Affirmed as modified; Opinion Filed March 9, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00300-CR

No. 05-17-00301-CR

ALBERT SULLIVAN, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F10-21100-N & F10-21101-N

MEMORANDUM OPINION

Before Justices Lang, Fillmore, and Myers
Opinion by Justice Myers

Appellant Albert Sullivan appeals from his adjudications of guilt and subsequent sentences for aggravated assault with a deadly weapon. In three issues, appellant contends (1) he was denied due process of law because his sentence was increased after his motion for new trial was granted; (2) the sentence assessed by the trial court was void because it exceeded the statutory maximum; and (3) the trial court erred by overruling appellant's objection to prejudicial hearsay evidence. In a cross-issue, the State asks us to modify both judgments. As modified, we affirm.

BACKGROUND AND PROCEDURAL HISTORY

In cause number 05–17–00300–CR (trial court cause number F10-21100-N), appellant was indicted for aggravated assault with a deadly weapon and causing serious bodily injury to Demethria Curtis. The indictment alleged that appellant:

> [D]id unlawfully then and there intentionally, knowingly and recklessly cause serious bodily injury to DEMETHRIA CURTIS, hereinafter called complainant, by STRIKING COMPLAINANT WITH A BROKEN PLATE AND BY STABBING COMPLAINANT WITH A BROKEN PLATE, and said defendant did use a deadly weapon, to wit: a BROKEN PLATE, during the commission of the assault[.]

In cause number 05–17–00301–CR (trial court cause number F10-21101-N), appellant was indicted for aggravated assault with a deadly weapon and causing bodily injury to Loretta Jones. This indictment alleged that appellant:

> [D]id unlawfully then and there intentionally, knowingly and recklessly cause bodily injury to LORETTA JONES, hereinafter called complainant, by CUTTING COMPLAINANT WITH A BROKEN PLATE, and said defendant did use and exhibit a deadly weapon, to-wit: a BROKEN PLATE, during the commission of the assault[.]

Both offenses were alleged to have occurred on December 25, 2010, and both indictments alleged a dating and/or family relationship between appellant and the complainants. On April 13, 2012, appellant entered open pleas of guilty to both charges. The court accepted appellant's pleas and placed him on six years' deferred adjudication community supervision in each case.

On November 23, 2015, the State filed a motion to adjudicate in each case, alleging appellant violated condition "a" of the conditions of his community supervision by committing a new offense—a November 16, 2015 aggravated assault. On August 25, 2016, the trial court accepted appellant's negotiated pleas of true to the alleged violation of the terms of appellant's community supervision. In both cases, the trial court found appellant guilty of the aggravated assaults of Demethria Curtis and Loretta Jones, revoked his community supervision, and sentenced him to twenty-two years' imprisonment in 05–17–00300–CR and twenty years' imprisonment in 05–17–00301–CR, in accordance with the terms of the plea agreement.

On September 22, 2016, appellant filed motions for new trial alleging the verdicts were contrary to the law and the evidence. The trial court overruled these motions. On September 23, 2016, appellant filed motions to reconsider his motions for new trial, again arguing the verdicts

were contrary to the law and the evidence. The trial court granted these motions, with the State's agreement.

A new hearing on the State's motions to adjudicate was held on February 17, 2017. Appellant pleaded "not true" to the alleged violation and the trial court heard evidence of that new offense, which was committed against Patresha Prince, as well as other punishment-related evidence. After hearing the evidence, the trial court adjudicated appellant's guilt and revoked his community supervision in both cases. The court then pronounced a forty-year sentence in—as it later clarified—05–17–00300–CR. On February 22, 2017, appellant reappeared before the court and the court pronounced a sentence of twenty years' imprisonment in 05–17–00301–CR.

DISCUSSION

1. Due Process

In his first issue, appellant contends he has been denied due process of law because his sentence in 05–17–00300–CR, the first degree felony aggravated assault case, was increased from twenty-two to forty years' imprisonment after the granting of a motion for new trial. Appellant attributes the higher sentence to vindictiveness, which violated his due process rights.

