

Affirmed and Opinion filed July 27, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00630-CR

DENNIS CARL, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 183rd Judicial District
Harris County, Texas
Trial Court Cause No. 791,792**

OPINION

Appellant, Dennis Carl, Jr., was charged by indictment with the murder of his estranged wife. Carl pleaded not guilty; however, a jury found him guilty as charged. The jury then sentenced him to confinement in the Texas Department of Criminal Justice, Institutional Division for life. In his sole point of error, appellant contends the trial court erred in denying a requested jury charge on "sudden passion" under section 19.02(d) of the Texas Penal Code. We affirm.

I.
Background

As of the date of the murder, appellant and his wife, Gail Carl, had been married for approximately twenty years. The record indicates appellant exhibited a pattern of abusive and violent conduct towards his wife for much of this time. Around the beginning of August 1998, Mrs. Carl separated from her husband. On August 30, 1998, appellant saw his wife at the church they attended together. According to appellant's testimony, he asked her for a ride to work and she obliged. On the way, the couple became involved in an argument during which Mrs. Carl told appellant that she did not want to be with him any longer and that he should stop calling her. Appellant claimed that her refusal made him very angry and caused him to start yelling at her. He testified that she attempted to hit him, and he then grabbed a knife that was in the vehicle and stabbed her twenty times.

There was an eyewitness for the latter part of the attack which occurred in the street after Mrs. Carl attempted to flee from appellant. At trial, appellant took the stand in his own defense and described the events in conformity with the witness's account. After the jury returned a guilty verdict, the defense counsel requested an instruction on sudden passion under section 19.02(d) of the Texas Penal Code. The request was denied and Mr. Carl was sentenced to life in prison. On appeal, appellant complains of the trial court's refusal to include the instruction which would have presented the jury with a mitigating factor in assessing punishment.

II.
Sudden Passion Instruction

The instruction requested by the defense is sanctioned by Texas Penal Code section 19.02(d) which provides:

At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the

affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

TEX. PEN. CODE ANN. § 19.02(d) (Vernon 1994). This court examined section 19.02 and a defendant's right to a sudden passion instruction at length in *Saldivar v. State*, 980 S.W.2d 475 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd). In that case, we recognized that the existence of sudden passion is a mitigating factor relevant to punishment. *See id.* at 505. The burden of proving sudden passion by a preponderance of the evidence rests on the defendant. *See id.* The Texas Penal Code defines sudden passion 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.” TEX. PEN. CODE ANN. § 19.02(a)(2) (Vernon 1994). 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.” TEX. PEN. CODE ANN. § 19.02(a)(1) (Vernon 1994).¹

An accused is entitled to an instruction on every defensive issue raised by the evidence whether or not the evidence is strong, weak, contradicted, unimpeached, or unbelievable. *See Saldivar*, 980 S.W.2d at 505; *see also Muniz v. State*, 851 S.W.2d 238, 254 (Tex. Crim. App. 1993) (holding that where the record contains no evidence before the jury on the issue of coerced confession, it was not error for the trial court to refuse appellant's requested instruction on voluntariness of the confession). Therefore, if the record reflects any evidence of sudden passion arising from an adequate cause, and the defendant properly requests a charge on that issue, the trial court must allow the jury to consider the issue by submitting an instruction. *See Muniz*, 851 S.W.2d at 254.

In this case, there was no evidence presented which would entitle appellant to an instruction regarding sudden passion. The series of events as described by appellant himself, show only that his wife refused to reunite with him and hit him. He testified that during the

¹ These definitions are substantially the same as those found in the former voluntary manslaughter statute and we rely on prior decisions under that statute for guidance. *See Saldivar*, 980 S.W.2d at 505.

discussion that took place in the victim's vehicle, she told him that she no longer wanted to be with him. When asked how he felt after hearing this he responded, "I just snapped" and "the whole world was coming against me [and] I just flipped." At trial, Mr. Carl was then asked if he remembered if his wife hit him. He stated, "she tried to hit me to get me off of her." After she tried to hit appellant, he grabbed the knife and began stabbing her. It is clear from this exchange that any passion experienced by the appellant, regardless of whether there was "sudden" passion, was not the product of adequate cause. Mrs. Carl was defending herself, not attacking the appellant. The law will not allow the punishment of appellant's homicidal behavior, in response to defensive actions such as those taken by Mrs. Carl, to be mitigated by a claim of sudden passion. *See Marquez v. State*, 725 S.W.2d 217, 223-24 (Tex. Crim. App. 1987) (finding no evidence entitling appellant to charge on voluntary manslaughter). Although appellant may have been incapable of cool and rational thought, the record does not indicate there was legally adequate cause. If anything, the record illustrates that appellant murdered his wife because of her attempt to end the relationship and his violent nature. "[T]he murderous acts of one not of ordinary temper or whose response to the alleged cause is not objectively common in the ordinary, reasonable person [do] not support a voluntary manslaughter issue." *Willis v. State*, 936 S.W.2d 302, 308 (Tex. App.—Tyler 1996, pet. ref'd).

Because there was no evidence presented at trial that raised the issue of sudden passion from adequate cause, the trial court did not err in refusing appellant's requested instruction on the issue. Accordingly, we overrule appellant's sole point of error and affirm the judgment of the court below.

/s/ John S. Anderson
 Justice

Judgment rendered and Opinion filed July 27, 2000.

Panel consists of Justices Amidei, Anderson, and Frost.

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