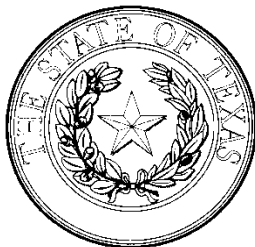


Opinion issued October 7, 2010.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-08-00707-CR

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**DAVID VASQUEZ, Appellant**  
V.  
**STATE OF TEXAS, Appellee**

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**On Appeal from the 182nd District Court  
Harris County, Texas  
Trial Court Case No. 1136293**

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**MEMORANDUM OPINION**

Appellant, David Vasquez, pled guilty to the state jail felony offense of theft without a recommendation as to punishment.<sup>1</sup> In his sole issue on appeal,

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<sup>1</sup> See TEX. PENAL CODE ANN. § 31.03(a), (e)(4)(A) (Vernon Supp. 2010).

appellant contends that the trial court erred in accepting his guilty plea and finding him guilty because the evidence was insufficient to support the plea pursuant to article 1.15 of the Code of Criminal Procedure.<sup>2</sup> We affirm.

## **BACKGROUND**

Appellant was indicted for unlawfully appropriating property belonging to Pedro Martinez, namely, a watch with a value of over \$1,500 and under \$20,000, with intent to deprive Martinez of the property. Appellant subsequently pled guilty to the charge without a recommendation as to punishment from the State, and he signed a “Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession” in which he stated under oath that the allegations in the indictment were true. After a pre-sentence investigation and a punishment hearing, the trial court found appellant guilty and assessed his punishment at nine months confinement in the State Jail Division of the Texas Department of Criminal Justice.

## **DISCUSSION**

In his sole issue on appeal, appellant contends that the trial court erred in accepting his guilty plea and finding him guilty because the evidence was insufficient to prove theft of a watch, citing to a portion of the State’s closing argument during the sentencing hearing. Under article 1.15 of the Texas Code of Criminal Procedure, the State must offer sufficient proof to support any judgment

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<sup>2</sup> TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon 2005).

based on a guilty plea in a felony case tried to the court. TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon 2005); see *Menefee v. State*, 287 S.W.3d 9, 13 (Tex. Crim. App. 2009). The State must “introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgment and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same.” TEX. CODE CRIM. PROC. ANN. art. 1.15. A defendant who pleads guilty does not need to admit the truth of the evidence to which he stipulates, but if he does, the court will consider the stipulation to be a judicial confession. *Stone v. State*, 919 S.W.2d 424, 426 (Tex. Crim. App. 1996); *Barnes v. State*, 103 S.W.3d 494, 497 (Tex. App.—San Antonio 2003, no pet.). A proffer of such evidence “will suffice to support [a] guilty plea so long as it embraces every constituent element of the charged offense.” *Menefee*, 287 S.W.3d at 13.

The evidence required by article 1.15 may be stipulated if the defendant consents in writing, in open court, to waive the appearance, the confrontation, and cross-examination of witnesses and further consents to the oral and written stipulation of evidence and to the introduction of affidavits, written statements of witnesses, and any other documentary evidence. See TEX. CODE CRIM. PROC. ANN. art. 1.15. The “Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession” that appellant executed satisfies this statutory requirement.

See TEX. CODE CRIM. PROC. ANN. art. 1.15. The judicial confession in which appellant states that the allegations in the indictment are true, also “embraces every constituent element of the charged offense,” including the theft of a watch element. See *Menefee*, 287 S.W.3d at 13. Regardless of what the State argued during the sentencing hearing, it is well-settled Texas law that a judicial confession, standing alone, is sufficient to support a guilty plea and satisfy the requirements of article 1.15. See *Breaux v. State*, 16 S.W.3d 854, 856 (Tex. App.—Houston [14th Dist.] 2000, pet. ref’d) (citing *Dinnery v. State*, 592 S.W.2d 343, 353 (Tex. Crim. App. 1980)); *Stewart v. State*, 12 S.W.3d 146, 148 (Tex. App.—Houston [1st Dist.] 2000, no pet.) Accordingly, we hold that appellant’s stipulation of guilt and judicial confession, provide sufficient evidentiary support for the judgment.

### CONCLUSION

We affirm the judgment of the trial court.

Jim Sharp  
Justice

Panel consists of Justices Jennings, Alcala, and Sharp.

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