Due process of law requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial. *North Carolina v. Pearce*, 395 U.S. 711, 724 (1969), *overruled in part on other grounds in Alabama v. Smith*, 490 U.S. 794 (1989).[1] As *Pearce* noted, however, there is no absolute constitutional bar to the imposition of a more severe sentence upon retrial. *Pearce*, 395 U.S. at 723. Upon retrial, due process is offended only in those cases that "pose a realistic likelihood of vindictiveness." *Blackledge v. Perry*, 417 U.S. 21, 27 (1974); *see also Johnson v. State*, 930 S.W.2d 589, 592 (Tex.

[1] In *Alabama v. Smith*, the Supreme Court overruled *Simpson v. Rice*, a companion case to *Pearce*. The *Smith* court concluded that no presumption of vindictiveness arises when the first conviction was based on a guilty plea, and the increased sentence followed a trial. *Smith*, 490 U.S. at 795.

Crim. App. 1996) (due process rights violated if resentencing is vindictive response to assertion of right to appeal). A trial court's reasons for imposing a harsher sentence after a new trial must appear affirmatively in the record. *Smith*, 490 U.S. at 798. Otherwise, a presumption arises that the trial court imposed a greater sentence for a vindictive purpose. *Id*. at 798–99. The State may rebut this presumption with objective information justifying the increased sentence. *Id*. at 799.

But the *Pearce* requirements do not apply to every case where a convicted defendant receives a higher sentence on retrial. *Texas v. McCullough*, 475 U.S. 134, 144 (1986). The presumption does not apply, for example, where the trial judge who granted the new trial is the same one who assessed the higher sentence. *See id*. at 138–40. This is because, unlike the trial judge who has been reversed, the trial judge in that situation has "no motivation to engage in self-vindication." *Id*. at 139 (quoting *Chaffin v. Stynchcombe*, 412 U.S. 17, 27 (1973)). The presumption also does not apply where different sentencers assessed the varying sentences because "a sentence 'increase' cannot be truly said to have taken place." *Id*. at 138, 140. In addition, the presumption does not apply where the first sentence was based on a plea of guilty and the second followed a contested trial. *See Smith*, 490 U.S. at 795; *Tillman v. State*, 919 S.W.2d 836, 839 (Tex. App.—Fort Worth 1996, pet. ref'd); *Wilson v. State*, 810 S.W.2d 807, 810 (Tex. App.—Houston [1st Dist.] 1991, no pet.). "Even when the same judge imposes both sentences, the relevant sentencing information available to the judge after the plea will usually be considerably less than that available after a trial." *Smith*, 490 U.S. at 801. Where there is no presumption of vindictiveness, the burden remains on the defendant to prove actual vindictiveness. *Tillman*, 919 S.W.2d at 840; *see Wilson*, 810 S.W.2d at 810.

The trial court may consider any information that reasonably bears on the defendant's proper sentence. *Wasman v. United States*, 468 U.S. 559, 563 (1984). The Supreme Court has "recognized the state's legitimate interest in dealing in a harsher manner with those who by

repeated criminal acts have shown that they are incapable of conforming to the norms of society as established by its criminal law." *McCullough*, 475 U.S. at 144. Thus, the Constitution does not require a judge to ignore objective information that may justify an increased sentence. *See id*. at 142.

