

Affirmed and Opinion filed November 10, 1999.



In The
Fourteenth Court of Appeals

NO. 14-97-01287-CR

DUSTIN HOOD, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 745,543**

O P I N I O N

Appellant Dustin Hood (Hood) appeals in one point of error that the evidence is insufficient to support his conviction for manslaughter. We overrule this point of error and affirm.

B A C K G R O U N D

Hood pleaded no contest to manslaughter after he shot his friend, Joey McCoy, in the head. He then stipulated to the State's evidence without an agreed recommendation for sentencing. After reviewing a presentence investigative report and hearing testimony from

Hood and Joey McCoy's mothers, the trial court found Hood guilty of manslaughter and assessed punishment at nine years' imprisonment. Hood now maintains that there is insufficient evidence to support his conviction,¹ claiming that the shooting was a tragic accident. He asks this court to reform the verdict to find him guilty of criminally negligent homicide or to restore the parties to their positions before Hood's plea of no contest.

SUFFICIENCY OF EVIDENCE

A person accused of committing a felony must be convicted by a jury unless he enters a plea and waives his right to a trial by jury in open court and in writing. TEX. CODE CRIM. PROC. art. 1.15 (Vernon Supp. 1999). In Texas, if an accused enters a plea and waives his right to a trial by jury, the state still must introduce evidence proving guilt to support the judgment. *See* TEX. CODE CRIM. PROC. art. 1.15; *Thornton v. State*, 601 S.W.2d 340, 347 (Tex. Crim. App. 1980) (op. on reh'g), *overruled on other grounds*, *Bender v. State*, 758 S.W.2d 278, 280 (Tex. Crim. App. 1988). The evidence supporting the judgment "may be stipulated if the [accused] consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses." TEX. CODE CRIM. PROC. art. 1.15; *see also Thornton*, 601 S.W.2d at 347 ("[I]n Texas, evidence is received to support the judgment, not to accept the plea"). Such a stipulation is sufficient to support a conviction in the context of article 1.15. *See Stone v. State*, 919 S.W.2d 424, 426 (Tex. Crim. App. 1996); *Brewster v. State*, 606 S.W.2d 325 (Tex. Crim. App. 1980).

In this case, Hood signed a "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Stipulation." In this document, the State charged Hood with manslaughter for recklessly killing Joey McCoy by firing a gun in Joey's direction. Hood stipulated that "the State's witnesses would testify under oath that [the allegations] are true." Thus, the trial

¹ Hood claims that the trial court found him guilty of murder, but the record shows that his conviction was for manslaughter. TEX. PEN. CODE ANN. § 19.04 (Vernon 1994).

court had sufficient evidence from which to find Hood guilty of manslaughter. *See Stone*, 919 S.W.2d at 426.

After sentencing, Hood filed a motion for new trial, which the trial court denied. In hearing on the motion, Hood asserted that he shot Joey McCoy by accident and not recklessly as the result of horseplay or an argument. Even if this evidence raised an issue about Hood's requisite mental state, the trial court was not required to withdraw Hood's plea after he had waived a jury trial and been found guilty by the court. *See Graves v. State*, 803 S.W.2d 342, 346 (Tex. App.–Houston [14th Dist.] 1990, pet. ref'd). Accordingly, we overrule Hood's sole point of error and affirm the trial court's judgment.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed November 10, 1999.

Panel consists of Justices Sears, Cannon, and Lee.*

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

* Senior Justices Ross A. Sears, Bill Cannon, and Norman Lee sitting by assignment.

