AFFIRM as modified; and Opinion Filed May 31, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00838-CR

CARL LEVON BURNS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1676243-N

MEMORANDUM OPINION

Before Justices Bridges, Brown, and Boatright
Opinion by Justice Brown

Appellant Carl Levon Burns entered an open plea of guilty to aggravated assault with a deadly weapon,[1] and the trial court accepted the plea and sentenced appellant to ten years' confinement. In three issues, appellant contends the trial court erred in allowing the victim's testimony on sentencing and seeks modification of the judgment to correctly reflect the deadly weapon finding and appellant's plea to, and the trial court's finding on, an enhancement paragraph. For the following reasons, we modify the trial court's judgment and, as modified, affirm.

BACKGROUND

Appellant was indicted for aggravated assault against a family member with a deadly weapon, a knife, enhanced by two prior offenses, one assault causing bodily injury family violence

[1] See Tex. Pen. Code Ann. § 22.02(a)(2) (West. 2011).

enhanced and one arson. The State subsequently moved to strike the indictment's second enhancement paragraph related to the arson, and appellant entered an open plea to aggravated assault with a deadly weapon enhanced by the prior assault causing bodily injury family violence enhanced.

During appellant's punishment hearing, Lashell McClellan testified that she and appellant had been in a relationship for approximately four years and are parents to a two-year-old boy. Two days after ending their relationship, McClellan told appellant he could shower at her apartment, but he had to leave afterwards. McLellan was not home at the time. Appellant called McClellan to tell her he had left the apartment, but he was still there when she returned. She decided to leave and got into her vehicle. Appellant followed her, gesturing for her to roll the window down. McClellan lowered her window, appellant reached through, and the two physically fought. McClellan eventually was able to drive away, discovered she was bleeding, and called 911. She later determined that appellant had cut her face with a bottle opener that was attached to his keys.

VICTIM TESTIMONY

In his first issue, appellant contends the trial court erred by allowing McClellan to testify on her opinion about appellant's sentence. Specifically, appellant, who was eligible for probation, complains of McClellan's testimony that she did not want appellant "locked up for the rest of his life."

A party must make a proper objection and obtain a ruling on the objection to preserve error for admission of evidence. TEX. R. APP. P. 33.1. The objection must be specific, inform the trial court of its basis, and present an opportunity for the court to rule on it. *Id.*; *see, e.g., Resendez v. State*, 306 S.W.3d 308, 314 (Tex. Crim. App. 2009); *Ibarra v. State*, 11 S.W.3d 189, 197 (Tex. Crim. App. 1999).

McClellan testified that she did not want appellant "locked up for the rest of his life" in response to questioning by both the prosecutor and defense counsel. But, the trial court also heard McClellan's testimony that she had no problem if appellant received probation. Instead, she was most interested in appellant obtaining counseling and help with managing his anger. McClellan further testified that she did not want to be the decision-maker on appellant's punishment; she wanted the trial court to make that decision. Appellant raised no objection to the complained-of testimony during the punishment hearing. Accordingly, he has not preserved his issue for review. *See Ibarra*, 11 S.W.3d at 197. Even had appellant objected, a review of the entire record, including all of McClellan's testimony, leads us to conclude that error, if any, in admitting the complained-of testimony did not affect appellant's "substantial rights." *See* TEX. R. APP. P. 44.2(b); *Garcia v. State*, 126 S.W.3d 921, 927-28 (Tex. Crim. App. 2004). Accordingly, we overrule appellant's first issue.

MODIFICATION OF THE JUDGMENT

In his second issue, appellant requests that we modify the judgment to properly reflect his plea of true, and the trial court's finding of true, to the indictment's enhancement paragraph. In his third issue, appellant also seeks modification of the judgment to correct the deadly weapon finding. The State joins in both of appellant's requests.

