In The
Court of Appeals
Seventh District of Texas at Amarillo

Nos. 07-16-00114-CR,
07-16-00115-CR

TARYN MARIE LEWIS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 108th District Court
Potter County, Texas
Trial Court Nos. 70,675-E, 70,676-E, Honorable Douglas Woodburn, Presiding

June 12, 2017

MEMORANDUM OPINION

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

The pivotal circumstances giving rise to the issues in this appeal were easily avoidable. They involve due process and article 26.13 of the Texas Code of Criminal Procedure. Taryn Marie Lewis (appellant) entered open guilty pleas to the charges levied against her. The trial court, however, did not admonish her of the consequences of her pleas as required by article 26.13. Nor did either the prosecutor or defense counsel make any effort to remind the trial court to do that. Admittedly, defense counsel may have less incentive to assist the trial court given a potential intent to build error into

the trial. Yet, the same cannot be said of the State. It would seem that the State would want to assure that the measures needed to validate a guilty plea are done since the plea relieves it of much of its work. Had either, though, taken a moment here to simply say to the trial court that it had better admonish the accused per article 26.13 and question her about whether her pleas were knowingly, voluntarily, and otherwise intelligently made, the complaints involved in this appeal could have been avoided. The adversarial process does not afford many opportunities for teamwork between the litigants. But, there are some aspects of a case wherein trial counsel can work together with the trial court to assure that the law is followed, such as when a defendant pleads guilty and long-established law mandates that certain steps occur before the plea is accepted. Doing that not only fosters the legitimate disposition of cases but also protects the interests of all involved.

Lewis appeals her convictions for the offenses of possession of a controlled substance in an amount less than one gram and unlawfully possessing a firearm. Though she pled guilty before a jury to both charges, she pled "not true" to the deadly-weapon allegation contained within the controlled-substance accusation. Thus, her trial during the guilt-innocence phase was limited to the deadly-weapon issue. The jury found appellant guilty of both offenses but determined that the deadly-weapon allegation was "not true." After completion of the punishment phase of the trial, it also assessed a seven-year prison term for her possessing the drugs and a nine-year term for her possessing the firearm.

Two issues are before us. The first involves whether the record contains evidence illustrating that her guilty pleas were made intelligently, knowingly, and

voluntarily. The second involves the trial court's noncompliance with article 26.13 of the Texas Code of Criminal Procedure. We affirm.

Issue One – Due Process

Through her first issue, appellant contends that the trial court denied her due process by accepting her guilty pleas without evidence affirmatively establishing that those pleas were made intelligently, knowingly, and voluntarily. We overrule the issue.

"It is a due process violation for a trial court to accept a guilty plea without an affirmative showing 'spread on the record' that the guilty plea was intelligently and knowingly made." *Fuller v. State*, 253 S.W.3d 220, 229 (Tex. Crim. App. 2008) (citing *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)). "Unless the appellate record discloses that a defendant entered his guilty plea 'voluntarily and understandingly[,]' a reviewing court must presume that he did *not*, and rule accordingly." *Davison v. State,* 405 S.W.3d 682, 690 (Tex. Crim. App. 2013) (citing *Boykin*, 395 U.S. at 244).

Yet, the admonishments required by article 26.13 of the Texas Code of Criminal Procedure are not constitutionally required to render a plea voluntary and knowing, though their provision may assist the trial court in determining that it was such. *See Fuller*, 253 S.W.3d at 229. Nor must the defendant be admonished on the range of punishment to satisfy the requirements of due process. *See Davison*, 405 S.W.3d at 687 (stating that due process does not require the equivalent of the article 26.13(a) admonishments or an admonishment on the range of punishment). Rather, if the record affirmatively discloses that the defendant's guilty plea was adequately informed, due process is satisfied even in the absence of express admonishments. *Id.*

Here, the record reflects that (1) appellant had spoken to her attorney about her decision to plead guilty, (2) her attorney informed her that she did not have to plead guilty, and (3) she knew she had a right not to plead guilty even if she thought what she had done was against the law. Appellant also acknowledged that she knew she did not have to testify, she was testifying of her "own free will," and she was not "coerced or threatened." The trial court also informed her that it would grant her a mistrial and begin anew if she felt she had "been improperly advised or if the fact that we did not go over that before this jury was impaneled." At the very least, this is some evidence that she knew she had no obligation to incriminate herself, that her decision to testify was volitional, and that her decision to plead guilty had been discussed with her attorney beforehand.

