AFFIRM; and Opinion Filed March 15, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00861-CR

TERRANCE JARMELL DUNN, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 265th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F14-17929-R

MEMORANDUM OPINION

Before Justices Francis, Lang-Miers, and Whitehill
Opinion by Justice Lang-Miers

The State charged appellant with aggravated assault on a public servant, a first-degree felony. Appellant waived his right to a jury trial and pleaded guilty to the offense without the benefit of a plea bargain. The trial court assessed punishment at 45 years' incarceration. Appellant argues on appeal that the trial court abused its discretion by admitting his involuntary statement into evidence and by sentencing appellant to a prison term of 45 years. We affirm the judgment.

Appellant and his girlfriend, the mother of his youngest child, had broken up and she was seeing someone else. Appellant did not like another man being around his child, and he began sending his girlfriend harassing messages. She went to the Cedar Hill police station to report appellant's harassing behavior. While she was sitting in the lobby waiting for an officer to talk to her, appellant came in to the lobby of the station. It is unclear whether they talked, but appellant

left and began sending her more text messages. An officer took the girlfriend to an interview room where she told him about appellant's behavior and showed him the messages on her cell phone. Officers, including Ann McSwain, looked for appellant at the girlfriend's apartment but could not find him.

When appellant left the police station, he stopped at a gas station where he bought a bottled water and filled the bottle with gasoline. Earlier appellant had asked a friend if he could borrow a gun so he could kill himself in front of his girlfriend; his friend refused. Appellant said he could not stab himself, so he decided he would set himself on fire.

Early that afternoon, one of the girlfriend's neighbors called to report that she saw appellant break into the girlfriend's apartment and destroy her property. Officers responded to the apartment complex, and McSwain completed the call she was on and headed toward the apartment complex to offer assistance. McSwain decided to look for appellant in the parking lot of a strip shopping center near the apartment complex and immediately recognized appellant walking in the parking lot. She "bumped" her siren a couple times to let appellant know she was there, but he kept walking.

By this time, appellant had poured some of the gasoline on himself.[1] McSwain activated the lights on her patrol car, which turned on the in-car camera, got out of her vehicle, and began speaking to appellant. She was in a police uniform. Appellant refused to stop. McSwain intended to arrest appellant for burglary of the girlfriend's apartment, so she unholstered her taser and walked in front of appellant. Appellant told McSwain to "put that taser away" because "he has gasoline." She said appellant's stare was "very serious." He looked "very intent on doing something. He was defiant, noncompliant." She could smell the gasoline, so she holstered the taser and tried to arrest appellant. Her hands slipped off appellant's arms because he was "very

[1] McSwain testified that appellant never said anything about committing suicide.

oily and wet." Appellant had the water bottle in one hand and a lighter in the other. The two struggled in the parking lot, but McSwain could not get a good grip on appellant. He "took off running toward the WingStop" and she chased after him.

As appellant entered the WingStop, McSwain could see detectives running behind and toward her. She went into the WingStop after appellant and yelled "gasoline." She grabbed appellant to try to prevent him from throwing gasoline on anyone in the restaurant. By then, detectives Brandon Woodall and Michael Hernandez were assisting; they all fell to the floor on top of appellant inside the WingStop. Woodall saw appellant reach his arm out and saw a lighter flick three times. McSwain heard the lighter click three times. At the third click, an explosion occurred, and appellant and the officers were on fire. McSwain and appellant sustained the most serious burn injuries. Appellant got up and ran outside, and Hernandez followed him. Appellant was still on fire, and when Hernandez perceived appellant as a threat to others, he shot appellant in the buttocks. Much of the incident was recorded on McSwain's car camera and a bystander's cell phone.

The Cedar Hill Police Department asked the Dallas County Sheriff's Office for assistance, and detectives Andrew Phelps and Julie Jacob took over the investigation of the officer-involved shooting and the charge against appellant for aggravated assault on a public servant. The detectives did not know if appellant would survive his injuries.

Two weeks after the incident, they went to the hospital to see if appellant could talk to them. The nurse told the detectives that appellant was alert, oriented, and able to talk. Appellant agreed to talk to the detectives, but because they were going to have to wait a while before they could speak with him, they decided to come back the next day. The next day, appellant said he remembered the detectives from the day before and agreed to talk with them. Jacob recorded the interview on her phone. The State offered the audio recording of the interview into evidence

during the punishment phase of the plea hearing. Appellant objected to the admission of his statement, arguing that he was on pain medicine and not in a proper state of mind. The trial court listened to the recording and overruled appellant's objection.

