

MODIFY and AFFIRM; and Opinion Filed September 29, 2015.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-00368-CR

DARLING FRANCISCO CRUZ, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the Criminal District Court No. 1
Dallas County, Texas
Trial Court Cause No. F14-15503-H**

MEMORANDUM OPINION

Before Justices Lang-Miers, Brown, and Schenck
Opinion by Justice Schenck

Darling Francisco Cruz waived a jury and pleaded guilty to robbery. *See* TEX. PENAL CODE ANN. § 29.02(a) (West 2011). After finding appellant guilty, the trial court sentenced him to twelve years' imprisonment. In a single issue, appellant contends the trial court's judgment should be modified to delete the deadly weapon finding. The State agrees the judgment should be modified as appellant requests. We modify the trial court's judgment and affirm as modified.

Appellant was indicted for the offense of aggravated robbery with a deadly weapon, a firearm. However, the trial court granted the State's motion to reduce the offense charged to the lesser-included offense of robbery, the offense to which appellant pleaded guilty. The judgment

incorrectly includes an affirmative finding that appellant used or exhibited a deadly weapon during commission of the offense. We sustain appellant's issue.

We modify the trial court's judgment to remove all references to an affirmative deadly weapon finding and that appellant used or exhibited a deadly weapon during the commission of the offense. See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref'd).

As modified, we affirm the trial court's judgment.

/David J. Schenck/

DAVID J. SCHENCK
JUSTICE

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TEX. R. APP. P. 47

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

DARLING FRANCISCO CRUZ,
Appellant

No. 05-15-00368-CR V.

THE STATE OF TEXAS, Appellee

Appeal from the Criminal District Court
No. 1 of Dallas County, Texas (Tr.Ct.No.
F14-15503-H).

Opinion delivered by Justice Schenck,
Justices Lang-Miers and Brown
participating.

Based on the Court's opinion of this date, the trial court's judgment is **MODIFIED** to remove all references to an affirmative deadly weapon finding and that appellant used or exhibited a deadly weapon during the commission of the offense.

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered September 29, 2015.