Opinion issued September 22, 2020

In The

Court of Appeals

For The

First District of Texas

NOS. 01-18-01016-CR,

01-18-01017-CR,

01-18-01018-CR

ROBERTO AMAYA PACAS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Case Nos. 1561964, 1561965, 1561966

O P I N I O N

Roberto Amaya Pacas pleaded guilty to three indictments charging him with aggravated assault, a second-degree felony. The trial court found him guilty and assessed punishment at 16 years' imprisonment for each charge, with the sentences

running concurrently. On appeal, Pacas contends that the trial court erred in accepting his guilty plea because the Texas Constitution requires a jury trial in all criminal prosecutions. He also alleges that he was assessed duplicative court costs. We modify the trial court's judgments in case numbers 1561965 and 1561966 to delete duplicative court costs and affirm the judgments as modified. We affirm the trial court's judgment in case number 1561964.

Background

In October 2017, a grand jury returned three indictments against Pacas relating to the same incident in which he shot his girlfriend and her two sons. The first accused him of aggravated assault with a deadly weapon against a family member for shooting his girlfriend with a firearm. The second and third indictments charged Pacas with aggravated assault with a deadly weapon for shooting his girlfriend's two sons.

Pacas signed and filed a "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession" in each case, in which he pleaded guilty and admitted that he committed the acts as alleged in each indictment. Pacas's trial counsel also signed the "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession" in each case, affirming that he believed that Pacas had entered his guilty plea knowingly, voluntarily, and after a full discussion of the

consequences of the plea. Counsel also affirmed that he believed his client was competent to stand trial.

Pacas signed written admonishments that informed him he had been indicted for second-degree felonies and of the punishment range for each offense. *See* TEX. CODE CRIM. PROC. art. 26.13. He also signed a "Defendant's Waivers and Statements" in each case, affirming that he was mentally competent; understood the nature of the charge against him, the trial court's admonishments, and the consequences of his plea; and freely and voluntarily pleaded guilty. *See id.* He affirmed that he was satisfied with his representation and that he received effective and competent representation. He gave up his right to a jury and his right to require the appearance, confrontation, and cross-examination of witnesses; and he consented to the oral and written stipulations of evidence in the case. He also signed a non-citizen immigration admonishment acknowledging that he was freely and voluntarily pleading guilty and that he was aware of the immigration consequences of his decision.

The trial court found sufficient evidence of Pacas's guilt and found that he had entered his guilty plea in each case freely, knowingly, and voluntarily. The court accepted his guilty pleas and found him guilty of two counts of aggravated assault with a deadly weapon and one count of aggravated assault with a deadly weapon against a family member. TEX. PENAL CODE § 22.02(a). Each of the three offenses

is a second-degree felony. *Id.* § 22.02(b). At the conclusion of a sentencing hearing, at which the State and appellant both presented evidence, the trial court sentenced him to 16 years' imprisonment in each case and ordered the sentences to run concurrently.

Pacas was ordered to pay court costs in each of the three cases. The bill of costs in the first case lists $334 in court costs. The bill of costs in the second and third cases listed $309 in costs each. The $309 costs in the second and third cases consisted of exactly the same court costs as the first, except that a $25 court cost for "Summoning Witness/Mileage" was not assessed. Pacas appeals.

Right to a Jury Trial

In his first issue, Pacas contends that his convictions should be vacated because he did not receive a jury trial. Article I, section 10 of the Texas Constitution states, "In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury." TEX. CONST. art. I, § 10. He argues that this creates an absolute requirement of jury trials in every criminal prosecution. He relies solely on the language contained in this clause to assert that he could not waive a constitutional mandate to a jury trial. We disagree.

A. Applicable Law and Standard of Review

Two provisions of the Texas Constitution address the concept of trial by jury in a criminal case. Article I, section 10 of the Texas Constitution, titled "Rights of

accused in criminal prosecutions," states: "In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury." TEX. CONST. art. I, §10. Article I, section 15, titled "Right of trial by jury," states: "The right of trial by jury shall remain inviolate" and authorizes the Legislature to "pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency." TEX. CONST. art. I, § 15; *see also* TEX. CODE CRIM. PROC. art. 1.13 ("Waiver of trial by jury"). The Sixth Amendment to the United States Constitution addresses the concept of trial by jury. It provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed . . . ." U.S. CONST. amend. VI.