Based on this record, we conclude no circumstances of vindictiveness are apparent here. To begin with, the August 25, 2016 original hearing on the State's motion to adjudicate—where the court accepted the negotiated pleas of "true" and sentenced appellant to twenty-two years in 05–17–00300–CR—and the rehearing held on February 17, 2017—where appellant pleaded "not true" and the court heard evidence and increased the punishment to forty years' imprisonment—took place before different judges. Furthermore, the evidence presented at the February 17, 2017 rehearing including the testimony of the probation officer who served appellant with the State's motion to adjudicate; the testimony of the trauma surgeon who operated on Patresha Prince after she was assaulted by appellant; the testimony of the next-door neighbor who came to her aid; the testimony of the police officer who responded at the scene of the stabbing; photographs of the bloody crime scene where Patresha was assaulted; photographs of Patresha's injuries at the hospital; and the testimony of Demethria Curtis regarding a Christmas of 2010 aggravated assault and other prior abuses by appellant. The court also heard testimony from various defense witnesses regarding why appellant should be continued on community supervision. Since different judges imposed the varying sentences and the second trial judge imposed the higher sentence only after a contested hearing that followed a plea of "not true," we cannot presume the greater sentence was a result of vindictiveness. *See, e.g., Tillman*, 919 S.W.2d at 840 (defendant's original sentence was imposed after plea of true to allegation that he failed to report as required by terms of probation, and higher sentence was imposed after "hotly contested trial" on defendant's failure to report as well as failure to pay fees, so appellate court could not presume greater sentence was

result of vindictiveness). We conclude appellant has shown no actual vindictiveness on the trial court's part; thus, he has failed to show the trial court violated his due process rights by assessing the forty years' imprisonment in 05–17–00300–CR. We overrule appellant's first issue.

2. Void Sentence

In his second issue, appellant argues the forty-year sentence assessed by the trial court in 05–17–00301–CR, the second degree felony aggravated assault case, is an illegal sentence and therefore void because forty years is outside the statutory range of punishment for a second degree felony. *See* TEX. PENAL CODE ANN. § 12.33 (punishment range for a second degree felony is not more than twenty years or less than two and a fine not to exceed $10,000).

The February 17, 2017 rehearing was on the State's motions to adjudicate in the above two cases: (1) the first degree felony aggravated assault of Demethria Curtis in 05–17–00300–CR, and (2) the second degree felony aggravated assault of Loretta Jones in 05–17–00301–CR. *See id.* § 22.02. At that hearing, after receiving evidence of the new offense involving Patresha Prince, the trial court stated, "At this point, the Court finds that you have violated your community supervision as set out in the State's motion, Mr. Sullivan." After hearing additional punishment-related evidence, the court found appellant guilty of both offenses, set aside the orders of deferred adjudication in both cases, and made the following pronouncement on punishment:

> It is the order, judgment and decree of the Court that you be taken by the sheriff of Dallas County and turned over to an agent of the Institutional Division of the Texas Department of Criminal Justice where you shall be confined for a period of 40 years or until the sentence of the Court has been otherwise discharged in accordance with the law.
>
> The sentence begins today. You will receive credit for all your back time in this case. You will receive credit for your court costs and fees.

The court then made deadly weapon and family violence findings, and concluded the hearing.

On February 22, 2017, the parties again appeared before the trial court. The court reiterated that on February 17, 2017, it had assessed a sentence of forty years in 05–17–00300–CR. The

court added, however, that the record also appeared to show that appellant had been sentenced to forty years' imprisonment in 05–17–00301–CR. Noting that the statutory punishment range for a second degree felony is not more than twenty years or less than two, *see id.* § 12.33, the court pronounced appellant's sentence in 05–17–00301–CR at twenty years' imprisonment. The relevant portion of the record reads as follows:

> On Friday, February 17th, the Court assessed punishment. We had a hearing, and the Court assessed punishment on Cause Number F10-21100 at 40 years' confinement and made a—gave the defendant credit for his back time and court costs and fines, made an affirmative finding, to-wit: a deadly weapon, and made an affirmative finding of family violence.
>
> On Cause Number F10-21101, the—as the record stands, it appears that the Court sentenced the defendant to 40 years as well. That is a second-degree felony offense. The maximum is 2 to—the maximum is—it's a second-degree felony offense, 2 to 20 years' confinement. So we are hear [sic] today for that purpose.
>
> It is—in Cause Number F10-21101, the Court did find the evidence sufficient to prove your guilt beyond a reasonable doubt and found you guilty of the offense of aggravated assault with a deadly weapon.
>
> It is the order, judgment and decree of the Court that you be taken by the sheriff of Dallas County and turned over to an agent of the Institutional Division of the Texas Department of Criminal Justice where you shall be confined for a period of 20 years or until the sentence of the Court has been otherwise discharged in accordance with the law.
>
> The sentence begins today. You will receive credit for all your back time. The sentences will run concurrently.
>
> You will receive—on Friday, you know, I gave you credit for your court costs, your back time and made an affirmative finding that a deadly weapon was used, to-wit, a broken plate and made an affirmative finding of family violence.
>
> At this time, that concludes the hearing.

