AFFIRMED and Opinion Filed July 2, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00696-CR

TADARRIUS LONTRELL WINTERS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1839468-N

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Whitehill

A jury rejected appellant's self-defense theory, convicted him of murder, and assessed punishment at thirty-two years in prison. In six issues he argues that: (i) the evidence is insufficient to support his conviction because he proved self-defense; (ii) the trial court erred by denying his request for a sudden passion instruction in the punishment charge and this caused him harm; (iii) the State's use of misleading testimony violated his due process rights; (iv) his common law right to allocution was violated; (v) his punishment was disproportionate; and (vi) his thirty-two year sentence violates the penal code's objectives. We affirm the trial court's judgment.

I. BACKGROUND

Appellant shot and killed Mylik Butcher in an IHOP parking lot after an argument with Butcher and Destinee Franks, the mother of three of appellant's children.

Appellant was charged with murder and the State produced testimony from numerous IHOP customers who witnessed the altercation. Appellant also testified, claiming that he shot Butcher because he believed Butcher was armed and he needed to defend himself and his pregnant girlfriend, Ashley Taylor. The jury rejected appellant's self-defense theory and convicted him of murder.

When the punishment evidence closed, the defense requested a sudden passion instruction, which was denied. The jury assessed punishment at thirty-two years in prison and the trial court entered judgment accordingly. Appellant timely appeals from that judgment.

II. ANALYSIS

A. First Issue: Is the evidence sufficient to support appellant's conviction?

Appellant's first issue argues that the evidence is insufficient to support his conviction because self-defense and defense of a third person justified his conduct. We disagree because a rational jury could have rejected appellant's version of events and concluded that Butcher posed no threat to appellant or Taylor and appellant's use of deadly force was not immediately necessary.

1. Standard of Review

We review the sufficiency of the evidence to support a conviction by viewing all of the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

This standard gives full play to the factfinder's responsibility to resolve testimonial conflicts, weigh the evidence and draw reasonable inferences from basic facts to ultimate facts. *Id*. at 319; *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015). And the factfinder is the sole judge of the evidence's weight and credibility. *See* TEX. CODE CRIM. PROC. art. 38.04; *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014).

Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for the factfinder's. *See Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murra*y, 457 S.W.3d at 448. We must presume that the factfinder resolved any conflicting inferences in the verdict's favor and defer to that resolution. *Id.* at 448–49. The standard of review is the same for direct and circumstantial evidence cases; circumstantial evidence is as probative as direct evidence in

establishing guilt. *Dobbs*, 434 S.W.3d at 170; *Acosta v. State*, 429 S.W.3d 621, 625 (Tex. Crim. App. 2014).

The indictment authorized the jury to find appellant guilty of murder if he (i) intentionally and knowingly caused Butcher's death by shooting him with a firearm, or (ii) intended to cause serious bodily injury to Butcher and committed an act clearly dangerous to human life; shooting Butcher with a firearm and causing his death. *See* TEX. PENAL CODE § 19.02(b).

Appellant argued self-defense and defense of another, and the jury was so instructed. 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 of attempted use of unlawful force." *Id.* § 9.31(a). Furthermore, an individual "is justified in using deadly force against another . . . if the actor would be justified in using force against the other" and "when and to the degree the actor reasonably believes the deadly force is immediately necessary . . . to protect the actor against the other's use or attempted use of unlawful deadly force." *Id*. § 9.32(a). "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury." *Id.* § 9.01(3).

Thus, self-defense is based on reasonableness. *Jordan v. State*, 593 S.W.3d 340, 346 (Tex. Crim. App. 2020). A reasonable belief is a belief that would be held

by an ordinary and prudent person in the same circumstances as the actor. TEX. PENAL CODE § 1.07(a)(42).