When interpreting our state constitution, we rely heavily on its literal text and give effect to its plain language. *Republican Party of Tex. v. Dietz*, 940 S.W.2d 86, 89 (Tex. 1997). We may consider "such things as the purpose of the constitutional provision, the historical context in which it was written, the collective intent, if it can be ascertained, of the framers and the people who adopted it, our prior judicial decisions, the interpretations of analogous constitutional provisions by other jurisdictions, and constitutional theory." *Id.* "It is well established that a reasonable construction should be given to constitutional provisions and that a provision will not be construed so as to lead to absurd conclusions, great public inconvenience, or

unjust discrimination, if any other interpretation can be reasonably indulged." *In re Keller*, 357 S.W.3d 413, 421 (Tex. Spec. Ct. Rev. 2010).

B. Analysis

The trial court did not err by allowing Pacas to waive his right to a jury and accepting his guilty pleas. The Texas Constitution does not mandate that a defendant may not waive a jury trial in felony cases. Our analysis of article I, sections 10 and 15, our review of the history and context of the adoption of the Texas Constitution, and precedent from the Court of Criminal Appeals supports this conclusion.

1. Interpretation of the Texas Constitution

Pacas admits that article I, section 15 of the Texas Constitution articulates a waivable right to a trial by jury, while article I, section 10 provides a mandate to a trial by jury in felony prosecutions. But it is illogical to read the state constitution to simultaneously allow for the waiver of trial by jury in one provision while also mandating a trial by jury in another provision. *See Keller*, 357 S.W.3d at 421 (constitutional provisions should not be interpreted to lead to absurd conclusions if any other interpretation can be reasonably indulged). We construe constitutional provisions and amendments that relate to the same subject matter together and consider those amendments and provisions in light of each other. *Doody v. Ameriquest Mortg. Co.*, 49 S.W.3d 342, 344 (Tex. 2001).

Article I, sections 10 and 15 are *in pari materia* because they both articulate the right to the trial by jury. The Texas Court of Criminal Appeals has explained:

> It is a settled rule of statutory interpretation that statutes that deal with the same general subject, have the same general purpose, or relate to the same person or thing or class of persons or things, are considered as being in pari materia though they contain no reference to one another, and though they were passed at different times or at different sessions of the legislature.

State v. Vasilas, 253 S.W.3d 268, 271–72 (Tex. Crim. App. 2008), (internal citations and quotations omitted). The *Vasilas* court explained that *in para materia* applies only if two statutes "have the same purpose or object, provides that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail." *Id.* at 273, quoting 67 Tex. Jur. 3d *Statutes* § 133 (Supp. 2008). The guidelines applicable to the construction of statutes are equally applicable to the construction of the Texas Constitution. *Tex. Bankers Ass'n v. Ass'n of Cmty. Orgs. for Reform Now (ACORN)*, 303 S.W.3d 404, 408 (Tex. App.—Austin 2010), *aff'd in part, rev'd in part on other grounds sub. nom. Fin Comm'n of Tex. v. Norwood*, 418 S.W.3d 566 (Tex. 2013).

Because article I, sections 10 and 15 are *in pari materia*, we read them in harmony, and when there is a conflict, the specific provision controls over the general provision. *See Vasilas*, 253 S.W.3d at 273. Article I, section 15 dictates that the right to a jury trial "shall remain inviolate," mandates that the Legislature pass

laws to regulate the right of trial by jury and to "maintain its purity and efficiency," and permits the Legislature to provide for temporary commitment of mentally ill people not charged with an offense for a period of time. TEX. CONST. art. I, § 15. Section 10 of the same article lists the rights of an accused, including that he shall have "a speedy public trial by an impartial jury," the right to know the accusations against him, the right to confront witnesses, and the right to produce evidence. TEX. CONST. art. I, § 10. We read the sections together, and because they each articulate rights with respect to a jury trial, the more specific article controls. *See Vasilas*, 253 S.W.3d at 273. Article I, section 15, titled "Right to trial by jury" is more specific than article I, section 10, which explains the general rights of an accused in criminal prosecutions. We conclude that a harmonious reading of the Texas Constitution provisions allows for the waiver of the trial by jury.