Twenty years is within the statutory range of punishment for a second degree felony. *See id.* § 12.33(a). Thus, appellant's contention that he received an illegal sentence is refuted by the record, and we overrule appellant's second issue.

3. Hearsay

In his third issue, appellant contends the trial court erred by overruling his objection to

prejudicial hearsay evidence contained within a business record—i.e., the "community supervision file."

A trial court's decision to admit or exclude evidence is reviewed under an abuse of discretion standard. *Shuffield v. State*, 189 S.W.3d 782, 793 (Tex. Crim. App. 2006). A trial court's evidentiary ruling will be sustained if it is correct under any theory of law applicable to the case, even when the court's underlying reason for the ruling is wrong. *Blackwell v. State*, 193 S.W.3d 1, 9 (Tex. App.—Houston [1st Dis.] 2006, pet. ref'd) (citing *Romero v. State*, 800 S.W.2d 539, 543–44 (Tex. Crim. App. 1990)).

Phillip Atkins, a Dallas County probation officer and a business records custodian for Dallas County probation services, testified for the State at the February 17, 2017 hearing. Through his testimony, the State offered into evidence a printout of narrative entries made by the probation office documenting contacts with, and updates concerning, appellant during his probation. That document, State's exhibit 62, was admitted under the business record exception. *See* TEX. R. EVID. 803(6). The complained-of entry is found on page 7 of State's exhibit 62. It describes a telephone call that was received by the probation office from a Teresa Rose on November 13, 2012:

> PO RECEIVED A CALL FROM A TERESA ROSE . . . STATING P IS USING COCAINE AND HAD HER 4 YEAR OLD GRANDSON WITH HIM WHEN HE USED. MS ROSE ALSO STATED THAT P BOUGHT A CAR IS [sic] DRIVING WITH A SUSPENDED LICENSE, IN ADDITION MS ROSE STATED THAT P TRAVELED TO CALIFORNIA AND HOUSTON WITHOUT PERMISSION.

The defense took Atkins on voir dire and questioned him about this entry. Asked if Teresa Rose was a probation officer, Atkins testified he did not "immediately know who that person is," and that he guessed "it's somebody that knows the defendant." Atkins also testified that the probation officer who received the telephone call likely entered the narrative without knowing whether the information provided by Rose was correct. The defense asserted a hearsay objection to the entry on page 7 and argued it was not a business record. The trial court overruled the objection and

admitted the exhibit without redacting the complained-of entry. On appeal, appellant does not challenge the general admission of the document as a business record, but he argues that the particular narrative entry on page 7 was inadmissible hearsay and should have been redacted.

We conclude that we need not address the substance of appellant's argument because, even if we assume the trial court erred, the admission of the narrative entry was not reversible error. The erroneous admission of hearsay is subject to a harm analysis under appellate rule 44.2(b). *See* TEX. R. APP. R. 44.2(b); *Rivera-Reyes v. State*, 252 S.W.3d 781, 786 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Under rule 44.2(b), an error that does not affect substantial rights must be disregarded. *See* TEX. R. APP. P. 44.2(b). A substantial right is affected when the error had a substantial and injurious effect or influence on the verdict or punishment. *Haley v. State*, 173 S.W.3d 510, 518 (Tex. Crim. App. 2005); *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). Evidence of the defendant's guilt is a factor to be considered in any thorough harm analysis. *Motilla v. State*, 78 S.W.3d 352, 358 (Tex. Crim. App. 2002); *Dickey v. State*, Nos. 05–07–01090–CR, 05–07–01214–CR, 2008 WL 2877761, at *2 (Tex. App.—Dallas July 25, 2008, pet. ref'd) (not designated for publication).