The State called numerous eyewitnesses, police officers and detectives, and medical personnel who responded to the scene and who treated McSwain and appellant over the next several months. McSwain testified in detail about her injuries, which were made worse by the polyester uniform that melted around her legs. The State offered many photographs of McSwain's burn injuries, from right after the incident through the treatment and healing stage, and of the crime scene. McSwain testified that on a scale of one to ten, her pain level at that time was "[a] hundred. It was horrible." McSwain was off duty for six months and then returned to light duty. She had to have surgery over a year later "to release the scars" on her arm. At the time of trial, which was two years after the incident, she still had not returned to full duty and had no indication of when she would be able to do so. She said she has to be careful about exposing the burned areas to the sun, and her risk of skin cancer has been increased because of the injuries.

The State also introduced numerous pen packets reflecting offenses for which appellant had been convicted, including interference with an emergency telephone call, criminal trespass (three times), criminal mischief, harassment (two times), felony theft (two times), assault/family violence, possession of marijuana, and possession of a controlled substance (three times). Appellant also told the community supervision officer during his pre-sentence interview that he had been involved in a gang.

Appellant presented three character witnesses: a pastor, his mother, and a church honor bearer who had known appellant since they were children. Appellant also testified. He expressed remorse for his actions and said he did not intend to hurt anyone but himself. He said he was at "a point in life where [he was] just tired. You just tired. And there's nothing you can do but just

be tired." He said he tried to get away from the officers that day and hoped they would leave him alone. He said the only thing he thought about at the WingStop was if he could not be with his kids and the only person he loves, he did not want to live anymore.

The court found appellant guilty and sentenced him to 45 years in prison.

In issue one on appeal, appellant contends the trial court abused its discretion by overruling his objection to the admission of his statement in the hospital because it was involuntary. We afford great deference to the trial court in determining whether to admit or exclude evidence. *Delao v. State*, 235 S.W.3d 235, 238 (Tex. Crim. App. 2007). We will not overturn a trial court's decision unless "a flagrant abuse of discretion is shown." *Id*.

Appellant argues that he was not in the proper state of mind and was in pain at the time he gave the statement from the hospital. The court listened to the statement and made findings of fact and conclusions of law regarding the admission of this evidence. The court found that even though appellant "may have been experiencing some of the effects of drugs at the time of the interview he was coherent, appeared to recognize the officer from being there the day before, was able to have a conversation and answer questions, and was able to understand his rights when they were read to him." The court found that appellant voluntarily waived his right to remain silent and to counsel, understood his rights, was not forced or made any promises in exchange for his statement, and never terminated the interview. The court concluded the statement was voluntary.

Having reviewed the record and listened to appellant's statement, we cannot conclude that the trial court abused its discretion by admitting the statement into evidence. Additionally, appellant does not argue how the admission of his statement was harmful in light of his guilty plea. We resolve issue one against appellant.

In issue two, appellant argues that the trial court abused its discretion by sentencing him to 45 years in prison. Appellant concedes that the offense was a first-degree aggravated felony and that the punishment range was wide, from deferred adjudication to life imprisonment. TEX. PENAL CODE ANN. §§ 12.32, 22.02(b)(2)(B) (West 2011).[2] He also concedes that generally punishment assessed within the range is not an abuse of discretion. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). But he argues that assessing community supervision as his sentence would have been in the best interest of society. He argues that he "has accepted responsibility for his poor choices" and the injuries he caused; that he was burned over 92% of his body and "will face the natural consequences of his actions" for the rest of his life; that he is not the same person and "has gained sober judgment about his relationship with [his girlfriend] and understands that they each must go their separate ways"; and that he has undergone 14 surgeries, needs more surgeries, and continues to face unbearable pain. He argues that based on his expression of remorse and the severity of his own injuries, a sentence of less than 45 years was warranted.

The trial court heard all the testimony appellant raises on appeal and viewed all the evidence of the crime. The court also heard evidence of appellant's many prior convictions. The punishment assessed was approximately in the middle of the wide range of punishment available for this crime. A trial court has "a great deal of discretion" in assessing punishment. *Id*. And we cannot conclude, having reviewed the record, that the court abused its discretion in assessing punishment at 45 years' imprisonment. We resolve issue two against appellant.

[2] There is no record the State sought to enhance appellant's punishment pursuant to section 12.42 for repeat offenders. *See* TEX. PENAL CODE ANN. § 12.42 (West Supp. 2016).

We affirm the trial court's judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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TEX. R. APP. P. 47.2(b)

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

TERRANCE JARMELL DUNN, Appellant	On Appeal from the 265th Judicial District Court, Dallas County, Texas
No. 05-16-00861-CR V.	Trial Court Cause No. F14-17929-R.
	Opinion delivered by Justice Lang-Miers.
THE STATE OF TEXAS, Appellee	Justices Francis and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 15th day of March, 2017.