In evaluating an insufficient evidence claim in the context of a justification defense, we apply the above general sufficiency review principles in conjunction with sufficiency review principles specific to justification defenses. *Braughton v. State*, 569 S.W.3d 592, 609 (Tex. Crim. App. 2018). When a defendant raises a claim of self-defense, defense of a third person, or defense of property to justify the use of force or deadly force against another, "the defendant bears the burden to produce evidence supporting the defense, while the State bears the burden of persuasion to disprove the raised issues." *Id.* at 608 (citing *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003). The defendant must produce "some evidence that would support a rational finding in his favor on the defensive issue." *Id.* (*citing Krajcovic v. State*, 393 S.W.3d 282, 286 (Tex. Crim. App. 2013)). The State, however, is not required to produce evidence; rather, its burden of persuasion only requires "that the State prove its case beyond a reasonable doubt." *Id*.

2. Evidence

The jury heard testimony about the complicated relationships between appellant, Taylor, and Franks. Appellant and Franks had two children when they lived with Franks' parents. The two broke up, and appellant began dating Taylor. Around this time, Franks discovered she was pregnant with appellant's third child.

Appellant, Franks, and their children moved into Taylor's apartment with Taylor and her son. Franks gave birth to the third child thereafter.

Franks worked at an IHOP. She began dating Butcher, another IHOP employee. Butcher also had a second job at FedEx, where Taylor also worked.

On the day of the murder, appellant and Taylor went to the IHOP because appellant wanted to confront Franks about text messages from Butcher he had seen on her phone. Taylor, who was five months pregnant with appellant's child, waited for appellant outside his truck in the back of the parking lot, and Franks met appellant near the IHOP entrance on the sidewalk. Taylor hid appellant's gun in his truck, hoping he would not find it.

Carlton Medlock, another IHOP employee, had alerted Franks that appellant wanted to speak with her. Medlock said appellant seemed angry and showed "some rage," and told Franks to be careful. Medlock followed Franks to the restaurant doors and watched from inside as Franks spoke with appellant.

Appellant told Franks she had better not have Butcher around the children or have sex with him in the apartment. Franks denied appellant's accusations, but appellant told her to stop lying and said that he was seconds away from "blasting [her] ass." The two eventually moved to the back of the property by appellant's truck and continued arguing there.

Butcher appeared and told appellant to leave Franks alone. As the exchange became heated, Franks tried to hold Butcher back and Taylor tried to push appellant toward the truck so they could leave.

Appellant threatened to "blast" Butcher and began looking for his gun in the truck. Butcher ran into the IHOP to retrieve his gun.

Franks found Butcher outside the back of the restaurant with a gun and tried to persuade him to hand her the gun and go inside. Butcher refused. But another IHOP employee, Dominic Brister, convinced Butcher to give up the gun.

As Brister, Franks, and Butcher were walking, Butcher took off running toward appellant. The argument between Butcher and appellant resumed.

Brister remained on the sidewalk holding Butcher's gun. Appellant finally found his gun as he and Butcher argued. When Franks saw the gun, she grabbed Butcher's hand and they ran between two parked cars near the IHOP entrance.

Butcher and Franks argued about going back inside. Appellant then rushed toward them, and standing inches away, fired at Butcher. The bullet hit Franks' right hand and traveled to the area around Butcher's left ribs. Franks saw appellant start to walk away, but he turned around, and as Butcher lay face down on the ground, appellant shot him six more times.

An autopsy showed that Butcher had been shot once on the left side of his body and six times from behind. The medical examiner testified that, based on the injuries to Butcher's face and the lack of injuries to his hands and knees, it appeared

that Butcher fell face down on the ground without bracing himself and was unconscious before he hit the ground.

Medlock testified that he saw appellant search his car for a gun and he saw Butcher go back inside. He later saw Butcher and Brister come from behind the building. Appellant broke away from Taylor and ran toward Butcher. Butcher did not have gun when he was shot and landed face down on the ground when appellant shot him. Although Butcher was face down on the ground, appellant continued to shoot.

John Ruth, an IHOP customer, also saw the shooting. After an argument, "a guy" walked over to another guy with a girl and fired his gun. The girl ran, but the guy who was shot fell face down. The shooter then "walked up" and fired his gun at the guy two or three more times. Ruth had "a very good view" of both the victim's hands and never saw a gun.