The issue during the initial phase of the adjudication rehearing was whether appellant violated the terms of his community supervision in 05–17–00300–CR and 05–17–00301–CR by committing a new offense—the November 16, 2015 aggravated assault. According to the evidence, appellant stabbed his girlfriend, Patresha Prince, over twenty times in their home on November 16, 2015, and this incident occurred while appellant was on community supervision in the above two cases. Regina Peterson, Patresha's next door neighbor, testified that she was at home when Prince ran to her house and knocked on her door. Peterson did not hear the knocking, but she saw Prince run past her window and heard screaming. Peterson went outside and found Prince "[e]xtremely bloody." Prince told Peterson that appellant had stabbed her and tried to kill

her in front of their children. Peterson called the police and waited with Prince for them to arrive. Peterson's 911 telephone call was admitted into evidence and played in court. Peterson testified it was still "terrifying" to listen to that call.

Officer Murphy of the Garland Police Department was dispatched to the crime scene. He testified that he found Prince in the driveway of Peterson's house, and that there was a trail of blood leading from Prince's house to Peterson's driveway. Murphy noticed that Prince had been stabbed repeatedly and that there was lot of blood loss. Prince's clothes were "completely covered in blood, just about," and "[s]he was pretty hysterical." Prince's injuries were so severe Murphy feared she might "possibly die right there" due to blood loss. The officer spoke briefly to Prince and learned that appellant had stabbed her following a verbal confrontation. Officer Murphy found the couple's one-year-old child wandering in the front yard of their home, and a child of approximately four months inside the house. Photographs of both the interior and exterior of the home—showing blood on the ground near the house, on various exterior parts of the house, and inside the house—were admitted into evidence.

Dr. Mohammad Frotan, the trauma surgeon at Presbyterian Hospital of Dallas who treated Prince, testified that she was admitted as a level one trauma patient—the classification used for the most severely injured patients. Frotan also testified that Prince had "severe injuries in all extremities, multiple deep lacerations, including her mouth and lip area, and a puncture of her left lung." She had approximately 120 centimeters of stab wounds on her body. The day after she was admitted, Prince had to undergo a second surgery to tackle "mobility issues" that were caused by deeper tendon and/or nerve injuries. Photographs of Prince's injuries, taken at the hospital, were admitted into evidence. The doctor testified that a laceration extending across Prince's face and into her mouth and lip area would leave a scar, resulting in disfigurement. He testified that "most all of" Prince's stab wounds could have been fatal.

The evidence presented by the State also included testimony from Demethria Curtis, the complainant in the aggravated assault in 05–17–00300–CR.[2] She testified that the December 25, 2010 aggravated assault was not the first time appellant had attacked her. In August of that year, just before school started, appellant kicked Curtis in the chest and threw a computer hard drive at her. He used a knife in that incident but did not cut Curtis with it. Curtis testified that she was able to escape appellant on that occasion because she lied and told him she had to go to the bathroom. She then climbed out of the bathroom window. The case was eventually dropped and Curtis stayed with appellant. She explained that she loved appellant and thought she could help him, but ended up regretting her decision. She testified that almost every day after that was like "hell," and that she ended up with her "hair getting pulled out, to having bruises around my neck, being choked every day until Christmastime."

