



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-18-00295-CR

RANDY PHILIP CHAUDRON, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 396th District Court
Tarrant County, Texas
Trial Court No. 1521449D; Honorable George Gallagher, Presiding

November 8, 2019

MEMORANDUM OPINION

Before QUINN, C.J. and PIRTLE and PARKER, J.J.

Appealing from his conviction for evading arrest with a vehicle,¹ Appellant, Randy Philip Chaudron, challenges his conviction through two issues.² First, he argues the

¹ TEX. PENAL CODE ANN. § 38.04(b)(2)(A) (West 2019). An offense under this section is a third degree felony. Appellant's range of punishment, however, was enhanced based on his two prior final felony convictions. TEX. PENAL CODE ANN. § 12.42(d) (West 2019). The jury assessed punishment against Appellant at thirty years of imprisonment.

² Originally appealed to the Second Court of Appeals, this appeal was transferred to this court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001 (West 2013). Should a conflict exist between precedent of the Second Court of Appeals and this court on any relevant issue, this appeal will be decided in accordance with the precedent of the transferor court. TEX. R. APP. P. 41.3.

evidence was insufficient to show he used a deadly weapon in evading arrest and second, he argues the trial court erred in refusing to include in its charge to the jury a requested instruction. We affirm.

BACKGROUND

Appellant was charged via indictment with "intentionally flee[ing], using a vehicle, from J. Reynolds knowing J. Reynolds was a peace officer who was attempting to lawfully arrest or detain the defendant." The indictment also included a deadly weapon finding notice that stated, "And it is further presented in and to said court that during the commission of the above described felony, the said defendant did use a deadly weapon, namely a motor vehicle, that in the manner of its use or intended use was capable of causing death or serious bodily injury."

At trial, Fort Worth Police Officer Justin Reynolds testified that on the day he stopped Appellant, he was monitoring a school zone. He told the jury that the "lights are activated between 8:30 and 9:30" and agreed that anyone driving in excess of twenty miles per hour through that zone after 8:30 and before 9:30 in the morning would be committing a traffic violation. At just before 9:30, Reynolds observed, using radar, Appellant driving twenty-nine miles per hour through the school zone. Reynolds initiated a traffic stop, stopping his motorcycle behind Appellant. Reynolds approached Appellant and attempted to obtain his identification. Appellant provided to him identification belonging to another person and would not give to the officer his own identifying information. After approximately thirteen minutes of discussion during which the officer attempted to gain this information, Appellant quickly backed up in his vehicle, hit the officer's motorcycle, and knocked it over. He then revved his engine and sped away.

Reynolds was not injured but did have to move quickly to the sidewalk to avoid being in the path of Appellant's vehicle. A recording from Reynold's body camera, admitted into evidence, showed these events. Appellant was later apprehended by another officer.

ISSUE ONE—SUFFICIENCY OF THE EVIDENCE TO SUPPORT DEADLY-WEAPON FINDING

In his first issue, Appellant contends the evidence was insufficient to support the jury's affirmative finding that he used a deadly weapon, to-wit: his vehicle, in evading arrest. He argues that while he did back over the officer's motorcycle, he did so in a way to avoid the officer and when he sped away, he drove to a street that was occupied only by empty vehicles. Therefore, Appellant asserts, there was no actual danger to anyone and nothing to support his use of his vehicle as a deadly weapon.

In order to establish Appellant committed the offense of evading arrest or detention with a vehicle, the State had to show he intentionally fled from a person he knew was a peace officer attempting lawfully to arrest or detain him, using a vehicle while in flight. TEX. PENAL CODE ANN. § 38.04(a), (b)(2)(A). Appellant concedes the evidence was sufficient to prove he evaded arrest or detention and challenges only the finding that he used his vehicle as a deadly weapon in the course of committing that offense.

