Affirmed and Opinion filed March 16, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00566-CR
NO. 14-99-00567-CR
NO. 14-99-00568-CR
(Consolidated)

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CARL JOINER, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause Nos. 94CR1255, 98CR1821, and 98CR1822

O P I N I O N

Carl Joiner, Jr. (Appellant) was indicted for the first degree felony offenses of murder and aggravated assault. He pled guilty to each offense. On the State's motion to adjudicate his guilt for his prior felony offense of attempted murder, for which he was granted deferred adjudication and placed on community supervision, Appellant pled true. The punishment phase of the proceedings was tried before the court without a jury. At the conclusion of the punishment phase, the trial court sentenced Appellant to

twenty years' imprisonment for his aggravated assault conviction, a term of life imprisonment for his murder conviction, and fifteen years' imprisonment for his previous offense of attempted murder. On appeal to this Court, Appellant assigns three points of error, contending that (1) the trial court failed to directly admonish him when he entered his guilty pleas, (2) his written waiver of rights and consent to the stipulation of evidence for each offense was not approved by the trial court, and (3) the State failed to introduce sufficient evidence into the record to show his guilt. We affirm.

BACKGROUND

The record shows that Appellant went to his former girlfriend's house and forced his way inside. A struggle ensued between Appellant, his former girlfriend, and her young daughter. The two females were attempting to wrestle away from Appellant his 20 gauge shotgun. During the struggle, Appellant produced a knife and threatened to cut the young girl's throat if they would not release their hands from the barrel of the shotgun. They complied and Appellant's former girlfriend began running from the house. Appellant followed her outside, took aim and fired at shot. The shot hit her and she fell to the ground. She was able to get up, however, and continued making her way to a neighbor's home. Appellant followed and caught up with her on the porch of her neighbor's home. From a distance of about three feet, Appellant blasted his shotgun a second time toward his former girlfriend. The blast hit her in her back and she fell at the doorstep of her neighbor's home. Appellant then got inside his automobile and drove away. His former girlfriend bled to death on her neighbor's porch. Appellant was subsequently arrested and charged with aggravated assault for threatening his former girlfriend's daughter and with murder for causing the death of his former girlfriend.

DISCUSSION

Admonishments

In his first point of error, Appellant contends that the trial court failed to directly admonish him in accordance with article 26.13 of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC.

ANN. art. 26.13 (Vernon 1989 & Supp. 2000). In support of his contention, he argues that the form containing each of his guilty pleas and written admonishments does not indicate from whom the admonishments were issued.

It is true that the trial court itself must admonish a defendant concerning the propriety of a guilty plea. *See Whitten v. State*, 587 S.W.2d 156, 158-59 (Tex. Crim. App. 1979). In our review of the record in this case to ascertain whether the trial court itself admonished Appellant, we note that we have not been provided with a reporter's record of the plea proceeding. To reach our resolution of Appellant's complaint, we are only able to review the respective "Written Plea Admonishments" forms contained in the clerk's record. For each offense, the form provides, in part, the following: "Comes now the Defendant, joined by my counsel, and states that **I understand the foregoing admonishments *from the Court* and am aware of the consequences of my plea**." (bold in original, italics for our emphasis added). The concluding paragraph of the same form provides, in part, that, "We . . . agree that all statements of the Defendant were freely and voluntarily made and that the Defendant's plea was freely and voluntarily entered and he understands *the Court's Admonishments* given to him in accordance with Art. 26.13 C.C.P. and that he is aware of the consequences of his plea." (emphasis added). The form for each offense is signed by Appellant, his trial counsel, the assistant criminal district attorney, and the trial court judge.

As the emphasized language demonstrates, the trial court itself admonished Appellant concerning the propriety of his guilty plea. Therefore, the record refutes Appellant's contention that he was not admonished directly by the trial court.

Furthermore, we note that prior to the beginning of the punishment phase of the proceedings, on the record, the trial court reviewed the plea of guilty for each offense, discussed the range of punishment for each offense, and reaffirmed that Appellant's respective guilty pleas were freely and voluntarily given. Appellant and his trial counsel responded to the trial court's oral admonishments that the guilty pleas were freely and voluntarily entered and that each guilty plea was "done before" the trial court. The record reveals that no objections were made relative to the trial court's admonishments. The Texas Court of

Criminal Appeals has found "substantial compliance" with article 26.13 where the trial court gives the required admonishments *after* the entry of a guilty plea but before the jury retires for the punishment phase where defense counsel does not object to the belated nature of the admonishments. *See Palacios v. State*, 556 S.W.2d 349, 352 (Tex. Crim. App. 1977). Accordingly, assuming *arguendo* that the trial court did not itself admonish Appellant prior to the entry of his guilty pleas, no reversible has been shown because the record shows that Appellant received oral admonishments from the trial court, without objection, before the punishment phase of the proceedings against him began. *See id*. We overrule Appellant's first point of error.