Regarding the December 25, 2010 aggravated assault, Curtis testified that the incident occurred when she went with appellant and her three children to have dinner with appellant's family on Christmas day. After dinner, appellant started "picking at" Curtis and tried to fight with her. Appellant's aunt, Marie, stood between them and pushed appellant out the door. Marie asked Curtis why she kept "going through that," and Curtis told her, "I'm not," and that she no longer wanted to be with appellant. Appellant then "barge[d] through the door," saying that "you don't want to be with me no more." Curtis looked at him and shook her head no. As she lowered her head, she heard someone say, "[N]o, AJ," and Curtis felt something hit her in the face. She fell backwards. She heard a muffled "commotion" and felt the bottom of her body being tugged. She then grabbed her face because she felt pain. When she opened her eyes, she saw Marie pushing appellant out the door and heard her children crying. Curtis looked at her hands and panicked

[2] Curtis explained that she did not testify at the 2012 plea hearing, where appellant pleaded guilty to assaulting her, because she was not emotionally ready to face him. She testified she went to counseling for three years "just to get over it."

when she saw blood all over them. She went to the bathroom and saw that her face "was busted open." Curtis testified that she still had a scar from the wound to her face, and she would have that scar for the rest of her life. Curtis later learned that appellant had cut her with a broken plate, and that he also cut his aunt Loretta (Loretta Jones, the complainant in 05–17–00301–CR), when she tried to intervene.

Curtis testified that when appellant was placed on community supervision in 2012 for assaulting her, she "knew it was going to happen again." When she received the message about appellant's assault on Prince, she looked at her phone and said, "I'll be damned; I knew it." She knew it would happen again because appellant "doesn't take responsibility for his actions" and he "blames everybody else for what he does." Curtis testified that continuing appellant on community supervision would benefit no one, and pointed out that appellant assaulted Prince while he was on community supervision for assaulting her. Asked what she thought would happen if appellant was continued on community supervision, Curtis said, "He's going to do it again. It's probably going to end up worse. She's going to end up dead."

Appellant's witnesses were clinical psychologist Dr. Kristi Compton, three aunts (Loretta Jones, Senora Jones, and Sandra Jones), his sister (Classie Pierre), and Patresha Prince. Dr. Compton testified that after interviewing appellant and his sister and reviewing numerous documents and records related to appellant's cases and the medical history, it was her opinion that appellant suffered from a severe case of "attachment disorder." Dr. Compton noted that appellant had been first diagnosed with this disorder in 2010 at Green Oaks Hospital. Dr. Compton testified that abandonment by both his biological father and his stepfather, who appellant believed was his actual father, and "a very immeshed [sic] relationship with his mother," who was ill throughout his childhood and died when appellant was fifteen years old, contributed to this disorder. Dr. Compton believed appellant's assaults on Curtis and Prince were related to this disorder, and she

concluded that he assaulted those women out of fear they would leave him. Dr. Compton acknowledged appellant's completion of a domestic violence program while he was on community supervision, but she argued this program was not specifically designed for any one offender or their specific mental health issues, and it would not have addressed the underlying attachment disorder. She also acknowledged the availability of counseling services and medication in prison for appellant's mental health needs. Dr. Compton could not guarantee appellant would not commit more crimes if he was continued on community supervision, noting that she could not "guarantee that for anyone."

The family members who testified on appellant's behalf maintained he was a good person who had never been violent with the exception of his attacks on Curtis, Prince, and Loretta Jones. They testified that they had always supported appellant in the past and would do so now given his mental disorder. Prince testified for the defense that the Albert Sullivan who attacked her that day was not the man she had lived with for several years. She said appellant "wasn't an abusive type," that he never put his hands on her, and the stabbing incident "was the first time I ever encountered that." She said she was now comfortable around appellant. She also testified that she was visiting him in jail because it provided "closure," and that what she really wanted was for appellant to have treatment. She noted that appellant had expressed remorse for his actions and she believed it was genuine. She recognized the seriousness of her injuries—she testified that her lungs collapsed at the hospital and that she was pronounced dead for five minutes—but she insisted that "[o]ur home was not domestic violence" and that the assault "was just this one incident where [appellant] put his hands on me or stabbed me." At the time of the adjudication hearing, Prince had not accepted the counseling services offered to her because, according to Prince, when she asked her mother if she needed counseling, her mother told her she did not.