When reviewing a deadly-weapon finding, appellate courts "review the record to determine whether, after viewing the evidence in the light most favorable to the [verdict], any rational trier of fact could have found beyond a reasonable doubt that the [vehicle] was used or exhibited as a deadly weapon." *Brister v. State*, 449 S.W.3d 490, 493 (Tex. Crim. App. 2014) (citing *Cates v. State*, 102 S.W.3d 735, 738 (Tex. Crim. App. 2003)). The trier of fact is the sole judge of the weight of the evidence and credibility of the

witnesses and we may not re-evaluate the weight and credibility determinations made by the fact finder. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

A motor vehicle is not a deadly weapon *per se*, but it can be found to be one if it is used in a manner that is capable of causing death or serious bodily injury. *Brister*, 449 S.W.3d at 494. See also TEX. PENAL CODE ANN. § 1.07(a)(17)(B) (defining deadly weapon). Thus, a vehicle can be a deadly weapon “when it does more than simply present a mere potential for endangering others.” *McKinney v. State*, No. 07-12-0206-CR, 2013 Tex. App. 1431, at *2 (Tex. App.—Amarillo Feb. 13, 2013, no pet.) (mem. op., not designated for publication) (citations omitted). To sustain a finding that the object in question is a deadly weapon, the evidence must illustrate that the object met the definition of a deadly weapon; the deadly weapon was used or exhibited during commission of the offense; and other people were put in actual danger. *Brister*, 449 S.W.3d at 494 (citing *Drichas v. State*, 175 S.W.3d 795, 798 (Tex. Crim. App. 2005)). To sustain a finding regarding the use of a deadly weapon, intent to use a motor vehicle as a deadly weapon is not required. *McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000). And, “evidence may be sufficient to support a deadly weapon finding in the absence of any evidence that either death or serious bodily injury occurred.” *Cummings v. State*, No. 05-17-00852-CR, 2018 Tex. App. LEXIS 5925, at *7 (Tex. App.—Dallas July 31, 2018, pet. ref’d) (mem. op., not designated for publication) (citing *Moore v. State*, 520 S.W.3d 906, 908 (Tex. Crim. App. 2017)).

In conducting our analysis, we first evaluate the manner in which the defendant used the motor vehicle during the commission of the offense. *Hilburn v. State*, 312 S.W.3d 169, 177 (Tex. App.—Fort Worth 2010, no pet.) (citing *Sierra v. State*, 280 S.W.3d

250, 255 (Tex. Crim. App. 2009)). We then "consider whether, during the felony, the motor vehicle was capable of causing death or serious bodily injury." *Id.*

Appellant argues here that the evidence did nothing more than show his driving could have potentially been a danger to others. This, he says, is not sufficient to support the jury's deadly-weapon finding. He notes that when he drove off, Reynolds was standing a few feet outside Appellant's vehicle. According to Appellant, the video shows Appellant, "rather than driving forward and risking coming close to Officer Reynolds, he backed up to create additional space to flee." Further, he argues, the direction he fled was to a street that was unoccupied, save for empty parked vehicles. No one, including Reynolds, was hurt.

We must disagree with Appellant's assessment of the evidence. As the State says in its response to Appellant's issue, we are to review the evidence in the light most favorable to the jury's deadly-weapon finding. In doing so, we see on the video that Appellant suddenly and quickly backs his vehicle into Reynold's motorcycle. We hear a loud crash as Appellant continues to back into the motorcycle, knocking it over and disabling it. Appellant then pulls forward toward where the officer is standing, revs his engine, and takes off. Reynolds runs out of the street and to the sidewalk in order to get out of Appellant's path. On the video, we can hear the tires screeching and see dirt flying in the direction in which Appellant fled. The jury also had before it Reynolds's testimony of what happened. Furthermore, during his testimony, Reynolds agreed that he would consider a vehicle to be capable of causing death or serious bodily injury and that he one "hundred percent" felt like the way Appellant's vehicle was driven at him or the way it was driven off the road could cause someone serious bodily injury or death.