2. History of the Texas Constitution and Context

Our conclusion is the same when considering the constitutional history and context surrounding article I, section 10. The directive in article I, section 10 of the Texas Constitution that forms the basis of Pacas's complaint has been in every Texas Constitution since statehood, with minor variations in punctuation. *See* TEX. CONST. of 1845, art. I, § 8; TEX. CONST. of 1861, art. I, §8; TEX. CONST. of 1866, art. I, § 8; TEX. CONST. of 1869 art. I, § 8. To understand its origins, we begin by reviewing the inception of the jury trial in English common law and the history of the Republic of

Texas at the time of the adoption of the Texas Constitution. "Texas courts have often noted that the primary goal in the interpretation of a constitutional provision is to ascertain and give effect to the apparent intent of the voters who adopted it." *Lanford v. Fourteenth Court of Appeals,* 847 S.W.2d 581, 585 (Tex. Crim. App. 1993). When attempting to discern apparent legislative intent, "we necessarily focus our attention on the literal text of the statute in question and attempt to discern the fair, objective meaning of that text at the time of its enactment." *Boykin v. State,* 818 S.W.2d 782, 785 (Tex. Crim. App. 1991).

i. English Common Law and the U.S. Constitution

At its inception in the English common law, trial by jury was an alternative to older methods of proof, such as trial by compurgation, ordeal, or battle. *Singer v. United States*, 380 U.S. 24, 27 (1965) (citing I Holdsworth, *A History of English Law* 326 (7th ed. 1956)). Even after compurgation, ordeal, and battle had passed into disuse after the thirteenth century, defendants technically retained the right to be tried by one of them. *Singer*, 380 U.S. at 27. Before a defendant could be subjected to a jury trial, his "consent" was required, but the concept of "consent" at the time differed from ours today. *Id.* Defendants who refused to submit to jury trial were refusing "to stand to the Common law of the Land." *Id.* (internal quotation removed). A defendant who did so was subject to *peine forte et dure* by which recalcitrant defendants were tortured until death or until they "consented" to a jury trial. *Id.*

Defendants were willing to be tortured to death rather than submit to a jury trial because of their desire to avoid a conviction, preventing forfeiture of their lands and resultant hardships for their descendants. *Id.* at 27 n.3. In 1772, *peine forte et dure* was officially abolished in England. *Id.* at 27.

The English colonies in America permitted waiver of jury trial. *See Singer*, 380 U.S. at 29–30 (explaining that in Maryland and Massachusetts defendants waived jury trials and were tried to the bench). As hostility to England grew, colonists in Massachusetts were concerned with the "question of a man's right to a jury when he asked for it, which they thought in danger." *Id.* (internal quotation and citation removed). These colonists emphasized their right to trial by jury, rather than their right to choose between alternate methods of trial, and gradually the ability to choose between jury and bench became a forgotten option. *Id.* at 29.

The U.S. Constitution "must be read in light of the common law" because the common law's principles and history were familiar to its framers. *Schick v. United States*, 195 U.S. 65, 69 (1904). The U.S. Constitution included from its ratification article III, section 2, mandating that "the trial of all Crimes, except in Cases of Impeachment, shall be by Jury" in the state where the crime was committed. U.S. Const. art. III, §2. In 1930, the U.S. Supreme Court addressed jury trial waiver in federal criminal cases and the tension between article III, section 2 of the Constitution and the Sixth Amendment. *See Patton v. United States*, 281 U.S. 276,

295 (1930). The court concluded that article III, section 2 was not jurisdictional and was meant to "confer a right upon the accused which he may forego [sic] at his election." *Id.* at 298. A jury trial is a "privilege" not an "imperative requirement." *Id.*

ii. Mexican Rule and the Adoption of the Texas Constitution

Before declaring their independence, Texans were citizens of the Mexican state of Coahuila and Texas. Under that state's constitution, they had no right to a trial because all criminal actions were decided "by executive judgment without the form or shape of trial," with no appeal. Coahuila & Tex. Const. of 1827, art. 181, *reprinted in* 1 H.P.N. Gammel, *The Laws of Texas, 1822-1897*, at 338 (Austin, Gammel Book Co. 1898). Other methods of proof, such as torture and compulsion, were prohibited. *Id.* art. 190, at 339. Article 192 of the constitution declared that "[o]ne of the main objects of attention of congress shall be to establish the trial by jury in criminal cases, to extend the same gradually, and even to adopt it in civil cases in proportion as the advantages of this valuable institution become practically known," indicating that the state's citizens were interested in expanding use of jury trials. *Id.* After experiencing abuse and oppression, including a prohibition on trials, inflicted on them as citizens of the Mexican government, the framers of the Constitution of the Republic of Texas insisted upon trial "by an impartial jury."