To show harm, we must find appellant's substantial rights were affected by the

complained-of error. No such harm has been shown in this case. Given the substantial evidence presented by the State, which included the brutal nature of the attacks on Curtis and Prince, appellant's history of abusive behavior towards women, and the fact that his completion of the domestic violence treatment program did not prevent his assault on Prince, it is highly unlikely that the complained-of narrative entry had a substantial and injurious effect or influence on the trial court's finding of guilt and assessment of punishment. Therefore, even if we assume the admission of the narrative entry was error, that error was harmless. We overrule appellant's third issue.

4. Modification of the Judgments

The State's cross-issue asks us to modify both judgments. In 05–17–00300–CR, the record shows appellant entered a plea of "not true" to the allegation in the State's motion to adjudicate, that the trial court made deadly weapon and family violence findings, and that the sentence was pronounced on February 17, 2017. The written judgment, however, incorrectly states that appellant entered a plea of "true" to the State's motion to adjudicate and that the judgment was entered on February 22, 2017. The judgment also incorrectly states "NA" for a finding on deadly weapon. In 05–17–00301–CR, the record shows appellant entered a plea of "not true" to the State's motion to adjudicate, but the written judgment incorrectly shows a plea of "true" to the motion to adjudicate.

Where the record contains the necessary information to do so, we have the authority to modify the incorrect judgment. TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27 (Tex. Crim. App. 1993); *Abron v. State*, 997 S.W.2d 281, 282 (Tex. App.—Dallas 1998, pet. ref'd). "An appellate court has the power to correct and reform a trial court judgment 'to make the record speak the truth when it has the necessary data and information to do so, or make any appropriate order as the law and nature of the case may require.'" *Nolan v. State*, 39 S.W.3d 697, 698 (Tex.

App.—Houston [1st Dist.] 2001, no pet.) (quoting *Asberry v. State*, 813 S.W.2d 526, 526 (Tex. App.—Dallas 1991, pet. ref'd)). Because the record contains the necessary information for us to do so, the written judgment in 05–17–00300–CR will be modified to reflect appellant's plea of "not true" to the State's motion, a judgment date of February 17, 2017, and the trial court's affirmative finding of deadly weapon. In 05–17–00301–CR, the written judgment will be modified to reflect appellant's plea of "not true" to the State's motion to adjudicate.[3]

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

/Lana Myers/
LANA MYERS
JUSTICE

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[3] The State also asked us to modify the judgment in 05-17-00301-CR to reflect the trial court's affirmative family violence finding in that case. However, the court's February 22, 2017 judgment in the case includes both the deadly weapon and family violence findings. Therefore, we need not address the issue.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ALBERT SULLIVAN, Appellant	On Appeal from the 195th Judicial District Court, Dallas County, Texas
No. 05-17-00300-CR V.	Trial Court Cause No. F10-21100-N.
	Opinion delivered by Justice Myers.
THE STATE OF TEXAS, Appellee	Justices Lang and Fillmore participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

> "Date Judgment Entered: 2/22/2017" should be changed to "Date Judgment Entered: 2/17/2017."
>
> "Plea to Motion to Adjudicate: TRUE" should be changed to "Plea to Motion to Adjudicate: NOT TRUE."
>
> "Findings on Deadly Weapon: N/A" should be changed to "Findings on Deadly Weapon: YES, NOT A FIREARM."

As **REFORMED**, the judgment is **AFFIRMED**. We direct the trial court to prepare a new judgment that reflects these modifications.

Judgment entered this 9th day of March, 2018.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ALBERT SULLIVAN, Appellant	On Appeal from the 195th Judicial District Court, Dallas County, Texas
No. 05-17-00301-CR V.	Trial Court Cause No. F10-21101-N.
	Opinion delivered by Justice Myers.
THE STATE OF TEXAS, Appellee	Justices Lang and Fillmore participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

> "Plea to Motion to Adjudicate: TRUE" should be changed to "Plea to Motion to Adjudicate: NOT TRUE."

As **REFORMED**, the judgment is **AFFIRMED**. We direct the trial court to prepare a new judgment that reflects this modification.

Judgment entered this 9th day of March, 2018.