The jury was entitled to view Appellant's operation of his motor vehicle as dangerous or reckless and as posing an actual risk to Reynolds. *Sierra*, 280 S.W.3d at 255; *Cummings*, 2018 Tex. App. LEXIS 5925, at *9-10. Additionally, the jury could have rationally concluded that the manner in which Appellant used his vehicle could have caused death or serious bodily injury to any other passerby. The video shows traffic on the street behind Appellant's vehicle and Reynolds's motorcycle. Any one of those vehicles could have turned onto that street during the time Appellant backed into the motorcycle and then took off down the street. See *Moore v. State*, No. 06-10-00173-CR, 2011 Tex. App. LEXIS 5975, at *10-11 (Tex. App.—Texarkana Aug. 2, 2011, no pet.) (mem. op., not designated for publication) (finding the evidence sufficient to uphold a finding that a truck was a deadly weapon because the manner in which the defendant operated it posed actual danger to the officers in proximity to the vehicle at the time he rapidly accelerated, causing it to dangerously swing out into the path of the officers, who were forced to move quickly in order to avoid being struck).

Viewing the evidence in the requisite light, we find a rational jury could have determined beyond a reasonable doubt that Appellant used or intended to use his vehicle in a manner capable of causing death or serious bodily injury. Accordingly, the evidence was sufficient to support the jury's deadly-weapon finding. We overrule Appellant's first issue.

ISSUE TWO—ARTICLE 38.23 INSTRUCTION

In his second issue, Appellant argues the trial court erred when it refused to include in its charge to the jury his requested instruction pursuant to article 38.23 of the Code of Criminal Procedure. As support for his argument, Appellant says there was a factual

dispute identified at trial over when Reynolds saw Appellant speed through the school zone. If it was before 9:30 a.m., as the officer testified, Reynolds would have been attempting to lawfully detain Appellant when he evaded arrest or detention. If, however, it was after 9:30 a.m., as the "call out" report seemed to indicate with a time of 9:40, Appellant was not speeding when the school zone was active and as such, Reynolds would not have been acting lawfully when he attempted to arrest or detain Appellant and Appellant would not have been guilty of evading arrest.

We review jury charge error under the *Almanza* standard. *Collins v. State*, 462 S.W.3d 617, 624 (Tex. App.—Fort Worth 2015, no pet.) (citing *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985) (op. on reh'g)). When a timely objection is made, any error in the charge requires reversal if the error was "calculated to injure the rights of [the] defendant," which means no more than that there must be some harm to the accused from the error. *Id.* (citations omitted). This analysis requires a reviewing court to consider (1) the jury charge as a whole, (2) the arguments of counsel, (3) the entirety of the evidence, and (4) other relevant factors present in the record. *Id.* (citations omitted).

A defendant's right to the submission of jury instructions under article 38.23(a) is "limited to disputed issues of fact that are material to his claim of a constitutional or statutory violation that would render evidence inadmissible." *Madden v. State*, 242 S.W.3d 504, 509-10 (Tex. Crim. App. 2007) (citing *Pierce v. State*, 32 S.W.3d 247, 251 (Tex. Crim. App. 2000)). The Court of Criminal Appeals has explained the statute by saying:

The terms of the statute are mandatory, and when an issue of fact is raised, a defendant has a statutory right to have the jury charged accordingly. The

only question is whether under the facts of a particular case an issue has been raised by the evidence so as to require a jury instruction. Where no issue is raised by the evidence, the trial court acts properly in refusing a request to charge the jury.

Id. (citing *Murphy v. State*, 640 S.W.2d 297, 299 (Tex. Crim. App. 1982)).

There are three requirements a defendant is required to satisfy before he is entitled to the submission of a jury instruction under article 38.23(a). *Madden*, 242 S.W.3d at 510 (citation omitted). First, the evidence heard by the jury must raise an issue of fact. *Id.* (citations omitted). Second, the evidence on that fact must be affirmatively contested. *Id.* (citations omitted). Third, that contested factual issue must be material to the lawfulness of the challenged conduct in obtaining the evidence. *Id.* (citations omitted).

With respect to the first factor, there must be a genuine dispute about a material fact. *Id.* (citing *Garza v. State*, 126 S.W.3d 79, 85 (Tex. Crim. App. 2004)). If there is no disputed factual issue, the legality of the conduct is determined by the trial judge alone, as a question of law. *Id.* (citations omitted). If other facts, not in dispute, are sufficient to support the lawfulness of the challenged conduct, then the disputed fact issue is not submitted to the jury because it is not material to the ultimate admissibility of the evidence. *Id.* (citations omitted). The disputed fact must be a crucial one in deciding the lawfulness of the challenged conduct. *Id.* at 511 (citation omitted).