Daniel Fischbach was also at the IHOP and recorded the scene on his phone. The recording was admitted into evidence and played for the jury. Still shots from the recording were also admitted into evidence and published to the jury.

The recording shows appellant preparing to fire his gun and then firing in Butcher's direction. Fischbach and his friends heard additional gunshots as they drove away.

Another IHOP customer, Brian Smith, saw appellant approaching Butcher. Butcher put his hands up in a boxing stance as if to fight, but then saw appellant's

gun and shifted his body to the side. Appellant shot and then turned as though he were going to run. He then stepped back and shot Butcher several more times. Smith could see Butcher's hands clearly and there was nothing in them.

Appellant testified that as he moved toward Butcher when he was in between the parked cars, he saw Butcher crouch down and make a reaching motion to the side of his leg. When Butcher started to raise back up, appellant thought he saw an object in Butcher's hand. Appellant fired the first shot at Butcher which caused him to fall or lean on a nearby car. Appellant fired a second shot when he saw Butcher rising with what appeared to be a gun in his hand. Appellant said that he feared for his safety and for Taylor's safety.

The jury, however, was free to reject appellant's version of events. *See Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). Viewed in a light most favorable to the verdict, we conclude that a rational jury could have found that Butcher posed no threat to Taylor or appellant and appellant's use of deadly force was not immediately necessary. Thus, the evidence is sufficient to support appellant's conviction.

We resolve appellant's first issue against him.

B. Second Issue: Did the trial court erroneously deny a sudden passion instruction in the punishment charge?

Yes, but the error was not harmful because, for several reasons, the jury was not likely to believe that appellant acted out of sudden passion had the instruction been given.

We review complaints of jury charge error by first determining whether error exists. *Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012). If error exists, we must determine whether the error caused sufficient harm to warrant reversal. *Ngo v. State*, 175 S.W.3d 738, 743–44 (Tex. Crim. App. 2005). When the trial court erroneously denies a requested sudden passion instruction, we review the record to determine whether appellant suffered "some harm." TEX. CODE CRIM. PROC. art. 36.19; *see also Wooten v. State*, 400 S.W.3d 601, 605 (Tex. Crim. App. 2013).

At the punishment stage of a murder trial, "the defendant may raise the issue as to whether he caused the death" of a complainant "under the immediate influence of sudden passion arising from an adequate cause." TEX. PENAL CODE § 19.02(d). If the defendant proves the issue by a preponderance of the evidence, the offense is reduced to a second-degree felony. *Id*.

"Adequate cause" is defined as "cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection." *Id.* § 19.02(a)(1); *see also Thompson*

v. State, No. 05-16-01211-CR, 2017 WL 4945160, at *5 (Tex. App.—Dallas Nov. 1, 2017, pet. ref'd) (mem. op., not designated for publication).

"Sudden passion" is defined as "passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation." *Id*. § 19.02(a)(2).

In *Wooten,* the court of criminal appeals explained:

> The defendant has the burden of production and persuasion with respect to the issue of sudden passion. To justify a jury instruction on the issue of sudden passion at the punishment phase, the record must at least minimally support an inference: 1) that the defendant in fact acted under the immediate influence of a passion such as terror, anger, rage, or resentment; 2) that his sudden passion was in fact induced by some provocation by the deceased or another acting with him, which provocation would commonly produce such a passion in a person of ordinary temper; 3) that he committed the murder before regaining his capacity for cool reflection; and 4) that a causal connection existed between the provocation, passion, and homicide.

Wooten, 400 S.W.3d at 605. The court further emphasized:

> It does not matter that the evidence supporting the submission of a sudden passion instruction may be weak, impeached, contradicted, or unbelievable. If the evidence thus raises the issue from any source, during either phase of trial, then the defendant has satisfied his burden of production, and the trial court must submit the issue in the jury charge—at least if the defendant requests it.

