

**NO. 12-15-00173-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*MICHAEL BENJAMIN JOHNSON,  
APPELLANT*

§ *APPEAL FROM THE 241ST*

*V.*

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,  
APPELLEE*

§ *SMITH COUNTY, TEXAS*

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***MEMORANDUM OPINION***

Michael Benjamin Johnson appeals his conviction for aggravated assault with a deadly weapon. In his sole issue, Appellant argues that the judgment should be modified to correctly reflect the proceedings below. We modify the trial court’s judgment, and affirm as modified.

**BACKGROUND**

Appellant was indicted for aggravated assault with a deadly weapon. The indictment also alleged that Appellant had been convicted of a prior felony, enhancing the punishment level to that of a first degree felony. Appellant pleaded “not guilty” to the charged offense and “not true” to the enhancement. The case proceeded to a jury trial. The jury found Appellant guilty of the offense and the enhancement to be true, and sentenced him to life imprisonment. The trial court’s judgment reflects that Appellant was convicted of aggravated assault with a deadly weapon, but cites Texas Penal Code Section 22.01, which is the statute for assault, as the statute for the offense. This appeal followed.

### ERROR IN THE JUDGMENT

In his sole issue on appeal, Appellant argues that the judgment should be modified to reflect that he was found guilty of aggravated assault with a deadly weapon under Texas Penal Code Section 22.02, rather than assault under Section 22.01.

We have authority to modify a judgment to speak the truth when we have the necessary information before us to do so. *See* TEX. R. APP. P. 43.2(b); ***Bigley v. State***, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); ***Asberry v. State***, 813 S.W.2d 526, 529 (Tex. App.–Dallas 1991, pet. ref’d). The judgment incorrectly cites the statute for Appellant’s conviction as Texas Penal Code Section 22.01. The record reflects that Appellant was convicted of aggravated assault with a deadly weapon under Texas Penal Code Section 22.02(a)(2). Accordingly, the trial court’s judgment should be modified to reflect that Appellant is guilty of aggravated assault with a deadly weapon under Texas Penal Code Section 22.02(a)(2).

Appellant’s sole issue is sustained.

### DISPOSITION

Having sustained Appellant’s sole issue, we ***modify*** the judgment of the trial court to reflect that Appellant was found guilty of aggravated assault with a deadly weapon under Texas Penal Code Section 22.02(a)(2), and ***affirm*** as modified. *See* TEX. R. APP. P. 43.2(b).

**JAMES T. WORTHEN**  
Chief Justice

Opinion delivered July 20, 2016.

*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*

(DO NOT PUBLISH)



## COURT OF APPEALS

### TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

#### JUDGMENT

JULY 20, 2016

NO. 12-15-00173-CR

**MICHAEL BENJAMIN JOHNSON,**  
Appellant  
V.  
**THE STATE OF TEXAS,**  
Appellee

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Appeal from the 241st District Court  
of Smith County, Texas (Tr.Ct.No. 241-0950-14)

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THIS CAUSE came on to be heard on the appellate record and the briefs filed herein; and the same being inspected, it is the opinion of the Court that the trial court's judgment below should be **modified and, as modified, affirmed.**

It is therefore ORDERED, ADJUDGED and DECREED that the trial court's judgment below be **modified** to reflect that Appellant was found guilty of aggravated assault with a deadly weapon under Texas Penal Code Section 22.02(a)(2); **and as modified**, the trial court's judgment is **affirmed**; and that this decision be certified to the trial court below for observance.

James T. Worthen, Chief Justice.  
*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*