Prior to submission of the charge to the jury, the following exchange took place:

Counsel: Judge, the only thing we'd request is a 38.23 charge based on the traffic stop. I believe we discussed this outside the presence of the jury beforehand. But that's the only thing we request in addition to the charge. Otherwise, we have no objections.

Court: For the jury to determine whether or not it was -- that they would have to disregard anything that would be illegally obtained?

Counsel: That's correct, Judge, based on the traffic stop. I believe the officer testified he was not aware what time he made the traffic stop, and I believe that raises a question as to whether or not it was a valid traffic stop or not.

Court: Any response?

Prosecutor: I would respond that the officer testified he believed it was between 9:00 and 9:20. It was during the time of the school zone. I don't think there's anything in evidence to conflict with that fact. So we would argue that there is no evidence to --

Court: Okay. I'll deny that request.

Counsel: Thank you, Judge.

The State argues Appellant's "request did not specify what facts he believed were in dispute." However, the State only quoted the first paragraph of counsel's request. Defense counsel did identify that it was the time of the traffic stop that was in dispute, and the time affected the validity of the traffic stop. The evidence before the trial court included Reynolds's testimony and the recording from his body camera. Reynolds testified he saw Appellant speeding in the school zone during a time the school zone was active. After stopping Appellant for that violation, Reynolds spoke with Appellant for some thirteen minutes before Appellant backed over Reynolds's motorcycle and sped away. It was at that time Reynolds called dispatch to report the incident. The evidence shows that call was made at 9:41:59, according to the defense exhibit introduced at the suppression hearing. From that evidence, the court could have determined that Reynolds saw Appellant driving through the school zone before 9:30 a.m., supporting a finding that the stop was valid. The fact that the school zone is in effect from 8:30 a.m. to 9:30 a.m., that Reynolds and Appellant spoke for approximately thirteen minutes before Appellant

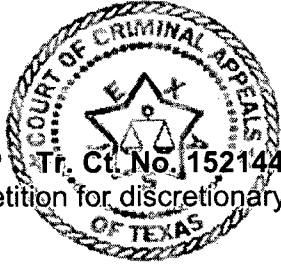
backed into the motorcycle and fled, and that the "call out" report was around 9:40 are all undisputed facts. These undisputed facts are sufficient to support Reynolds's traffic stop of Appellant. *Madden*, 242 S.W.3d at 509-11. Because Appellant did not satisfy his burden for entitlement to his requested article 38.23 instruction, the trial court did not err in refusing to submit that instruction. *Id.* See also *Manifold v. State*, No. 06-17-00101-CR, 2017 Tex. App. LEXIS 10485, at *8-9 (Tex. App.—Texarkana Nov. 9, 2017, pet. ref'd) (mem. op., not designated for publication) (no error in denying article 38.23 instruction when it was undisputed that the officer observed the defendant fail to remain entirely within a single lane of traffic and video evidence supported that testimony). Accordingly, we overrule Appellant's second issue.

CONCLUSION

Having resolved each of Appellant's issues against him, we affirm the judgment of the trial court.

Patrick A. Pirtle
Justice

Do not publish.



2/12/2020

CHAUDRON, RANDY PHILIP

Tr. Ct. No. 1521449D

COA No. 07-18-00295-CR

PD-1232-19

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

DISTRICT ATTORNEY TARRANT COUNTY

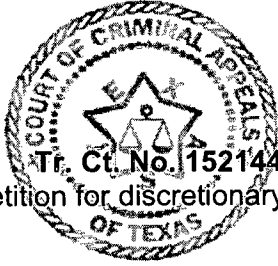
SHAREN WILSON

401 WEST BELKNAP

FORT WORTH, TX 76196

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EXHIBIT 71-107-1
EXHIBIT 71-107-1015
PLATE 100
EXHIBIT 71-107-1015
EXHIBIT 71-107-1015



