



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-09-00022-CR

JUAN BALLESTEROS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 7th Judicial District Court
Smith County, Texas
Trial Court No. 007-0955-08

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

_____ Juan Ballesteros was convicted of aggravated robbery, a first-degree felony.¹ It was alleged that during the course of a theft, Ballesteros caused bodily injury to Mary Wood, a person over the age of sixty-five. An enhancement paragraph was included in the indictment, alleging a prior felony conviction for driving while intoxicated. After Ballesteros pled guilty to the underlying charge, but not the punishment enhancement, the case was submitted to the jury for a punishment determination. The jury found the enhancement paragraph "true" and assessed Ballesteros's punishment at life in prison and a \$10,000.00 fine.

Ballesteros argues that there is legally and factually insufficient evidence that he pled guilty, and in the event he did plead guilty, that there is insufficient evidence to support the plea.² We disagree.

We affirm the judgment because Ballesteros pled guilty and there is sufficient evidence to support the plea.

¹Originally appealed to the Twelfth Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (Vernon 2005). We are unaware of any conflict between precedent of the Twelfth Court of Appeals and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

²Ballesteros's arguments are apparently based upon the premise that documentation of the plea and stipulation of evidence are absent from the record. However, the supplemental clerk's record containing the acknowledgment of admonishments, stipulation of evidence, waiver of jury trial, and agreement to stipulate testimony was filed after Ballesteros's brief.

"No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless the defendant, upon entering a plea, has in open court in person waived his right of trial by jury in writing" TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon 2005). The State is required to introduce evidence showing the defendant's guilt.³ *See id.* Evidence is sufficient under Article 1.15 if it embraces every essential element of the offense charged and establishes the defendant's guilt. *See Stone v. State*, 919 S.W.2d 424, 427 (Tex. Crim. App. 1996). A judicial confession alone is usually sufficient to satisfy the requirements of Article 1.15, but a judicial confession that omits an element of the offense is insufficient to support a guilty plea.⁴ An oral confession may also constitute sufficient evidence to support the judgment and to satisfy Article 1.15. *See* TEX. CODE CRIM. PROC. ANN. art. 1.15; *Lord v. State*, 63 S.W.3d 87, 92 (Tex. App.—Corpus Christi 2001, no pet.) (citing *Dinnery v. State*, 592 S.W.2d 343, 353 (Tex. Crim. App. [Panel Op.] 1979) (op. on reh'g) (holding oral exchange with court at time plea accepted constituted

³Article 1.15 provides that:

The evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents either to an oral stipulation of the evidence and testimony or to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment of the court.

TEX. CODE CRIM. PROC. ANN. art. 1.15.

⁴A defendant's written stipulation that the evidence admitted is true and correct qualifies as a judicial confession. *Roberson v. State*, 879 S.W.2d 250, 254 (Tex. App.—Dallas 1994, no pet.).

judicial confession sufficient to support judgment and satisfy Article 1.15)); *McFarland v. State*, 644 S.W.2d 17, 18 (Tex. App.—Dallas 1982, no pet.) (defendant's oral judicial confession he is pleading guilty just as he is charged in indictment sufficient evidence to support plea).

An exception to this rule provides that if the judicial confession contains a "catch-all" phrase that the defendant is guilty "as charged in the indictment," the confession is sufficient evidence to support the conviction even where an element of the offense has been omitted. *See Snyder v. State*, 629 S.W.2d 930, 932 (Tex. Crim. App. 1982). This exception seems also to apply to sworn oral statements made by the defendant during the course of the plea proceedings that the indictment is "true and correct." *Breaux v. State*, 16 S.W.3d 854, 857 n.2 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

Aggravated robbery occurs when a person commits robbery as defined in Section 29.02⁵ and (1) causes serious bodily injury to another or (2) uses or exhibits a deadly weapon. TEX. PENAL CODE ANN. § 29.03 (Vernon 2003).

⁵Under Section 29.02 of the Texas Penal Code, a person commits robbery if "in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." TEX. PENAL CODE ANN. § 29.02 (Vernon 2003).

Theft is defined as the unlawful appropriation of property with the intent to deprive the owner of the property. TEX. PENAL CODE ANN. § 31.03(a) (Vernon Supp. 2008).

In this case, Ballesteros made several clear guilty pleas. During the trial, Ballesteros affirmatively stated that he understood the charges of the indictment and the range of punishment. Then, the following two exchanges took place between the trial court and Ballesteros:

THE COURT: As to that underlying first-degree felony charge, I think you pled guilty to that, correct?

[BALLESTEROS]: Yes.

....

THE COURT: . . . Are you pleading guilty today because you're, in fact, guilty of each of those charges and for no other reason? Are you pleading guilty because you are guilty?

[BALLESTEROS]: Guilty because I am guilty.

In the signed and sworn stipulation of evidence, Ballesteros admits to committing the specific acts alleged in the indictment. The indictment alleged that "while in the course of committing theft of property and with intent to obtain or maintain control of said property [Ballesteros] intentionally, knowingly, or recklessly cause[d] bodily injury to Mary Wood, a person 65 years of age or older, by pulling Mary Wood to the ground and pushing Mary Wood to the ground." In stipulation of evidence, Ballesteros confessed that the allegations in the indictment were true and correct, repeating the allegations verbatim. The oral statements and the stipulation of evidence amount to a judicial

confession of the acts alleged in the indictment. Therefore, there is sufficient evidence that Ballesteros pled guilty and there is sufficient evidence to support the plea. We overrule Ballesteros's points of error and affirm the judgment of the trial court.

Bailey C. Moseley
Justice

Date Submitted: August 31, 2009
Date Decided: September 11, 2009

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