

**Motion for Rehearing Overruled, Affirmed and Substitute Memorandum Opinion  
filed December 23, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-09-00544-CR**

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**MATHEW LOUIS BARRERA, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 434th District Court  
Fort Bend County, Texas  
Trial Court Cause No. 49591**

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**SUBSTITUTE MEMORANDUM OPINION**

We overrule appellant's motion for rehearing, withdraw our opinion of November 23, 2010, and issue this substitute memorandum opinion on rehearing. Appellant Matthew Louis Barrera challenges the sufficiency of the evidence to support his conviction for intoxicated manslaughter. He further asserts that the trial court erred in refusing to accept his plea of "true" to the deadly weapon allegation<sup>1</sup> and was thus precluded from making such a finding because use of a deadly weapon is not an element

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<sup>1</sup> Perhaps appellant intended to assert that the trial court erred in *not* refusing to accept his plea of "true," because, as noted *infra*, the trial court actually did accept appellant's plea. Regardless of what appellant meant by this rather confusing issue, however, our disposition of his appeal remains the same.

of intoxicated manslaughter with a motor vehicle and because insufficient evidence supports the finding. We affirm.

## **BACKGROUND**

Appellant pleaded guilty as charged in the indictment in open court without an agreed recommendation on punishment. The indictment provided:

MATHEW LOUIS BARRERA, hereafter styled the Defendant, heretofore on or about December 03, 2007, did then and there operate a motor vehicle while intoxicated by not having the normal use of his mental or physical faculties by reason of the introduction of alcohol into the body, or by having an alcohol concentration of at least 0.08, and did then and there by reason of such intoxication cause the death of another, namely, James Warren, by accident or mistake, to wit: driving said motor vehicle into James Warren and/or a motorcycle operated by James Warren.

It is further presented that the said defendant did then and there use or exhibit a deadly weapon during the commission of said offense, to wit: a 2007 Chevrolet Cobalt automobile in conjunction with the consumption of alcohol and operation of said Cobalt automobile, that in the manner of its use and intended use was capable of causing serious bodily injury or death.

After he pleaded guilty, he waived any errors relating to guilt or innocence; in fact, he twice acknowledged that by pleading guilty, he understood he was waiving any errors regarding guilt or innocence. He also pleaded true to the deadly weapon allegation. He again acknowledged that he understood he was waiving any right to appeal that plea. The trial court accepted his plea and proceeded with a unitary jury trial on punishment.<sup>2</sup> Several witnesses testified that appellant was driving while intoxicated and caused the death of the decedent. Appellant took the stand and acknowledged his guilt before the jury. After being instructed by the trial court to find him guilty as charged in the indictment and to make a finding of “true” to the deadly weapon allegation, the jury did so and sentenced him to twenty years’ imprisonment and a \$10,000 fine. The trial court entered the judgment accordingly, and this appeal timely followed.

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<sup>2</sup> See *Carroll v. State*, 975 S.W.2d 630, 631 (Tex. Crim. App. 1998) (en banc)..

## ANALYSIS

Appellant (a) challenges the sufficiency of the evidence to support his conviction and (b) complains that the trial court's refusal to accept a plea on a deadly weapon allegation (that it actually accepted) precluded it from making this finding because use of a deadly weapon is not an element of the offense and insufficient evidence supports the finding.<sup>3</sup> But, as noted above, appellant pleaded "guilty" to the trial court and pleaded "true" to the deadly weapon allegation. In a unitary proceeding, as occurred here, a guilty plea before a jury or judge is conclusive as to the defendant's guilt. *Carroll v. State*, 975 S.W.2d 630, 631–32 (Tex. Crim. App. 1998) (en banc). Further, appellant's judicial confession is sufficient evidence to show that he used a deadly weapon, and the record need not otherwise provide proof. *Keller v. State*, 125 S.W.3d 600, 605 (Tex. App.—Houston [1st Dist.] 2003, pet. dismiss'd).

Moreover, in a unitary proceeding, evidence submitted for punishment may substitute for or supplement evidence submitted in support of the guilty plea. *See Barfield v. State*, 63 S.W.3d 446, 450–51 (Tex. Crim. App. 2001) (en banc). As described above, numerous witnesses testified that appellant was driving while intoxicated when he ran over the decedent. Appellant explained that his intoxicated driving caused the death of the decedent. Additionally, Trooper Devon Wiles, with the Texas Department of Public Safety, testified that, in conjunction with appellant's alcohol consumption, appellant used his motor vehicle as a deadly weapon. This evidence supplemented and supported appellant's guilty plea and plea of "true" to the deadly weapon allegation. *See id.* Accordingly, we conclude that there is more than sufficient evidence to support both appellant's conviction and the deadly weapon finding. We thus overrule appellant's issues.

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<sup>3</sup> As noted above, the jury made the deadly weapon finding after being instructed to do so by the trial court.

For the foregoing reasons, we affirm the trial court's judgment.

/s/ Adele Hedges  
Chief Justice

Panel consists of Chief Justice Hedges, Justice Yates, and Senior Justice Mirabal.\*

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\* Senior Justice Margaret Garner Mirabal sitting by assignment.