT OF APPEALS OF TEXAS AT HOUSTON

Jeremy Deshawn Dugar v. The State of Texas

2015 WL 1632690 (Tex. App.—Houston [14th Dist.] Apr. 9, 2015) · No. 14-14-00245-CR · Decided May 1, 2015

SUMMARY

This document is the State of Texas's Petition for Discretionary Review in Jeremy Deshawn Dugar v. The State of Texas. It challenges the Fourteenth Court of Appeals' decision reversing a felony-murder conviction based on the trial court's failure to give a self-defense instruction. The petition addresses multiple-assailant self-defense, reasonable apprehension of imminent danger, the treatment of an innocent third person under Texas Penal Code section 9.05, and harm.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas at Houston
WRITING FOR THE COURT	Tracy Christopher; Donovan; Wise
JURISDICTION	Texas
DECIDED	May 1, 2015
DOCKET	14-14-00245-CR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a felony-murder conviction in which the trial court omitted a requested self-defense instruction after concluding that the deceased was an innocent bystander as a matter of law.
STANDARD OF REVIEW	Jury-charge error is reviewed in two steps: whether error exists and, if so, whether the error caused harm under Almanza. Whether the evidence raised a defensive issue is a question of law reviewed without appellate deference to the trial court, with the evidence viewed in the light most favorable to the requested submission. When the defendant objected to the charge, reversal requires some actual harm.
PRECEDENTIAL VALUE	unpublished
PARTIES	Jeremy Deshawn Dugar v. The State of Texas

TOPICS

[self defense](#) [jury instructions](#) [criminal procedure](#) [harmless error](#) [standard of review](#)

PRACTICE AREAS

criminal procedure

jury instructions

self-defense

QUESTIONS PRESENTED

1. Whether the evidence raised a self-defense issue under a multiple-assailants theory even though the deceased himself was not shown to have threatened or attacked Dugar.
2. Whether Texas Penal Code section 9.05 barred a self-defense instruction because the deceased could be regarded as an innocent third person as a matter of law.
3. Whether omission of the self-defense instruction caused some harm requiring reversal.

HOLDINGS

1. The evidence raised the issue of self-defense because Dugar testified that he was pursued by a hostile group and reasonably apprehended an immediate danger from the group as a whole; the deceased's individual actions did not control whether the instruction was required.
2. Section 9.05 did not permit the trial court to deny the self-defense instruction as a matter of law. The deceased's status as an innocent third person presented at least a fact question, and whether Dugar acted recklessly in injuring or killing him was for the jury.
3. The omission caused some actual harm because Dugar's defense was built around self-defense, he admitted the conduct constituting the actus reus, and the charge gave the jury no alternative vehicle for acquittal on his justification theory.

KEY QUOTATIONS

“A defensive issue is raised by the evidence if there is some evidence, regardless of its source, on each element of a defense that, if believed by the jury, would support a rational inference that the element is true.”
(2015 WL 1632690, at *4)

“A person has the right to defend himself from apparent danger to the same extent as he would if the danger were real.” (2015 WL 1632690, at *5)

“When the trial court denied an instruction on appellant’s sole defensive theory, the jury was given a charge that contained no vehicle with which it could acquit.” (2015 WL 1632690, at *9)

FACTUAL BACKGROUND

After a traffic-related dispute involving several vehicles, Dugar returned to a parking lot where an angry crowd had gathered. He testified that the crowd was vicious and ferocious, that he saw at least one firearm, and that members of the crowd pursued him on foot as he drove away. Dugar fired several shots toward or above the crowd, killing Tevin Williams, who had been a passenger in one of the vehicles and who was not shown to have threatened Dugar or possessed a weapon.

PROCEDURAL HISTORY

Dugar was convicted of felony murder in the 263rd District Court of Harris County and sentenced to twelve years' imprisonment. The trial court refused to submit a self-defense instruction. The Fourteenth Court of Appeals held that the evidence raised self-defense, that Texas Penal Code section 9.05 did not preclude the instruction, and that the omission caused some harm. It reversed the judgment and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for a new trial.

CASES CITED

- Ngo v. State, 175 S.W.3d 738, 743 (Tex. Crim. App. 2005)
- Almanza v. State, 686 S.W.2d 157 (Tex. Crim. App. 1984)
- Krajcovic v. State, 393 S.W.3d 282, 286 (Tex. Crim. App. 2013)
- Shaw v. State, 243 S.W.3d 647, 657-58 (Tex. Crim. App. 2007)
- Bufkin v. State, 207 S.W.3d 779, 782 (Tex. Crim. App. 2006)
- Frank v. State, 688 S.W.2d 863, 868 (Tex. Crim. App. 1985)
- Sanders v. State, 632 S.W.2d 346, 346-48 (Tex. Crim. App. [Panel Op.] 1982)
- Dickey v. State, 22 S.W.3d 490, 493 (Tex. Crim. App. 1999)
- Hamel v. State, 916 S.W.2d 491, 493 (Tex. Crim. App. 1996)
- Jones v. State, 544 S.W.2d 139, 142 (Tex. Crim. App. 1976)
- Kolliner v. State, 516 S.W.2d 671, 674 (Tex. Crim. App. 1974)
- Burke v. State, 652 S.W.2d 788, 790 (Tex. Crim. App. 1983)
- Whiting v. State, 797 S.W.2d 45 (Tex. Crim. App. 1990)
- Dyson v. State, 672 S.W.2d 460, 463 (Tex. Crim. App. 1984)
- Smith v. State, 676 S.W.2d 584, 586-87 (Tex. Crim. App. 1984)
- Banks v. State, 955 S.W.2d 116, 118 (Tex. App.—Fort Worth 1997, no pet.)
- Vidal v. State, 418 S.W.3d 907, 911 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd)
- Brown v. State, 122 S.W.3d 794, 800 (Tex. Crim. App. 2003)
- Alonzo v. State, 353 S.W.3d 778, 782 (Tex. Crim. App. 2011)
- Reeves v. State, 420 S.W.3d 812, 816 (Tex. Crim. App. 2013)
- Cornet v. State, 417 S.W.3d 446, 451 (Tex. Crim. App. 2013)
- Carmen v. State, 276 S.W.3d 538, 546-47 (Tex. App.—Houston [1st Dist.] 2008, pet. ref'd)
- Johnson v. State, 271 S.W.3d 359, 368-69 (Tex. App.—Beaumont 2008, pet. ref'd)
- Guilbeau v. State, 193 S.W.3d 156, 161 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd)
- VanBrackle v. State, 179 S.W.3d 708, 716-17 (Tex. App.—Austin 2005, no pet.)

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