

## TIBA's Case of the Week

### Court of Criminal Appeals

**Case Name:** [Victor Hugo Cuevas v. The State of Texas](#)

- **OFFENSE:** Murder
- **COUNTY:** Fort Bend
- **COURT OF APPEALS:** Houston [14th]
- **C/A CITATION:** No Citation Yet
- **C/A RESULT:** Conviction Affirmed
- **CCA. CASE No.** PD-0144-25 **DATE OF OPINION:** April 2, 2026
- **DISPOSITION:** Court of Appeals Reversed
- **OPINION:** [Judge Gina Parker](#) **VOTE:** 3-3-3
- **TRIAL COURT:** 240th D/C; Hon. Frank Fraley
- **LAWYERS:** [Stephen A. Doggett](#) (Defense); [Jason Bennyhoff](#) (State)

**(Background Facts):** In July 2017, while eating sushi at a shopping center, Juan Garza saw Appellant and his friend Milton Egbe (Egbe) on two motorcycles speed into the parking lot. Appellant got off his motorcycle and walked over to a parked car to speak to Osiekhueimen Omobhude (Ose) in his car. Garza then heard a sound “like fireworks” and saw Appellant chasing the car, gun in hand, as Ose drove away. While working at a Buffalo Wild Wings, Alexis Blanton recalled a man, later determined to be Ose, rushing into the restaurant in a “frantic” state and “looking for help.” Ose collapsed and became “unresponsive.” First responders took Ose to a hospital where he was pronounced dead. The medical examiner revealed that Ose had been shot in the right side of his face and the back of his right shoulder and likely died within a matter of minutes.

**Ed Note (Trial Testimony):** Appellant and Egbe testified in Appellant’s defense. According to Appellant, he and Egbe planned to eat at the sushi restaurant and then go to a nearby shooting range, but it became apparent that the two would not have had enough time to get to the shooting range before it closed had they eaten before. Appellant testified that he planned to sell marijuana to Ose, so he set up a drug buy, texted Ose the time, place, and price for the drug deal, brought a handgun, and gave another handgun to Egbe to Egbe’s surprise. When the two arrived at the parking lot, Appellant told Egbe to wait by the motorcycles while he walked to Ose’s car. Appellant sat in the car on the passenger side with his backpack of marijuana. According to both

Appellant and Egbe, Ose pressed a gun to Appellant's head, choked him, took his phone and marijuana, and then told him to "[g]et the fuck out." Once he stepped out of the car, Appellant looked back at Ose, who still had his gun trained on him. Ose asked, "Do you have any bread?" Appellant said that he did not have money, to which Ose said, "Stop playing with me. I will smoke you," as he cocked his handgun. According to Appellant, immediately after Ose cocked his gun, Appellant shut the door, retrieved the handgun he had tucked into his waistband, and shot seven times into the car. Ose drove away, initially heading toward Egbe and the motorcycles. Egbe testified that he reached into his backpack to draw his weapon when he saw Ose put a hand on Appellant's neck. He was still looking for his gun when he heard gunshots but did not know who was shooting. When he looked up, the car was heading toward him, so he shot at the car. Investigator Patrick Douglas, for the Fort Bend County Sheriff's Office, testified to a security camera video that recorded a scene after the shooting where it shows Appellant and Egbe putting their motorcycles into a garage. Investigator Douglas noted that it appeared as though Appellant and Egbe either high-fived or fist-bumped each other. Jesse Richey testified that he was at a friend's house two weeks before the shooting and met Ose. According to Richey, Ose told him, "He wanted to rob somebody named Victor. And whenever I tried telling him that it wasn't a good idea, that he should not do that, he said that he did not care and that Victor was an easy lick for him."

