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COURT OF CRIMINAL APPEALS
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Court of Criminal Appeals
P.O. Box 12308
Austin, Texas 78711

Re: *Patrick Jordan v. The State of Texas*, No. PD-0899-18
Post-submission Letter Brief

To the Honorable Court of Criminal Appeals,

At oral argument, Judge Yeary questioned 1) whether the confession of the requisite mental state of the charged offense is required for self-defense, and 2) whether this Court has consistently said so. The answers are 1) "yes" and 2) "no." In the last 20 years, this Court has produced two lines of thought on the subject.

The first line makes it clear that justification defenses, including self-defense, are in the nature of confession and avoidance and that the defendant (or at least his evidence) must admit both the culpable conduct and its requisite mental state.[1] These cases build upon each other, reinforcing this Court's considered judgment that a defendant cannot claim he was justified in committing an offense he says he did not commit.

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[1] *See Rogers v. State*, 550 S.W.3d 190, 192 & n.1 (Tex. Crim. App. 2018) (self-defense and necessity); *Villa v. State*, 417 S.W.3d 455, 460-61 (Tex. Crim. App. 2013) (medical care defense); *Juarez v. State*, 308 S.W.3d 398, 404 (Tex. Crim. App. 2010) (necessity); *Shaw v. State*, 243 S.W.3d 647, 659 (Tex. Crim. App. 2007) (Good Samaritan defense); *Ex parte Nailor*, 149 S.W.3d 125, 133-34 (Tex. Crim. App. 2004) (self-defense); *Young v. State*, 991 S.W.2d 835, 839 (Tex. Crim. App. 1999) (necessity).

The second line, consisting of two cases, ignores the first. *Alonzo v. State*, which held that self-defense applies to reckless offenses, does not mention "confession and avoidance" or any case from the first line mentioned above.[2] *Gamino v. State*, also a self-defense case, cites one of them for an unrelated point of law.[3] But both cite *Martinez v. State* for the proposition that a defendant need not admit the mental state to be entitled to self-defense.[4] Multiple opinions from this Court have rightly viewed *Martinez* as an anomaly.[5] As thoroughly explained in *Juarez*, "confession and avoidance" is a "long-standing legal doctrine" that has been ignored in only a handful of cases like *Martinez*.[6] Moreover, the cited portion of *Martinez* was *dicta*; this Court held Martinez was not entitled to a self-defense instruction because a reasonable person in his position would have retreated.[7]

Martinez, and the line of thinking it supports, should be disavowed. No defendant who does not admit his culpability in plain language should enjoy the benefit of a justification instruction sanctioned by the trial court.

PRAYER FOR RELIEF

WHEREFORE, the State of Texas prays that the Court of Criminal Appeals affirm the judgment of the Court of Appeals.

Respectfully Submitted,

/s/ John R. Messinger
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[2] 353 S.W.3d 778 (Tex. Crim. App. 2011).

[3] 537 S.W.3d 507, 510 n.7, 512 n.22 (Tex. Crim. App. 2017) (citing *Shaw*).

[4] *Id*. at 512 n.20; *Alonzo*, 353 S.W.3d at 783 n.20. *See Martinez v. State*, 775 S.W.2d 645, 647 (Tex. Crim. App. 1989) (entitlement not precluded by claim of accident).

[5] *Juarez*, 308 S.W.3d at 403; *Cornet v. State*, 359 S.W.3d 217, 225 (Tex. Crim. App. 2012) (plurality).

[6] *Juarez*, 308 S.W.3d at 401-06.

[7] *Martinez*, 775 S.W.2d at 647.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this document contains 488 words.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of June, 2019, a true and correct copy of the State's Post-submission Letter Brief has been eFiled and electronically served on the following:

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