

NO. 07-11-0200-CR
NO. 07-11-0201-CR
NO. 07-11-0202-CR

IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL C

JULY 18, 2011

JOSHUA COBBS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 137TH DISTRICT COURT OF LUBBOCK COUNTY;

NOS. 2010-427,391, 2010-428,785, 2010-428,786;

HONORABLE JOHN McCLENDON, JUDGE

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

MEMORANDUM OPINION

Upon pleading guilty in open court, Appellant, Joshua Cobbs, was convicted of aggravated assault with a deadly weapon in three causes and sentenced to sixty years confinement in each cause, with the sentences running concurrently. The State candidly concedes the trial court committed reversible error in Cause Nos. 07-11-0200-

CR and 07-11-0201-CR; however, it maintains the judgment in Cause No. 07-11-0202-CR is supported by the record. We agree.

CAUSE No. 07-11-0200-CR (TRIAL COURT CAUSE No. 2010-427,391)

The indictment in this cause alleged Appellant committed the offense of aggravated assault by causing serious bodily injury to Ashley Shedd, by striking her with his hand. See Tex. Penal Code Ann. § 22.02(a)(1) (West 2011). Appellant raises four issues contending the trial court erred: (1) by including a deadly weapon finding; (2) by accepting Appellant's plea in contravention of article 1.15 of the Texas Code of Criminal Procedure;¹ (3) by proceeding without adequate jurisdiction; and (4) by finding Appellant guilty of an uncharged offense. The State candidly concedes the trial court's judgment is void in finding Appellant guilty of aggravated assault by the use or exhibition of a deadly weapon; see Tex. Penal Code Ann. § 22.02(a)(2), an uncharged offense that is not a lesser-included-offense. We accept the State's concession of error.

Accordingly, as to this cause, we sustain Appellant's fourth issue. Our sustention of issue four pretermits Appellant's remaining issues. See Tex. R. App. P. 47.1.

CAUSE No. 07-11-0201-CR (TRIAL COURT CAUSE No. 2010-428,785)

The indictment in this cause alleged Appellant committed the offense of aggravated assault by causing serious bodily injury to Lanika Moore, by stabbing her with a knife, see Tex. Penal Code Ann. § 22.02(a)(1) (West 2011); and, during the commission of the assault, he did use or exhibit a deadly weapon. See Tex. Penal

¹Throughout the remainder of this opinion, we will refer to provisions of the Texas Code of Criminal Procedure as "article ____" or "art. ____."

Code Ann. § 22.02(a)(2) (West 2011). Appellant raises two issues contending the trial court erred: (1) by accepting his plea in contravention of article 1.15 of the Texas Code of Criminal Procedure; and (2) by finding him guilty of an uncharged offense. The State candidly concedes the trial court's judgment is void in finding Appellant guilty of an uncharged offense, to-wit: "us[ing] a deadly weapon during the commission of the assault and caus[ing] serious bodily injury to a person *whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code.*" See Tex. Penal Code Ann. § 22.02(b)(1) (emphasis added). Again, we accept the State's concession of error.

Accordingly, as to this cause, we sustain Appellant's second issue. Our sustention of issue two pretermits Appellant's remaining issue. See Tex. R. App. P. 47.1.

CAUSE No. 07-11-0202-CR (TRIAL COURT CAUSE No. 2010-428,786)

The indictment in this cause alleged Appellant committed the offense of aggravated assault by causing serious bodily injury to Alecia Logan, by stabbing her with a knife, see Tex. Penal Code Ann. § 22.02(a)(1) (West 2011); and by the use or exhibition of a deadly weapon, during the commission of the assault. See Tex. Penal Code Ann. § 22.02(a)(2) (West 2011). The indictment further alleged that Alecia Logan was a person with whom Appellant has or has had a dating relationship, as described by Section 71.005 of the Texas Family Code. See Tex. Penal Code Ann. § 22.02(b)(1). By a single issue, Appellant contends the State's evidence was insufficient to show either the use of a deadly weapon or the infliction of serious bodily injury in the

commission of the offense and the trial court therefore erred by accepting his plea in contravention of article 1.15 of the Texas Code of Criminal Procedure.