Repub. Tex. Const. of 1836, Sixth Declaration of Rights, *reprinted in* 1 H.P.N. Gammel, *The Laws of Texas 1822-1897*, at 23 (Austin, Gammel Book Co. 1898).

We do not agree with Pacas that the framers of the Texas Constitution meant to prohibit guilty pleas and concomitant waiver of trial in declaring that all felony trials would be by jury. This view overlooks that guilty pleas existed in Texas even before the adoption of the constitution. *See Crow v. State*, 6 Tex. 334, 334 (1851) (a guilty plea is "nothing more than an acknowledgement of the facts charged" and whether those facts constitute an offense is left for the court to decide); *see also Lanford*, 847 S.W.2d at 585 (stating that courts must ascertain and give effect to the intent of the voters who adopted the constitution). A guilty plea before a jury admitted the existence of all facts necessary to establish guilt. *Fairfield v. State*, 610 S.W.2d 771, 776 (Tex. Crim. App. 1981) (quoting *Crow*, 6 Tex. at 334).

By statehood, Texas enacted a system where the jury assessed punishment in all felony cases. Act of April 30, 1846, 1st Leg. R.S., 1846 Tex. Gen'l Laws 161, 161, *reprinted in* 2 Gammel, *The Laws of Texas 1822-1897*, at 1467; *see also Johnson v. State*, 39 Tex. Crim. 625, 627 (Tex. Crim. App. 1898) (stating that after the court accepts a defendant's guilty plea, "there must be a jury impaneled to assess his punishment and evidence submitted to enable them to decide thereon").[1] The

[1] For misdemeanors, a guilty plea could be made by either the defendant or his counsel in open court, and the defendant or his counsel could waive a jury. If the defendant did so, the court assessed punishment either with or without evidence, at

Sixth Legislature adopted the original 1856 Code of Criminal Procedure that created statutory requirements for guilty pleas. For example, the Code stated that "[t]he defendant to a criminal prosecution for any offence may waive any right secured to him by law, except the right of trial by jury when he has pleaded not guilty." 1856 Code of Criminal Procedure, 6th Leg., Adj. S., § 1, art. 26. Shortly after, in *Saunders v. State*, 10 Tex. App. 336 (1881), the court reiterated that there were three statutory requirements for a defendant who pleaded guilty: "1. He shall be admonished by the court of the consequences. 2. It must plainly appear that he is sane. 3. It must plainly appear that he is uninfluenced by any consideration of fear, or by any persuasion or delusive hope of pardon." 10 Tex. App. at 338. The court explained that a plea was an "admission by record of the truth of whatever is well alleged in the indictment." *Id*. at 339.

Even when a defendant pleaded guilty, the jury still heard evidence to assess punishment. "A plea of guilty, without its concomitants, is not good." *Johnson*, 39 Tex. at 627; *see also Evers v. State*, 22 S.W. 1019, 1020 (1893) (requiring evidence to be submitted to jury for punishment and requiring court to admonish the defendant so that he was "uninfluenced by any considerations of fear, or by any persuasion, or delusive hope of pardon, prompting him to confess his guilt"). Submitting evidence

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the discretion of the court. *Johnson v. State*, 39 Tex. 625, 627 (Tex. Crim. App. 1898).

to the jury to decide punishment after a plea was mandatory because it not only benefitted the defendant but "more especially, [protected] the interests of the State by preventing aggravated cases of crime to be covered up by the plea of guilty so as to allow the criminal to escape with the minimum punishment fixed by law." *Harwell v. State*, 19 Tex. App. 423, 423 (1885). Failure to present evidence to the jury was fundamental error. *Id.* Relatedly, a defendant could withdraw his guilty plea before the jury began deliberating, and in so doing, reimpose the State's burden of proof as to guilt. *Fairfield*, 610 S.W.2d at 776. Therefore, the right to withdraw a guilty plea was derived directly from the right to trial by jury. *Id.*