Id. Nonetheless, the evidence cannot be so weak, contested, or incredible that it could not support such a finding by a rational jury. *McKinney v. State*, 179 S.W.3d 565, 569 (Tex. Crim. App. 2005). Thus, our duty is to examine the evidence

supporting the inclusion of a sudden passion instruction in the charge, not the evidence refuting it. *Trevino v. State*, 100 S.W.3d 232, 239 (Tex. Crim. App. 2003).

Appellant testified that Butcher said he was going to get a gun and used foul language against him. Appellant was angry and afraid that he or Taylor would be shot. Everything happened fast and he was afraid Butcher would shoot when Butcher charged back out at him. And he believed that he only fired the shots because of Butcher's "actions and energy." According to appellant, he did not provoke Butcher.

Therefore, on this record, the evidence was sufficient to at least minimally support an inference that appellant acted under the immediate influence of sudden passion arising from an adequate cause and the requested instruction should have been given.

We thus consider whether appellant suffered some harm. We evaluate harm in light of the complete jury charge, jury arguments, the evidence as whole, and any other relevant factors in the record. *Wooten*, 400 S.W.3d at 606. We focus on whether a jury would likely have believed that the appellant acted out of sudden passion if the instruction had been given. *Id.*; *see also Rivas v. State*, 473 S.W.3d 877, 884 (Tex. App.—San Antonio 2015, pet. ref'd).

In evaluating these factors, we conclude that denying appellant a sudden passion instruction did not harm appellant. To begin, the record shows that there were two competing theories at trial—the State's assertion that appellant knowingly

and intentionally shot Butcher, and the defense's assertion that appellant shot Butcher in self-defense. The jury heard the evidence in support of self-defense and implicitly rejected it by finding appellant guilty of murder.

We acknowledge that a jury rejecting a self-defense theory at guilt/innocence does not necessarily mean the defendant is not entitled to a sudden passion instruction at the punishment phase, or that the jury would reject sudden passion as mitigation of punishment. *See Trevino*, 100 S.W.3d at 242 (recognizing that, depending on the facts, there could be evidence that was not discredited by the rejection of self-defense which supports a claim of sudden passion). But those instances are rare. Generally, when the State's evidence is sufficient to overcome a self-defense claim, it will also be sufficient to show the absence of sudden passion. *See Rivas*, 473 S.W.3d at 885.

In addition to the jury's rejection of appellant's self-defense theory, the evidence shows that there was nothing sudden about appellant's passion.

Appellant was angry about Butcher and Franks days before the shooting and accused Franks of choosing Butcher over the father of her children. Appellant threatened to send a message to Butcher at his second job that could get him fired.

Appellant harassed Franks at work for two days before the shooting. On Friday, he took her phone when she was at work and told her coworkers to keep his name out of their mouths. Appellant threatened to return and "shut . . . that bitch

down" if anyone had something to say about him. On Saturday, he harassed Franks at work by repeatedly demanding the passcode to her phone.

Before the shooting on Sunday, appellant took Franks' phone to an Apple store to get it reset and saw text messages between Franks and Butcher that further enraged him. This is what promoted him to drive to the IHOP to confront Franks.

Medlock said that appellant seemed angry and showed some rage when he arrived. This anger intensified as appellant argued with Franks and Butcher. Appellant was the one who introduced a gun into the dispute. But by the time he found his gun, Butcher had run away from him and was unarmed. Appellant approached anyway and shot Butcher. As Butcher lay unconscious, appellant shot him six more times.

Moreover, even if the jury believed appellant was in some state of fear, a "mere claim of fear" standing alone does not establish sudden passion arising from an adequate cause. *See Fino v. State*, No. 05-17-00169-CR, 2018 WL 3829781, at *12 (Tex. App.—Dallas Aug. 13, 2018, pet. ref'd) (mem. op., not designated for publication). Likewise, ordinary anger will not suffice. *See Thompson v. State*, No. 05-16-01211-CR, 2017 WL 4945160, at *6 (Tex. App.—Dallas Nov. 1, 2017, pet. ref'd) (mem. op., not designated for publication).

