Affirmed and Opinion Filed May 30, 2018

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00984-CR

CHRISTOPHER MACEL WASHINGTON, Appellant
V.
STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1600190-Q

MEMORANDUM OPINION

Before Justices Francis, Fillmore, and Whitehill
Opinion by Justice Whitehill

Appellant pled guilty to aggravated robbery and true to an enhancement paragraph, and the trial court sentenced him to eighteen years imprisonment. In a single issue, appellant argues that the trial court erred by admitting evidence of two prior convictions because there was insufficient evidence linking him to these offenses. We conclude that one exhibit was not erroneously admitted, and the admission of the other did not cause appellant harm. We therefore affirm the trial court's judgment.

I. BACKGROUND

Appellant complains about the admission of (i) exhibit 27, a certified copy of a final judgment for state jail evading arrest in Harris County, and (ii) exhibit 30, a certified copy of a

final judgment for misdemeanor failure to identify from Tarrant County. Neither exhibit was relevant to the enhancement offense to which appellant pled true.

To prove a prior conviction as part of a defendant's criminal record, the State must prove beyond a reasonable doubt that (i) a prior conviction exists and (ii) the defendant is linked to that conviction. *See Flowers v. State*, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007). The requirement for independent evidence linking a prior conviction and the defendant can be met several ways, one of which is introduction of certified copies of judgment, sentence, and record of the Texas Department of Corrections or county jail, including fingerprints of the accused, supported by expert testimony identifying them with known prints of the defendant. *Beck v. State*, 719 S.W.2d 205, 209–10 (Tex. Crim. App. 1986). But as the court of criminal appeals has observed, "[j]ust as there is more than one way to skin a cat, there is more than one way to prove a prior conviction." *Flowers*, 220 S.W.3d at 922. Thus, the State may use "[a]ny type of evidence, documentary or testimonial" to make its proof. *Id.*

II. ANALYSIS

The record reflects that when the State offered the exhibits, appellant's counsel objected "[t]hey're not corroborated by anybody that can say those - - - those prints belong to my client." When the trial court asked if the documents were certified, appellant's counsel replied, "Yes, but I still think that somebody needs to link up the prints to my client."

With regard to the first prong of *Flowers*, the existence of a conviction, rule of evidence 902(4) allows admitting certified copies of public records without extrinsic evidence of their authenticity. *See Jackson v. State*, No. 05-13-0004-CR, 2014 WL 2611106, at *5 (Tex. App.—Dallas June 11, 2014, no pet.) (mem. op. not designated for publication).

"But to satisfy the second *Flowers* prong, 'it is incumbent on the State to go forward and show by independent evidence that the defendant is the person so previously convicted.'" *Id*., (*citing Beck v. State*, 719 S.W.2d 205, 210 (Tex. Crim. App. 1986)).

Viewed in the appropriate context, it is clear that appellant's objection concerned the second *Flowers* prong. We therefore consider whether there was sufficient evidence linking the prior convictions to appellant.

Exhibit 30 shows appellant's Tarrant County conviction on March 31, 2007, for failure to identify. During cross-examination, appellant admitted that he was on the run for six months after the first scheduled trial in this case, was apprehended in Tarrant County, and lied to a police officer about his name. A defendant can be linked to a prior conviction from his own admission. *Flowers,* 220 S.W.2d at 921–22. Here, appellants' admissions provide sufficient evidence linking him to the exhibit 30 offense.

There is, however, no evidence linking appellant to the exhibit 27 offense. Exhibit 27 shows appellant's January 2009 Harris County conviction for evading arrest. When the trial judge asked the prosecutor if the State had witnesses to "prove up" exhibits 27 and 30, the prosecutor replied, "We can." But the State did not call any such witnesses. Likewise, the State did not elicit appellant's admission concerning the exhibit 27 offense during cross-examination. Because there was no evidence linking the offense to appellant, exhibit 27 was erroneously admitted.

Appellant argues that he was harmed by the exhibit's admission because he received more than the minimum sentence. We disagree.

The erroneous admission of extraneous evidence is a non-constitutional error, and must be disregarded unless it affected appellant's substantial rights. *See Snowden v. State*, 353 S.W.3d 815, 818 (Tex. Crim. App. 2011). First, the enhancement offense was a Harris County burglary

of a habitation that appellant admitted by pleading true. This elevated the minimum sentence to fifteen years.

Moreover, the range of punishment for appellant's aggravated robbery enhanced by his prior conviction was fifteen to ninety-nine years or life and an optional fine not to exceed $10,000. *See* TEX. PENAL CODE § 12.42(c). Appellant's eighteen year sentence is not only within the range, but is only slightly more than the minimum punishment, and two years less than what the State argued was appropriate.

Finally, appellant judicially confessed to committing aggravated robbery by luring the seventy-one-year-old complainant out of his car under false pretenses, bashing him in the head with a rock from behind, and taking his property. Photographs of the injury to the complainant's face were admitted into evidence, and the complainant testified that the injuries took three weeks to a month to heal and left a scar. On the other hand, there is nothing to suggest that the court's sentencing determination was influenced by the evading arrest offense rather than the evidence of the offense at issue. Therefore, we conclude that the erroneous admission of exhibit 27 did not cause appellant harm. The trial court's judgment is affirmed.

/Bill Whitehill/
BILL WHITEHILL
JUSTICE

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TEX. R. APP. P. 47
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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CHRISTOPHER MACEL WASHINGTON, Appellant

No. 05-17-00984-CR V.

STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court, Dallas County, Texas
Trial Court Cause No. F-1600190-Q.
Opinion delivered by Justice Whitehill.
Justices Francis and Fillmore participating.

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

Judgment entered May 30, 2018.