Even though article I, section 10 established that all felony cases would be tried by jury, this did not equate to a prohibition of pleas. "It was an utterly 'alien notion in both the days of the Republic and the early days of statehood that a citizen be convicted of a felony offense other than by verdict of a jury, there being no procedural method whatever for waiver of jury in the trial of a felony until 1931.'" *State ex rel. Turner v. McDonald*, 676 S.W.2d 371, 373 (Tex. Crim. App. 1984) (quoting *Fairfield*, 610 S.W.2d at 776). In 1931, after the U.S. Supreme Court's decision in *Patton*, Texas allowed a defendant to waive the entry of his plea before a jury, effectively waiving his jury trial right, and conditioned the effectiveness of the waiver upon consent and approval by the State and the trial court. *Thornton v. State*, 601 S.W.2d 340, 346 (1979), *overruled by Ex parte Martin*, 747 S.W.2d 789

(Tex. Crim. App. 1988). A judge could accept a guilty plea without impaneling a jury to hear it.

Reviewing the right to a jury trial in context, giving effect to the intent of the constitutional adopters, we note that the state constitutional provisions regarding jury trials were adopted to protect the jury trial as the chosen method of proof, as opposed to other methods. Given that historically a jury decided punishment, even if the defendant pleaded guilty, we cannot say that article I, section 10 of the Texas Constitution prohibits a guilty plea.

3. Applicable Texas Precedent

Finally, our conclusion is supported by precedent. "As an intermediate court of appeals, we are bound to follow the precedent of the court of criminal appeals." *Ervin v. State*, 331 S.W.3d 49, 53 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd); *see* TEX. CONST. art. V., § 5(a) (court of criminal appeals is final authority for criminal law in Texas). The Court of Criminal Appeals has stated that "there is no significant textual difference between" article I, section 10 of the Texas Constitution and the Sixth Amendment to the United States Constitution that "indicate[s] that different standards of protection should be applied" to criminal defendants under either constitution. *See Jacobs v. State*, 560 S.W.3d 205, 210 (Tex. Crim. App. 2018) (internal quotations omitted). The people of Texas have the authority to provide greater protections to criminal defendants than those provided in the federal

constitution. They have chosen not to in the context of the right to the trial by jury in criminal cases. *See id.* In other words, "the right in the [Texas] [C]onstitution is no greater than that recognized in the Sixth Amendment." *Uranga v. State*, 330 S.W.3d 301, 304 (Tex. Crim. App. 2010). Although article I, section 10 is expressed in mandatory terms as an indispensable feature of the system, the Court of Criminal Appeals has held that the constitutional provision "conferred a right to the accused which could not be impaired without his consent, as authorized by the Legislature." *Delrio v. State*, 840 S.W.2d 443, 445 n.2 (Tex. Crim. App. 1992). Article I, section 10 gives a defendant a right to a trial by jury, which he may waive at his election with the consent of the State.

Additionally, the Court of Criminal Appeals has rejected Pacas's exact argument on appeal. *See Dabney v. State*, 60 S.W.2d 451, 451 (Tex. Crim. App. 1933); *see also Farris v. State*, 581 S.W.3d 920, 924 (Tex. App.—Houston [1st Dist.] 2019, pet. denied) (rejecting same argument, noting *Dabney*).

We overrule Pacas's first issue.

Duplicative Court Costs

In his second issue, Pacas argues that he was assessed duplicative court costs across his three convictions. Specifically, he contends that he was overcharged $618 because he was ordered to pay duplicative court costs in two of his three judgments arising from the same criminal incident.

The State concedes that court costs in two of the cases are duplicative of costs assessed in a third. When there are multiple convictions arising from the same criminal episode, assessing multiple court costs is prohibited. TEX. CODE CRIM. PROC. art. 102.073(a).

We modify the judgments to assess no court costs in trial court case numbers 1561965 and 1561966.

Conclusion

We modify the trial court's judgments in case numbers 1561965 and 1561966 to assess no court costs and affirm the judgments as modified. We affirm the trial court's judgment in case number 1561964.

Peter Kelly
Justice

Panel consists of Chief Justice Radack and Justices Kelly and Goodman.

Justice Goodman, dissenting.

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