Under these circumstances, it is unlikely the jury would have concluded that at the time of the offense, appellant's passion was suddenly provoked by Butcher such that a person of ordinary temper would have been incapable of cool reflection.

See TEX. PENAL CODE § 19.02(a)(1)-(2). We therefore conclude that appellant was not harmed by the trial court refusing a sudden passion instruction.

We resolve appellant's second issue against him.

C. Third Issue: Did the State's witness violate appellant's due process rights?

This issue was not preserved for our review. But even had it been preserved, the record does not establish that any testimony was false.

Jonnaira Ruth was at the IHOP when the shooting occurred and gave the police a written statement about what she saw. Among other things, the statement said that Butcher had a gun in his hand.

The State did not call Ruth as a witness. Appellant's third issue argues that because the State presented several other witnesses who testified that Butcher did not have a gun when he was shot, the State intentionally withheld Ruth's testimony to obtain a conviction with misleading evidence. According to appellant, this violates his due process rights.

Appellant did not preserve this issue for appeal. *See* TEX. R. APP. P. 33.1(A)(1)(A); *see also Reyna v. State*, 168 S.W.3d 173, 177 (Tex. Crim. App. 2005).[1]

[1] A defendant's failure to object to false testimony may be excused if he could not reasonably have known the testimony was false when made. *Moses v. State*, No. 05-16-01391-CR, 2018 WL 4042359, at *12 (Tex. App.—Dallas Aug. 23, 2018 pet. ref'd) (mem. op., not designated for publication). But that did not occur here. First, there is nothing to establish that any witness testimony was false. Second, Ruth's statement was disclosed to appellant a year before trial, which eliminates the "could not have reasonably known" part of the equation.

While the testimony about Butcher not having a gun in his hand does not favor appellant, it defies logic to therefore assume that the testimony was false. Instead, it is a question of the accuracy of the witnesses' observations and their credibility—both of which were within the scope of cross-examination. *See* TEX. R. EVID.607; *see also Kelly v. State*, 60 S.W.3d 299, 301 (Tex. App.—Dallas 2001, no pet.) (credibility of a witness may be attacked by any party). Appellant had the opportunity to cross-examine the State's witnesses and did so.

Moreover, to the extent that Ruth's statement was inconsistent with the other witnesses' recollection, mere inconsistencies or conflicts in evidence do not make it false. *See Ex parte De La Cruz*, 466 S.W.3d 855, 870–71 (Tex. Crim. App. 2015).

A defendant has the burden to prove that testimony is false and material. *Ex parte Weinstein*, 421 S.W.3d 656, 664–65 (Tex. Crim. App. 2014). But even though appellant was aware of Ruth's statement a year before trial, he waited until a week before trial to attempt to subpoena her. His unsubstantiated attempt to now characterize as false testimony that may have conflicted with testimony from a witness he failed to call is unpersuasive. And even if Ruth had testified, resolution of witnesses' differing recollections or perceived inconsistencies was within the jury's province. *See Murray v. State*, 446 S.W.3d at 448–49 (Tex. Crim. App. 2014) (fact finder's role to resolve conflicting inferences).

We resolve appellant's third issue against him.

D. Fourth Issue: Was appellant's right to allocution violated?

This issue was not preserved for our review.

Appellant contends the trial court violated his common-law right to allocution. "Allocution" refers to a trial judge affording a criminal defendant the opportunity to "present his personal plea to the Court in mitigation of punishment before sentence is imposed." *McClintick v. State*, 508 S.W.2d 616, 618 (Tex. Crim. App. 1974) (op. on reh'g). The statutory right is found in article 42.07 of the Texas Code of Criminal Procedure and requires that the defendant be asked, before sentence is pronounced, "whether he has anything to say why the sentence should not be imposed against him." TEX. CODE CRIM. PROC. art. 42.07.

