Affirmed and Opinion filed August 17, 2000.

In The

Fourteenth Court of Appeals

———————————

NO. 14-99-00154-CR

———————————

LUCILLE PILLSBURY NARON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 9
Harris County, Texas
Trial Court Cause No. 98-16362

O P I N I O N

Appellant, Lucille Pillsbury Naron, was charged with the misdemeanor offense of indecent exposure. After unsuccessfully attempting to quash the information, appellant entered a guilty plea without the benefit of a plea bargain agreement. The trial court deferred a finding of guilt and placed appellant under the terms and conditions of community supervision for one year. On appeal, appellant contends the trial court erred in overruling her motion to quash. We affirm.

Appellant contends the charging instrument was fatally defective and should have been quashed because it failed (1) to give adequate notice of the accusations against her or (2) to

allege the necessary acts or circumstances establishing the necessary *mens rea* for the offense, namely, recklessness. The State concedes the information contains grammatical inconsistencies. It alleges that appellant

> . . . did then and there unlawfully expose his PART OF HIS GENITALS, NAMELY HER VAGINA to L. MOORE with intent to arouse and gratify the sexual desire of L. MOORE, and the defendant was reckless about whether another person was present who would be offended and alarmed by the action to-wit: BY PULLING HER G-STRING OVER TO EXPOSE HER VAGINA TO L. MOORE IN A PUBLIC PLACE.

Appellant pled guilty without a punishment recommendation. Such a plea has for many years waived all non-jurisdictional defects. *See Flowers v. State*, 935 S.W.2d 131, 133 (Tex. Crim. App. 1996); *Helms v. State*, 484 S.W.2d 925 (Tex. Crim. App.1972). Recently, however, the Court of Criminal Appeals limited the application of the *Helms* rule. *See Young v. State*, 8 S.W.3d 656, 667 (Tex. Crim. App. 2000). Nevertheless, the State claims appellant falls under the modified rule announced in *Young* and has waived all non-jurisdictional error. Thus, we must decide (1) to what extent, if any, the *Helms* Rule has been modified or repudiated by *Young*, and, if so, (2) whether the new rule applies here.

Waiver under the Helms/Young Rule

In *Helms*, the Court of Criminal Appeals held: "Where a plea of guilty is voluntarily and understandingly made, all non-jurisdictional defects including claimed deprivation of federal due process are waived." *Helms*, 484 S.W.2d at 927. In *Young*, the court wrote: "A valid plea of guilty or nolo contendere 'waives' or forfeits the right to appeal a claim of error *only* when the judgment of guilt was rendered independent of, and is not supported by, the error." *Id.* (emphasis added). Thus, *Young* purports to be a qualification or limitation of *Helms* as opposed to a complete repudiation. The court seems to suggest there are some occasions where alleged error is waived by a plea of guilty and some where it is not. The distinguishing factor is whether the judgment of guilt was rendered *independent* of the alleged error. Consequently, the degree to which a guilty plea is *induced* by the alleged error and the extent

to which the plea provides *support* for the judgment determines whether the alleged error is waived on appeal.

If a defendant's plea of guilty is induced by the specious advice of incompetent counsel or even an improper admonishment, the effect of the error may be so great as to render the plea involuntary.[1] However, even under *Helms*, an error which rendered the plea involuntary was not waived by the entry of a guilty plea. *See Flowers v. State*, 935 S.W.2d 131 (Tex. Crim. App. 1996) (in both open and negotiated pleas, a defendant may always raise an issue regarding the voluntariness of his plea). Thus, *Young* must have been alluding to all errors which have *induced* the plea even if such inducement fell short of rendering the plea involuntary.

Young also implies that pleas may provide a varying degree of *support* for the judgment. A judgment cannot be sustained on appeal unless two fundamental elements exist: (1) the prosecution must have presented sufficient evidence of guilt to convince the trier-of-fact beyond a reasonable doubt, and (2) the evidence must have been legally admissible. The degree to which a plea will satisfy these two prerequisites differs markedly between federal and state courts.