Generally, a plea of true alone is sufficient to support a finding of true to an enhancement allegation. *See Ex parte Rich*, 194 S.W.3d 508, 513 (Tex. Crim. App. 2006); *Washington v. State*, 893 S.W.2d 107, 109 (Tex. App.—Dallas 1995, no pet.). A trial court's failure to orally pronounce an enhancement finding when it assesses punishment does not amount to error as long as the record reflects that the court found the enhancement allegation true and sentenced the defendant accordingly. *See Meineke v. State*, 171 S.W.3d 551, 557 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd); *Garner v. State*, 858 S.W.2d 656, 659 (Tex. App.—Ft. Worth 1993, pet. ref'd). We

may conclude that a trial court made an implied finding of true to an enhancement allegation when the record establishes the truth of that allegation. *See Almand v. State*, 536 S.W.2d 377, 379 (Tex. Crim. App. 1976); *Torres v. State*, 391 S.W.3d 179, 183 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd).

Appellant entered an open plea of guilty to aggravated assault with a deadly weapon and true to one enhancement allegation of a prior conviction of assault bodily injury family violence enhanced. At the plea hearing, appellant responded affirmatively when the trial court asked if he was freely and voluntarily entering a plea of guilty to the offense and a plea of true to the enhancement paragraph. The trial court accepted appellant's pleas. Following the punishment hearing, the trial court pronounced appellant's sentence of ten years' confinement, which was within the enhanced range of punishment for appellant's conviction of aggravated assault with a deadly weapon. *See* TEX. PEN. CODE ANN. §§ 12.33 (West 2011), 12.42(b) (West Supp. 2017). The trial court did not orally pronounce its finding of true to the enhancement paragraph, but the record is sufficient to show the trial court impliedly found the enhancement paragraph true. *See Almand*, 536 S.W.2d at 379; *Meineke*, 171 S.W.3d at 557. The judgment, however, incorrectly reflects "N/A" as both appellant's plea and the trial court's finding on the enhancement paragraph.

The judgment's deadly weapon finding states, "The Court FINDS [appellant] used or exhibited a deadly weapon, namely, a knife," during the offense. The indictment initially charged appellant with aggravated assault with a deadly weapon, a knife. Prior to trial, the State moved to amend the indictment to reflect that the deadly weapon was a bottle opener or sharp object, and the trial court granted the amendment. Appellant's judicial confession and the evidence presented during the punishment hearing established the deadly weapon as a bottle opener or sharp object, but the trial court's deadly weapon finding in the judgment refers to "a knife."

When a record contains the necessary information, we may modify an incorrect judgment to correct clerical errors. TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref'd). Because the record establishes that appellant entered a plea of true to the enhancement paragraph and the trial court impliedly found the enhancement paragraph to be true, we modify the section of the judgment titled "Plea to 1st Enhancement Paragraph" to state "True" and the section of the judgment titled "Findings on 1st Enhancement Paragraph" to state "True." Because the record also establishes the deadly weapon as a bottle opener or sharp object, we modify the "Deadly Weapon" finding in the trial court's judgment to state:

> The Court FINDS Defendant used or exhibited a deadly weapon, namely, a bottle opener or sharp object, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited. TEX. CODE CRIM PROC. Art. 42.12 §3g.

See TEX. R. APP. P. 43.2(b); *Bigley*, 865 S.W.2d at 27; *Asberry*, 813 S.W.2d at 529-30. We sustain appellant's second and third issues.

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

/Ada Brown/
ADA BROWN
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CARL LEVON BURNS, Appellant	On Appeal from the 195th Judicial District Court, Dallas County, Texas
No. 05-17-00838-CR V.	Trial Court Cause No. F-1676243-N.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Brown; Justices Bridges and Boatright participating.

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

> We **REPLACE** "N/A" in the section of the judgment titled "Plea to 1st Enhancement Paragraph" with "True";
>
> We **REPLACE** "N/A" in the section of the judgment titled "Findings on 1st Enhancement Paragraph" with "True"; and
>
> We **REPLACE** "a knife" in the judgment's "Deadly Weapon" finding with "a bottle opener or sharp object".

As modified, the judgment is **AFFIRMED**.

Judgment entered this 31st day of May, 2018.