**§ 321 Court's Charge / Instructions & Definitions (Presumption of Reasonableness)**: At trial, the State's theory at trial was that this was a drug deal that "went south" and that Appellant intended to shoot and kill Ose. Appellant relied on a theory of self-defense, that Ose robbed Appellant and threatened him with gun violence. The jury charge instructed the jury on murder, self-defense, and the law of parties. It is clear from the events at several points of trial, that the defense believed there to be no questions as to the law on the potential reasonableness of Appellant's actions. During the charge conference, defense counsel argued that the jury charge should not include any presumption of reasonableness language because it was not at issue. The application paragraph read:

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, Victor Cuevas, did shoot Oseikhuemen Omobhude with a deadly weapon, namely a firearm, as alleged, but you further find from the evidence, as viewed from the standpoint of the defendant at the time, that from the words or conduct, or both of Oseikhuemen Omobhude it reasonably appeared to the defendant that his life or person was in danger and there was created in his mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force at the hands of Oseikhuemen Omobhude, and that acting under such apprehension and reasonably believing that the use of deadly force on his part was immediately necessary to protect himself against Oseikhuemen Omobhude's use or attempted use of unlawful deadly force, he shot Oseikhuemen Omobhude, then you should acquit the defendant on the grounds of self-defense; or if you have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and

under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict, not guilty.

The jury found Appellant guilty of murder. The main issue in this case was whether the erroneous inclusion of a presumption on self-defense harmed Appellant. The Court of Appeals agreed with Appellant and held “that the presumption of reasonableness was not applicable and should not have been included in the jury charge because it [was] undisputed that he was engaged in criminal activity, -- namely, a drug deal -- when he shot Ose” (see [§8](#), [Vol. 32, No. 15](#); 04/22/2024). The Court of Appeals then weighed all the factors set out in [Almanza v. State](#), 686 S.W.2d 157 (Tex.Cr.App. 1985), and found that the error in the jury charge was harmless because defense counsel corrected the prosecutor’s misstatement of the law, the court instructed the jury to follow the law set out in the charge, and the charge did not contain a misstatement of the law, so Appellant identified a purely theoretical harm from the erroneous inclusion of the presumption instruction.

**Holding (Merits):** This case revolves around Section 9.32 of the Texas Penal Code. Appellant’s defensive theory was that he acted in self-defense when faced with deadly force by Ose during a marijuana deal gone wrong. \*\*\* The presumption involving the use of deadly force has several elements, but we need only concern ourselves with the last element: “(b) The actor’s belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor: . . . (3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.” \*\*\* When a rule or statute requires an instruction that is “the law applicable to the case,” the trial court must instruct the jury accordingly. In general, issues that do not involve the elements of the offense and are not applicable in every case constitute law applicable to the case only if raised by the evidence. In particular, the issue of the existence of a presumed fact must be submitted to the jury “unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact.” Thus, when the evidence conclusively establishes that the defendant was engaged in criminal activity at the time he used deadly force, the presumption of reasonableness is not the law applicable to the case. \*\*\* Because the Court of Appeals found error, and the State did not file a petition from that adverse determination, we assume error.

**Holding (Harm Analysis):** Since the error in submitting the presumption was objected to, the record need only show “some harm.” In the context of [Almanza](#), “the presence of **any** harm, regardless of degree, which results from preserved charging error, is sufficient to require a reversal of the conviction. Cases involving preserved charging error will be affirmed only if **no** harm has occurred.” [Arline v. State](#), 721 S.W.2d 348 (Tex.Cr.App. 1986). Even “the less exacting standard of ‘some’ harm still requires that the record reveal ‘actual,’ and not merely ‘theoretical’ harm.” \*\*\* In determining whether Appellant suffered “some harm,” we must look to (1) the jury charge as a whole, (2) the arguments of counsel, (3) the entirety of the evidence, and (4) any other relevant factors present in the record. \*\*\* **(Error in Light of the Entire Jury Charge)** The