In support of Appellant's guilty plea, the State introduced Appellant's "*Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession.*" By way of this document, Appellant consented to the stipulation of evidence and waived certain rights.² See art. 1.15. This document also represented that Appellant understood the "foregoing allegations" and confessed to their truth.³ In that regard, the indictment alleged that, "[Appellant] . . . on or about September 7, 2010, did then and there intentionally, knowingly or recklessly cause serious bodily injury to Alecia Logan by stabbing [her] with a knife, and [he] did then and there use or exhibit a deadly weapon, to-wit: [a] knife, during the commission of said assault, and the said Alecia Logan was a person with whom [Appellant] has or has had a dating relationship, as described by Section 71.005 of the Family Code" The stipulation and confession was signed by Appellant, witnessed by his counsel, and approved by the prosecutor and trial court before being filed with the court.

The State contends Appellant's admission of guilt contained in this stipulation and confession is sufficient to meet the requirements of article 1.15. Appellant

²Under article 1.15, the State's evidence may be stipulated if the defendant consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents to an oral stipulation of the evidence or the introduction of affidavits, written statements or other documentary evidence in support of the judgment.

³The caption of the *Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession* indicates that it was a legal instrument filed in conjunction with "No. 2010428786, THE STATE OF TEXAS VS. **JOSHUA COBBS**, . . . Felony Charge: **AGG ASSAULT DV - DW & SBI**, . . . Agency/Rpt#: LPD / 10-44897" The following page contained in the Clerk's Record is an unsigned document also entitled *Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession*, reciting the specific allegations contained in the indictment. From this, we conclude that the "foregoing allegations" refer to the allegations contained in the indictment in this cause.

acknowledges that a judicial confession alone would be sufficient to support a plea, but contends the requirements of article 1.15 were not met here because this document was not introduced into evidence by the State and the trial court did not take judicial notice of it. In that regard, Appellant cites this Court to no authority specifically requiring that a stipulation and confession be formally admitted into evidence or be judicially noticed in order to meet the requirements of article 1.15, and we find none.

As used in article 1.15, the term “stipulation” includes “agreements about what *particular evidence or testimony would be, if presented in full and open court*, without conceding the truthfulness of that evidence or otherwise waiving the need for proof.” *Nixon v. State*, 928 S.W.2d 212, 214 (Tex.App.—Beaumont 1996, no pet.) (citing *Robinson v. State*, 739 S.W.2d 795, 799 n.51 (Tex.Crim.App. 1987)) (Emphasis added). “In reviewing our sufficiency of stipulated evidence to support the trial court’s finding of guilt, we view stipulations as if they were actual witness testimony.” *Id.* (quoting *Stell v. State*, 496 S.W.2d 623, 626 (Tex.Crim.App. 1973)). Therefore, because the stipulation and confession was filed as a legal document in this cause and became a part of the record of this case, we find that the stipulation was “as if” presented by actual witness testimony.

Moreover, because Appellant’s judicial confession is sufficient to show that he committed the offense alleged in the indictment, the record need not contain other evidence to satisfy the State’s burden under article 1.15. *See Keller v. State*, 125 S.W.3d 600, 605 (Tex.App.—Houston [1st Dist.] 2003, pet. dismiss’d), (evidence sufficient where Appellant read and signed a similar “Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession stating ‘I understand the above allegations and I

confess they are true”), *cert. denied*, 544 U.S. 906, 125 S.Ct. 1603, 161 L.Ed.2d 280 (2005). Accordingly, we conclude that the filing of Appellant’s stipulation and judicial confession was sufficient to support the judgment under article 1.15. See *Dinnery v. State*, 592 S.W.2d 343, 353 (Tex.Crim.App. 1980) (“It is well settled that a judicial confession, standing alone, is sufficient to sustain a conviction upon a guilty plea. [collected cases cited therein]”). Appellant’s single issue is overruled.

CONCLUSION

Agreeing with the State's position, the trial court’s judgments in Cause Nos. 07-11-0200-CR and 07-11-0201-CR are reversed and those causes are remanded to the trial court for further proceedings; and the trial court’s judgment in Cause No. 07-11-0202-CR is affirmed.

Patrick A. Pirtle
Justice

Do not publish