In federal jurisprudence, a defendant's guilty plea satisfies both elements, i.e., the plea (1) admits every element of the offense and satisfies the prosecution's burden; and (2) is conclusive as to guilt. Because the conviction rests solely upon the plea, questions regarding the admissibility of putative evidence that would have been introduced had the cause proceeded to trial are immaterial.[2] Thus, in federal jurisprudence it is "well settled that by entering a plea

---

[1] *See, e.g., Rivera v. State*, 952 S.W.2d 34, 36 (Tex. App.–San Antonio 1997, no pet.) (if an attorney conveys erroneous information to his client, a plea of guilty based upon that misinformation is involuntary); *Ex parte Williams*, 704 S.W.2d 773, 776-77 (Tex. Crim. App. 1986) (when a defendant shows he was harmed by inaccurate information provided by the court, thereby leaving the defendant unaware of the consequences of his plea, the plea is involuntary).

[2] Prior to 1983, appeals after a guilty plea were not permitted in federal court. Defendants who wanted to preserve their right to appeal rulings on pretrial motions had to stand trial. *See United States v. Stalder*, 696 F.2d 59, 60 n.2 (8th Cir. 1982). However, Rule 11 of the Federal Rules of Criminal Procedure has now been amended to authorize the entry of a conditional plea with the consent of the court and the (continued...)

of guilty, a defendant ordinarily waives all non-jurisdictional defects in the proceedings below." *See United States v. Bell*, 966 F.2d 914, 915 (5th Cir. 1992). In short, a plea of guilty is much more than a mere admission; "it is itself a conviction." *Kercheval v. United States*, 274 U.S. 220, 223 (1927). "Like a verdict of a jury it is conclusive. More is not required; the court has nothing to do but give judgment and sentence." *Id*.

In contrast, a guilty plea to a court in Texas is often not conclusive. Despite the defendant's plea, it is still necessary in felony cases for the State to introduce evidence into the record showing the guilt of the accused. *See* TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon Supp. 2000).[3] Article 1.15, however, is expressly limited in its application to felony cases.[4] Here, appellant entered a plea of guilty to a misdemeanor offense. Moreover, in misdemeanor cases, as in federal cases, a plea of guilty constitutes an admission of every element of the charged offense and is conclusive of a defendant's guilt. *See Avila v. State*, 884 S.W.2d 896, 897 (Tex. App.–San Antonio 1994, no pet.). Thus, here, the judgment is directly supported by appellant's plea.

Moreover, another reason articulated by the Court of Criminal Appeals for abandoning the *Helms* Rule is to promote the public policy of increasing the efficiency of criminal courts by "encouraging conditional pleas of guilty and discouraging trials that have only the purpose

---

[2] (...continued)
government. *See* FED. R. CRIM. P. 11(a)(2). After entry of a conditional plea, the defendant is permitted to appeal from adverse determinations of any specified pretrial motion. *Id*.

[3] In fact, the Court of Criminal Appeal's modification of the "*Helms* Rule," and its adoption of the "*Young* Rule" was predicated, in part, on the theory that *Helms* was "a distortion of a rule . . . imported from federal habeas corpus decisions." *Young*, 8 S.W.3d at 657.

[4] Even in felony cases, the distinction between federal and state jurisprudence regarding the conclusiveness of a guilty plea is largely ethereal. While a plea, in Texas, is not conclusive of the defendant's guilt, it is usually supported by an affirmation that the allegations in the indictment are true and correct, i.e., a judicial confession. *See Potts v. State*, 571 S.W.2d 180, 181-82 (Tex. Crim. App. 1978). It is well settled that a judicial confession, standing alone, is sufficient to sustain a conviction upon a guilty plea. *See Dinnery v. State*, 592 S.W.2d 343, 353 (Tex. Crim. App. 1979). Thus, the judicial confession would seem to be an independent basis for the judgment and a rational justification for waiving all non-jurisdiction errors preceding the plea. *But see Young*, 8 S.W.3d at 667 n. 32 (holding that a judicial confession is not independent of a ruling that admitted evidence in error).

of preserving the ability to appeal issues that were fully resolved before the trial." *Young*, 8 S.W.3d at 666. Here, the only dispute prior to the plea was in regard to the information. Within the written plea agreement the parties have added by interlineation:

> Court and State grant permission that Defendant can appeal motion to quash information. Defendant is pleading to place Motion to Quash on appeal.

Thus, public the policy considerations recited by *Young* are applicable here.