abstract instruction on the presumption was essentially a partial explanation on how to determine whether Appellant’s belief was reasonable and was thus logically linked to the application paragraph. Consequently, the absence of a dedicated application paragraph for the presumption does not significantly cut against a finding of harm. The entirety-of-the-charge factor weighs, at most, slightly in favor of the State. (**Other Relevant Factors Present in the Record**) The jury’s finding of sudden passion combined with its rejection of self-defense suggests that it believed Appellant’s story but also believed the State’s interpretation of the presumption issue and therefore thought its hands to be tied on the issue of self defense. The other-relevant-information factor weighs heavily in favor of harm to Appellant. (**The Entirety of the Evidence**) The fact that Appellant brought a firearm to a drug deal was not conclusive evidence that he intended to start a firefight; drug dealing is a dangerous activity and bringing a firearm for protection is an unfortunate reality of that activity. We hold that this factor weighs at least moderately in favor of harm. (**Arguments of Counsel**) Though the jury charge correctly recited the presumption language, the prosecutor misused this portion of the charge in precisely the way to which it was susceptible by conflating it in a way that stripped it of its meaning. The only thing that might prevent this factor from weighing heavily in favor of harm is the fact that the defense’s objection was a little late. However, the trial judge had been consistently overruling these types of objections, and this objection was made early enough for the judge to issue a curative instruction. We hold that this factor weighs at least moderately in favor of harm. (**Weighing the Factors**) These factors showed the State previewing how it will misuse the presumption in voir dire and opening statements and then actually misusing the presumption in its closing argument on rebuttal. While the irrelevant instruction did not incorrectly recite the abstract law relating to the presumption, the State consistently told the jury that the instruction meant that Appellant had no defense. As a result, Appellant was virtually stripped of his defensive theory. We conclude that he suffered at least “some harm.” *Elizondo v. State*, 487 S.W.3d 185 (Tex.Cr.App. 2016)(see ¶8, [Vol. 24, No. 15](#); 04/11/2006). (**Resolution**) This Court addressed a similar issue in *Reeves v. State*, 420 S.W.3d 812 (Tex.Cr.App. 2013)(see ¶8, [Vol. 21, No. 18](#); 09/23/2013), where a jury charge erroneously included an instruction on provocation even though it did not apply to the facts of the case. The State used a provocation instruction to claim that *Reeves* “is not justified in claiming self-defense,” which was contrary to the law. Much like Appellant’s case, the State used an irrelevant instruction to highlight the arguments it made to the jury. The only differences between these two cases are (1) a provocation instruction could only harm a defendant’s case whereas a presumption of reasonableness instruction would generally tend to benefit a defendant, and (2) the provocation instruction in *Reeves* also appeared in the application section of the charge. However, as in *Reeves*, the State in this case weaponized the instruction at issue to improperly limit the right to self-defense. This Court noted in *Reeves* that: “(1) the State misspoke about the law of provocation and then told the jury to pay careful attention to the erroneous instruction, and (2) the evidence concerning self-defense was hotly contested and [A]ppellant’s version of events was, at a minimum, plausible, and, if believed, exonerating.” Those two types of factors were also present here. \*\*\* Because we hold that Appellant suffered at least some harm from the

inclusion of the presumption instruction, we reverse the judgment of the Court of Appeals and remand the case for a new trial.

### Sidebars

([John G. Jasuta](#)) The objection was soon enough even though late because the trial court could still have cured with instructions. Words to remember.

([David A. Schulman](#)) This result is because of some stellar work by appellate defense counsel. The Court of Appeals opinion focused on whether, starting from jury selection, the State had utilized improper arguments as to the law of self-defense. The discussion on the “reasonableness” instruction was buried in the opinion and made to look like a standard “no harm” [Almanza](#) case. Counsel was able to get the CCA to look past the haze caused by the Court of Appeals’ opinion and concentrate on the proper law and the dissent below.

**Concurring / Dissenting Opinions:** [Judge Jesse McClure](#) filed a concurring opinion in which **Judge Scott Walker** joined. He argued that the State’s misstatements of self-defense law effectively twisted the presumption of reasonableness in Section 9.32 of the Penal Code into a total bar to Appellant’s claim of self-defense and the jury’s punishment verdict shows the damage this misunderstanding did. **Judge Mary Lou Keel** concurred without note. [Judge Kevin Yeary](#) provided a dissenting opinion in which he was joined by **Judge Lee Finely** and, in part, by **Presiding Judge David Schenck**, and in which he argued that the “was likely no error at all in the court’s charge to the jury.” He also argued that “in its zeal to repair another injustice done to the defendant in this case -- namely, misrepresentations by the prosecutor about a proper understanding of the law, compounded by the trial court’s refusal to correct those misrepresentations -- the Court finds a non-erroneous jury instruction to have been so harmful that it justifies reversing and remanding this case for a whole new trial.” He believes the Court is mistaken.