2/12/2020

CHAUDRON, RANDY PHILIP Tr. Ct. No. 1521449D

COA No. 07-18-00295-CR

PD-1232-19

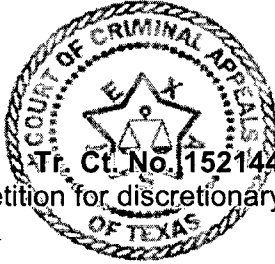
On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

WES BALL
4025 WOODLAND PARK BLVD
SUITE 100
ARLINGTON, TX 76013
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WASHINGTON, D.C. 20535

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FROM: SAC, NEW YORK (100-100000) (P)
SUBJECT: [Illegible]



2/12/2020

CHAUDRON, RANDY PHILIP

TE. Ct. No. 1521449D

COA No. 07-18-00295-CR

PD-1232-19

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

7TH COURT OF APPEALS CLERK

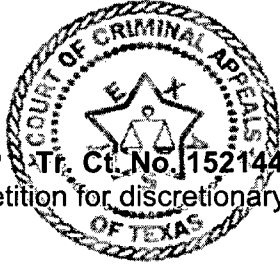
VIVIAN LONG

POTTER COUNTY COURTS BUILDING, SUITE 2A

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AMARILLO, TX 79101

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2/12/2020

CHAUDRON, RANDY PHILIP **Tf. Ct. No. 1521449D**

COA No. 07-18-00295-CR

PD-1232-19

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

STATE PROSECUTING ATTORNEY

STACEY SOULE

P. O. BOX 13046

AUSTIN, TX 78711

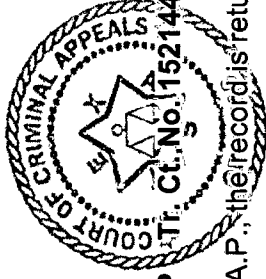
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3/12/2020

CHAUDRON, RANDY PHILIP

COA No. 07-18-00295-CR
PD-1232-19

Ct. No. 1521449D



Pursuant to Rule 69.4(a) T.R.A.P., the record is returned to the court of appeals.
Deana Williamson, Clerk

7TH COURT OF APPEALS CLERK
VIVIAN LONG
POTTER COUNTY COURTS BUILDING, SUITE 2A
P.O. BOX 9540
AMARILLO, TX 79101
* DELIVERED VIA E-MAIL *

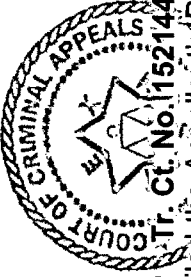
12/6/2019

CHAUDRON, RANDY PHILIP Tr. Ct. No. 1521449D **COA Case No. 07-18-00295-CR**
PD-1232-19

On this day, this Court has granted the Appellant's motion for an extension of time in which to file the Petition for Discretionary Review. The time to file the petition has been extended to Wednesday, January 08, 2020. NO FURTHER EXTENSIONS WILL BE ENTERTAINED. NOTE: Petition for Discretionary Review must be filed with the Court of Criminal Appeals.

Deana Williamson, Clerk

WES BALL
4025 WOODLAND PARK BLVD
SUITE 100
ARLINGTON, TX 76013
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1/8/2020

CHAUDRON, RANDY PHILIP

Tr. Ct. No. 1521449D

COA No. 07-18-00295-CR

PD-1232-19

I have this day received and filed the Appellant's Petition for Discretionary Review.
[The Court requires ten copies of this document to be filed in this office within three
(3) days pursuant to Rule 9.3(b). Failure to send copies will result in the refusal of
the petition.]

Deana Williamson, Clerk

WES BALL
4025 WOODLAND PARK BLVD
SUITE 100
ARLINGTON, TX 76013
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CASE No. 1521449D COUNT ONE
INCIDENT NO./TRN: 9279560786

THE STATE OF TEXAS

V.