Recently, the Court of Criminal Appeals summarized its holding in *Young* by observing that if the defendant challenged a "ruling . . . made before the plea, it [is] not waived under the *Helms* Rule." *See Brasfield v. State*, 18 S.W.3d 232, 234 (Tex. Crim. App. 2000). Because the alleged error here, i.e., the trial court's ruling on the motion to quash, was some inducement for appellant's plea of guilty, and the plea provided support for the court's judgment, we find the alleged error was not waived under the *Helms* Rule.[5]

Notice of the Offense Charged

Appellant argues that the wording of the information was so nonsensical as to deprive her of notice of the offense charged. The rules with respect to allegations in an indictment and the certainty required also apply to an information. *See* TEX. CODE CRIM. PROC. ANN. Art. 21.23 (Vernon 1989). An indictment is sufficient if it contains the elements of the offense charged, fairly informs the defendant of charges they must prepare to meet, and enables the defendant to plead acquittal or conviction as a bar to future prosecution for the same offense. *See* TEX. CODE CRIM. PROC. ANN. Art. 21.11 (Vernon 1989); *Smith v. State*, 873 S.W.2d 66, 71 (Tex. App.–Tyler 1993, pet. ref'd).

---

[5] As the State correctly observes, there was a split among the courts of appeals as to whether *Helms* applied to misdemeanor cases. *Compare Salazar v. State*, 773 S.W.2d 34 (Tex. App.–Houston [14th Dist.] 1989, no pet.) (finding the Helms rule inapplicable to misdemeanor convictions) *with Studer v. State*, 757 S.W.2d 107 (Tex. App.–Dallas 1988), *aff'd*, 799 S.W.2d 263 (Tex. Crim. App.1990) (finding just the opposite). We need not decide, however, whether *Helms* is applicable in misdemeanor cases because even if we were to persist in our conclusion that *Helms* is not applicable to misdemeanors, the limitations placed on the *Helm's* Rule in *Young* render it inapplicable here.

It is undisputed that appellant is female. The substitution of the male possessive pronoun "his" for the female "her" is merely a grammatical error. "Grammatical errors present no grounds for the quashing of an indictment, unless such errors render the indictment uncertain and one is unable to determine the charge intended." *Hogue v. State*, 711 S.W.2d 9, 14 (Tex. Crim. App. 1986) (internal citations omitted). The information clearly states that the act complained of was the exposure of appellant's vagina. The information is not so vague, uncertain, or confusing that the allegation cannot clearly be determined. There is no indication that appellant was not provided with sufficient notice of this act or that the use of the masculine rather than the feminine pronoun prejudiced her ability to prepare a defense. *See Sanchez v. State*, 928 S.W.2d 255, 259 (Tex. App.–Houston [14 Dist.] 1996, no pet.); *see also Adams v. State*, 707 S.W.2d 900, 903 (Tex. Crim. App.1986) (holding that the appellant has the burden to show both the defect and the prejudice caused by that defect); *Opdahl v. State*, 705 S.W.2d 697, 699 (Tex. Crim. App.1986). Appellant's first point of error is overruled.

Sufficiency of the Allegations Regarding Recklessness

Appellant, in her second point of error, contends the information "is silent on the alleged acts. . . which may constitute recklessness." Whenever recklessness is a part or element of an offence, the charging instrument must allege, with reasonable certainty, the acts relied upon to constitute recklessness. *See* TEX. CODE CRIM. PROC. ANN. Art. 21.15 (Vernon 1988). A charge of indecent exposure requires the State to allege circumstances which indicate the appellant was aware of the risk that another person was present who would be offended by the exposure and that the appellant acted in conscious disregard of that risk. *See Gengnagel v. State*, 748 S.W.2d 227, 230 (Tex. Crim. App. 1988). The information expressly charges that the act was directed at a specific individual in a public place. This is sufficient to allege the acts which constituted recklessness. *See id.* at 230 n. 2 (indicating that the acts or circumstances that should have been alleged were that the appellant exposed himself in a public park after seeing the complainant approach); *State v. Emanuel*, 873 S.W.2d 108, 109 (Tex.

App.–Dallas 1994, no pet.). Appellant's second point of error is overruled, and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed August 17, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

Do Not Publish — TEX. R. APP. P. 47.3(b).