Sufficiency of the Written Stipulations of Evidence

In his second and third points of error, Appellant contends that the trial court did not approve the written stipulations of evidence and that the stipulations of evidence were insufficient to satisfy the State's burden to demonstrate guilt.

Article 1.15 of the Texas Code of Criminal Procedure provides that where a defendant pleads guilty and waives his right of trial by jury, "it shall be necessary for the state to introduce evidence into the record showing the guilt of the defendant . . . ." *See* TEX. CODE CRIM. PROC. ANN. art 1.15 (Vernon Supp. 2000). It also provides that the "evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive appearance, confrontation, and cross-examination of witnesses, and further consents . . . to an oral stipulation of the evidence and testimony . . . ." *See id*. The waiver and consent "must be approved by the court in writing . . . ." *See id*.

The record in this case, for each offense, shows that the trial court judge signed the form containing Appellant's consent to the stipulation of evidence. The trial court's signature on the form for each offense demonstrates that the trial court approved each stipulation of evidence in writing. Therefore, each stipulation of evidence was effective. *See Parks v. State*, 960 S.W.2d 234, 236 (Tex. App.–Houston [1st Dist.] 1997, pet. ref'd).

Appellant also argues that the State failed to introduce sufficient evidence in the record to show his guilt. In each stipulation, the written form provides that "**I give up all right to a jury in this case**

under Art. 1.13 C.C.P., and I give up my right to appearance, confrontation and cross-examination of witnesses under Art. 1.15. I consent to oral and written stipulations of evidence in this case." (bold in original). Further, for each of the offenses alleged, Appellant entered into the following, written stipulation:

> I freely and voluntarily plead GUILTY and confess my GUILT to having committed each and every element of the offense alleged in the indictment or information by which I have been charged in this cause and I agree and stipulate that the facts contained in the indictment or information are true and correct and constitute the evidence in this case.

Appellant "stipulates" that the allegations in the indictments themselves "constitute the evidence in this case." *See Huddleston v. State*, 997 S.W.2d 319, 321 (Tex. App.–Houston [1st Dist.] 1999, no pet.). By agreeing to this, the parties have in effect agreed that if the State were to present its evidence, the evidence for the offense of murder, as alleged in the first indictment, would be that Appellant, on or about October 19, 1998, in the County of Galveston and State of Texas, (1) did then and there intentionally and knowingly cause the death of the first victim by shooting her with a deadly weapon, to wit: a shotgun; and (2) did then and there intentionally and knowingly commit an act clearly dangerous to human life, to wit: by shooting the victim with a deadly weapon, to wit: a shotgun thereby causing her death. *See* TEX. PENAL CODE ANN. § 19.02(b) (Vernon 1994). The parties also agreed that if the State were to present its evidence, the evidence for the offense of aggravated assault, as alleged in the second indictment, would be that Appellant, on or about October 19, 1998, in the County of Galveston and State of Texas, did then and there intentionally and knowingly threaten the second victim with imminent bodily injury and did then and there intentionally and knowingly use a deadly weapon, to wit: a knife that in the manner of its use and intended use was capable of causing death and serious bodily injury and said knife was manifestly designed, made and adapted for the purpose of inflicting death and serious bodily injury. *See* TEX. PENAL CODE ANN. § 22.02(a) (Vernon 1994).

The Court of Criminal Appeals has routinely found a stipulation as to what witnesses would testify had they been present at trial is sufficient to support a conviction in the context of article 1.15. *See, e.g.*, *Stone v. State*, 919 S.W.2d 424, 426 (Tex. Crim. App. 1996). The stipulations by Appellant in this case

satisfy article 1.15 and are the functional equivalent of a stipulation embracing every element of the offenses charged. *See Huddleston*, 997 S.W.2d at 321-22. We conclude there is sufficient evidence in the record to establish Appellant's guilt. Points of error two and three are overruled.

The judgments are affirmed.

PER CURIAM

Judgment rendered and Opinion filed March 16, 2000.
Panel consists of Justices Yates, Fowler, and Edelman.
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