

**Affirmed and Opinion filed March 2, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NOS. 14-98-01000-CR & 14-98-01001-CR**  
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**RICHARD GOMEZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 228<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause Nos. 775,448 & 755,447**

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**OPINION**

Appellant, Richard Gomez, pled guilty to the charge of burglary of a habitation and escape. He was found guilty in each case and sentenced to thirty years in the penitentiary for the burglary and ten years for the escape. On appeal, he makes three contentions: (1) the trial judge violated his Federal and State rights to compulsory process by not allowing the defense to put on any evidence before accepting his plea; (2) the trial judge violated his Federal and State rights to compulsory process by entering judgment when the record is silent as to a waiver of the right to compulsory process; and (3) the trial judge violated his Federal and State due process rights by reviewing the pre-sentence report prior to making a finding of guilt. We affirm.

The record reflects a concerned neighbor saw a man enter a house occupied by an elderly woman whom she knew lived alone. Police were summoned, and appellant was found hiding in a laundry hamper inside the woman's house. A watch, stolen from a jewelry box, was found in his shirt pocket. Appellant was arrested and transported to the courthouse for a magistrate warning. Afterwards, as he was being led through the courthouse, appellant complained that he had misplaced a ring. Officer Simmons took appellant to retrace their steps, and appellant broke from his grasp and ran. He was tackled and recaptured. In the process, Officer Simmons suffered an abrasion to his knee and an investigator who helped subdue appellant was kicked in the thigh.

### **Waiver of non-jurisdictional defects**

In his first four points of error, appellant claims the trial judge violated his Federal and State rights by preventing him from submitting evidence and by entering judgment when the record was silent as to a waiver of his right to compulsory process.

Appellant knowingly 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*, No. 1579-96, 2000 WL 3955, at \*10, (Tex. Crim. App. Jan. 5, 2000). Thus, the first issue we must decide is whether appellant, by his plea of guilty, waived all non-jurisdictional defects.

*Helms* was derived from federal precedent, and in federal jurisprudence 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 Texas, however, a guilty plea in a bench trial is not conclusive. Despite the defendant's plea, it is still necessary 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). Because the significance of a guilty plea

is different under federal and state law, the Court of Criminal Appeals has concluded it erred in incorporating federal precedent into this realm of Texas jurisprudence. *See Young* at \*5-6.

The issue in a criminal trial is whether the prosecution can, by legally admissible evidence, prove its allegations of criminal conduct beyond any reasonable doubt. Thus, two fundamental questions are presented in every criminal case: (1) does the prosecution have sufficient evidence of guilt to convince the trier-of-fact beyond a reasonable doubt; and (2) is the evidence legally admissible.

In federal jurisprudence, a defendant's guilty plea ordinarily satisfies both questions. First, the plea of guilt admits every element of the offense and completely satisfies the prosecution's burden. Second, because the plea is conclusive as to guilt, the conviction rests solely upon the plea; questions regarding the admissibility of other evidence the prosecution may have intended to use are rendered moot. Thus, in federal jurisprudence it is "well settled that by entering a plea of guilty, a defendant ordinarily waives all non-jurisdictional defects in the proceedings below." *See United States v. Bell*, 966 F.2d 914, 915 (5<sup>th</sup> Cir. 1992).

In contrast, a defendant's guilty plea does not prove the guilt of the defendant under Texas law where the jury has been waived. Accordingly, questions regarding both the sufficiency and admissibility of the State's evidence remain at issue after the plea. Thus, "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." *See Young*, at \*10.

The State can satisfy its burden of proof and support the plea in various ways. The two chief methods of supporting a plea are by the introduction of (1) stipulated evidence or (2) a judicial confession. Here, the State used appellant's judicial confession. Appellant confessed in writing that on February 13, 1998, he unlawfully, with the intent to commit theft, entered a habitation owned by Laurain Sizemore, without her consent. Appellant, in a separate writing, confessed that on February 13, 1998, he unlawfully, intentionally and knowingly escaped from the custody of B. Simmons of the Houston Police Department while he was under arrest for burglary of a habitation and that to effect his escape, he caused bodily injury to B. Simmons.

Thus, under the facts presented here, appellant's guilt was established independent of any preceding error.<sup>1</sup> Accordingly, all non-jurisdictional error has been waived.

### **Right to compulsory process**

To the extent that appellant's points of error can be construed as a challenge to the voluntariness of his plea, we note that he expressly waived his right to "the appearance, confrontation, and cross-examination of witnesses." Having waived his right to call witnesses, appellant effectively waived his right to compulsory process. Moreover, we have previously considered and rejected this precise claim. *See Vanderburg v. State*, 681 S.W.2d 713, 717 (Tex. App.–Houston [14<sup>th</sup> Dist.] 1984, pet. ref'd); *see also Lyles v. State*, 745 S.W.2d 567, 568 (Tex. App.–Houston [1<sup>st</sup> Dist.] 1988, pet. ref'd).

Appellant's first four points of error are overruled.

### **Due Process and the Pre-Sentence Report**

In his fifth and sixth points of error, appellant contends the trial judge violated his federal and state due process rights by reviewing the pre-sentence report prior to a finding of guilt.

The Court of Criminal Appeals has held that a trial court's inspection of pre-sentence reports prior to a determination of guilt violates due process. *See State ex rel. Turner v. McDonald*, 676 S.W.2d 375 (Tex. Crim. App. 1984); *State ex rel. Bryan v. McDonald*, 662 S.W.2d 5 (Tex. Crim. App. 1983). Those cases, however, are clearly distinguishable from the instant case because here appellant pled guilty. The pre-sentence report could not have

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<sup>1</sup> In a plea to the court, the trial judge must not consider the defendant's plea as evidence of his guilt; rather, the court must accept the evidence offered by the State "as the basis for its judgment." *See* TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon Supp. 2000). 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). Moreover, an affirmation that the allegations in the indictment are true and correct is a judicial confession, and it is sufficient to support a judgment of conviction. *See Potts v. State*, 571 S.W.2d 180, 181-82 (Tex. Crim. App. 1978). Accordingly, in every instance where the plea is supported by a judicial confession, as opposed to stipulated evidence, the *Helms* rule would seem to be a viable doctrine.

influenced the trial court's opinion of appellant's guilt, because appellant had already judicially confessed. *See Vela v. State*, 915 S.W.2d 73, 75 (Tex. App.—Corpus Christi 1996, no pet.); *Blalock v. State*, 728 S.W.2d 135, 138 (Tex. App.—Houston [14th Dist.] 1987, pet. ref'd); *Wissinger v. State*, 702 S.W.2d 261, 263 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd).

Appellant's fifth and sixth points of error are overruled, and the judgment of the trial court is affirmed in each cause.

/s/ J. Harvey Hudson  
Justice

Judgment rendered and Opinion filed March 2, 2000.

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

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