Appellant acknowledges that the trial court complied with article 42.07 but urges that the statutory version differs significantly from a common law right. But the record shows that appellant did not complain about a common law allocution right during sentencing, nor did he object when the court pronounced his sentence.[2] An appellate complaint about denial of the right of allocution, whether statutory or one claimed under the common law, requires a timely trial objection. *See Gallegos-Perez v. State*, No. 05-16-00015-CR, 2016 WL 6519113, at *2 (Tex. App.—Dallas Nov. 1, 2016, no pet.) (mem. op., not designated for publication) (citing *Tenon v.*

[2] Appellant first asserted this right in his second amended motion for new trial. This court has held, however, that a sentencing issue may not be raised in a motion for new trial if a defendant had the opportunity to object at the punishment hearing. *See Loring v. State*, No. 05-18-00421-CR, 2019 WL 3282962, at *5 (Tex. App.—Dallas July 22, 2019, no pet.) (mem. op., not designated for publication).

State, 563 S.W.2d 622, 623 (Tex. Crim. App. [Panel Op.] 1978); *McClintick*, 508 S.W.2d at 618)).

Appellant did not timely object. Accordingly, we reject his fourth issue.

E. Fifth Issue: Is appellant's punishment constitutionally disproportionate?

This issue was not preserved for our review. But even had it been preserved, there is no basis to conclude that the sentence, which is at the lower end of the statutory range, is excessive.

Appellant's fifth issue argues that his thirty-two-year prison is grossly disproportionate to his offense in violation of his constitutional right to protection from cruel and unusual punishment. According to appellant, his sentence is excessive because he only killed Butcher to defend himself and he had no criminal history.

To preserve alleged error relating to excessive punishment, a defendant must make a timely request or motion in the trial court. *Garza v. State*, No. 05–11–01626–CR, 2013 WL 1683612, at *2 (Tex. App.—Dallas Apr. 18, 2013, no pet.). Here, appellant did not complain about his sentence either when it was imposed or in a new trial motion. Accordingly, we conclude any error was not preserved. *Id.*

Even had the argument been preserved, the jury rejected appellant's self-defense argument and convicted him of murder. Murder is a first-degree felony punishable by five to ninety-nine years or life. *See* TEX. PENAL CODE §§ 12.32, 19.02(c). Appellant's sentence was at the lower end of this range. And generally,

punishment that is assessed within the statutory range is not excessive. *Kirk v. State*, 949 S.W.2d 769, 772 (Tex. App.—Dallas 1997, pet. ref'd).

Thus, we resolve appellant's fifth issue against him.

F. Sixth Issue: Does appellant's sentence violate the penal code's objectives?

Again, the issue was not preserved. But even if it were, the sentence is consistent with the penal code's deterrence and punishment objectives.

In his final issue, argues that he had no prior convictions or arrests, was employed, and provided for his children. Accordingly, appellant contends his sentence violates the objectives of the penal code because it "failed to recognize the differences in rehabilitation possibilities between appellant and other convicted criminals for whom such sentence would constitute an eminently appropriate punishment."

We note, once again, that appellant did not object to his sentence the trial court imposed it. Thus, as with his constitutional complaint, appellant's complaint of excessive punishment under the penal code has not been preserved for review. *See Garza*, 2013 WL 1683612, at *2.

Furthermore, rehabilitation is only one of the penal code's objectives, with two others being deterrence and punishment. *See* TEX. PENAL CODE § 1.02; *see also Garza*, 2013 WL 1683612, at *2. In this case, appellant shot Butcher as he was running away and unarmed. After Butcher was unconscious, appellant shot him six

more times. Therefore, even had appellant's issue been preserved, we could not conclude that appellant's sentence violates the penal code's objectives.

We thus resolve appellant's sixth issue against him.

III. CONCLUSION

Having resolved all of appellant's issues against him, we affirm the trial court's judgment.

/Bill Whitehill/
BILL WHITEHILL
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

TADARRIUS LONTRELL WINTERS, Appellant	On Appeal from the 195th Judicial District Court, Dallas County, Texas Trial Court Cause No. F-1839468-N.
No. 05-19-00696-CR V.	Opinion delivered by Justice Whitehill. Justices Osborne and
THE STATE OF TEXAS, Appellee	Carlyle participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered July 2, 2020