That she knew of her right to a jury trial can also be inferred from the record. Voir dire of the potential jury had just been completed, and the jury selected to decide her fate was sitting in the court at the time she opted to plead guilty. *See Campbell v. State*, No. 02-08-00232-CR, 2009 Tex. App. LEXIS 4856, at *9 (Tex. App.—Fort Worth 2009, no pet.) (mem. op., not designated for publication) (noting that the defendant "must have been aware of his right to a jury trial since he was in the process of exercising it before he announced his guilty plea in front of the jury").

Additionally, one can glean from the record that appellant's decision to plead guilty was part of an overall trial strategy. That is, she accepted responsibility for committing the charged offenses and sought from the jury the opportunity to obtain rehabilitative services that she purportedly needed. *See id.* at *10–11 (observing that

"the voluntary nature of Campbell's guilty plea is further shown in the record by the 'evidence that [Campbell's] guilty plea was part of a strategy'")

Admittedly, much more could have occurred to assure that appellant's pleas were knowing and voluntary. Yet, the record contains sufficient evidence to indicate that appellant's decision to forgo a trial by her peers and forgo her rights to remain silent and to have the State prove its accusations was knowing and voluntary.

Issue Two – Article 26.13

Through appellant's second issue, she contends that the trial court's failure to comply with article 26.13(a) of the Code of Criminal Procedure requires reversal. We overrule the issue.

Prior to accepting a guilty plea, the trial court is statutorily required to make certain admonishments to a criminal defendant. TEX. CODE CRIM. PROC. ANN. art. 26.13(a) (West Supp. 2016). Included within them is the obligation to tell the accused of (1) the range of punishment and (2) the potentiality of deportation if the accused is not a citizen of the United States. *Id.* art. 26.13(a)(1), (4); *VanNortrick v. State*, 227 S.W.3d 706, 707–08 (Tex. Crim. App. 2007) (stating that the statute "requires the trial court to admonish a defendant, prior to his plea of guilty or nolo contendere, about the range of punishment for the offense, potential effects of a plea-bargain agreement . . . a sex-offender-registration requirement," and the effect that the plea may have on the accused's continued presence in the United States).

While failing to abide by article 26.13 may be error, it is not necessarily reversible. For it to be reversible, we must determine that it harmed appellant. *See VanNortrick*, 227 S.W.3d at 708–09. And, that requires us to review the record as a

whole to determine whether we "'have a fair assurance that the defendant's decision to plead guilty would not have changed had the court admonished him.'" *See id.* (quoting *Anderson v. State*, 182 S.W.3d 914, 919 (Tex. Crim. App. 2006) (en banc)).

Here, the trial court failed to afford appellant any of the admonishments required by article 26.13(a) prior to accepting her guilty plea. This was and is error. Yet, the record prevents us from concluding that it was harmful, that is, that appellant's decision to plead guilty would have changed had she been properly admonished.

Again, the decision to plead as she did was part of a trial strategy. Furthermore, appellant was present for voir dire, and before it began the trial court stated that appellant was being tried for two third-degree felonies. The prosecutor several times informed the voir dire panel that the range of punishment for a third-degree felony was two to ten years. *See Aguirre-Mata v. State*, 26 S.W.3d 922, 925–26 (Tex. App.—Houston [1st Dist.] 2000), *aff'd*, 125 S.W.3d 473 (Tex. Crim. App. 2003) (en banc) (alluding to the prosecutor's statement about the range of punishment during voir dire as a factor in assessing whether appellant was harmed by the trial court's failure to abide by article 26.13(a)). The range of punishment was also included in the trial court's charge to the jury during the punishment phase of the trial. The record does not indicate that appellant expressed surprise or otherwise objected when that range was read to the jury. *See Davison*, 405 S.W.3d at 688–89 (stating that the "appellant's failure to exhibit alarm at the punishment phase was a circumstance relevant to the court of appeals' harm analysis"). So too does the record contain evidence that appellant was born in Amarillo, Texas. *See Lawrence v. State*, 306 S.W.3d 378, 379 (Tex. App.—Amarillo 2010, no pet.) (stating that the failure to admonish about

deportation is harmless if the record shows that defendant is a United States citizen and, therefore, not subject to deportation).

In short, the record does not permit us to infer any possibility that appellant would have changed her pleas had the trial court complied with article 26.13(a). Thus, the error was harmless.

Accordingly, we affirm the trial court's judgment.

Brian Quinn
Chief Justice

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