RANDY PHILIP CHAUDRON

STATE ID No.: TX06768365

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IN THE 396TH DISTRICT COURT

TARRANT COUNTY, TEXAS

JUDGMENT OF CONVICTION BY JURY

| | | | |
|---------------------|---|-------------------------|-------------------------------------|
| Judge Presiding: | HON. GEORGE GALLAGHER | Date Judgment Entered: | 6/27/2018 |
| Attorney for State: | SHAREN WILSON MICHELE HARTMANN TRACEY KAPSIDELIS EMILY KIRBY | Attorney for Defendant: | BRYAN PATRICK HOELLER KATE STONE |

Offense for which Defendant Convicted:

EVADING ARREST DETENTION WITH VEHICLE

Charging Instrument:

Indictment

Statute for Offense:

38.04(B)(2)(A) PC

Date of Offense:

10/18/2017

Degree of Offense:

3RD DEGREE FELONY

Plea to Offense:

NOT GUILTY

Verdict of Jury:

Guilty

Findings on Deadly Weapon:

Yes, a motor vehicle

Plea to Special Issue No. 1:

Not True

Plea to 2nd Enhancement/Habitual Paragraph:

True

Findings on Special Issue No. 1:

Findings on 2nd Enhancement/Habitual Paragraph:

Jury Answer: "We Do"

True

Punishment Assessed by:

Court

Date Sentence Imposed:

6/27/2018

Date Sentence to Commence:

6/27/2018

Punishment and Place of Confinement:

30 YEARS Institutional Division, TDCJ

THIS SENTENCE SHALL RUN N/A.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A.

Fine:

N/A

Court Costs:

\$319.00

Restitution:

N/A

Restitution Payable to:

☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

☐ Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part thereof.

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A.

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time

From: 11/16/2017 To: 6/27/2018

Credited:

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A Days Notes: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.



CASE NO. 1521449D

COUNT ONE

INCIDENT NO./TRN: 9279560786

THE STATE OF TEXAS

IN THE 396TH DISTRICT COURT

V.

RANDY PHILIP CHAUDRON

TARRANT COUNTY, TEXAS

STATE ID NO.: TX06768365

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: HON. GEORGE GALLAGHER

Date Judgment
Entered: 6/27/2018Attorney for State: SHAREN WILSON
MICHELE HARTMANN
TRACEY KAPSIDELIS
EMILY KIRBYAttorney for
Defendant: BRYAN PATRICK HOELLER
KATE STONEOffense for which Defendant Convicted:

EVADING ARREST DETENTION WITH VEHICLE

Charging Instrument:

Indictment

Statute for Offense:

38.04(B)(2)(A) PC

Date of Offense:

10/18/2017

Degree of Offense:

3RD DEGREE FELONY

Plea to Offense:

NOT GUILTY

Verdict of Jury:

Guilty

Findings on Deadly Weapon:

Yes, a motor vehicle

Plea to Special Issue No. 1:

Plea to 2nd Enhancement/Habitual Paragraph:

Not True

True

Findings on Special Issue No. 1:

Findings on 2nd Enhancement/Habitual Paragraph:

Jury Answer: "We Do"

True

Punishment Assessed by:Date Sentence Imposed:Date Sentence to Commence:

Court

6/27/2018

6/27/2018

Punishment and Place
of Confinement:

30 YEARS Institutional Division, TDCJ

THIS SENTENCE SHALL RUN N/A.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A.

| | | | |
|--------------|---------------------|---------------------|---|
| <u>Fine:</u> | <u>Court Costs:</u> | <u>Restitution:</u> | <u>Restitution Payable to:</u> |
| N/A | \$319.00 | N/A | <input type="checkbox"/> VICTIM (see below) <input type="checkbox"/> AGENCY/AGENT (see below) |

☐ Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part thereof.

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A.

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time From: 11/16/2017 To: 6/27/2018

Credited:

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A Days Notes: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.



This cause was called for trial in TARRANT County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

- ☒ Defendant appeared in person with Counsel.
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The Indictment was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

- ☐ Jury. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

- ☒ Court. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

- ☐ No Election. Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

- ☒ Confinement in State Jail or Institutional Division. The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the Tarrant County District Clerk. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

- ☐ County Jail Confinement / Confinement in Lieu of Payment. The Court ORDERS Defendant immediately committed to the custody of the Sheriff of County, Texas on the date the sentence is to commence. Defendant shall be confined in the County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the . Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

- ☐ Fine Only Payment. The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the County . Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

- ☒ The Court ORDERS Defendant's sentence EXECUTED.
☐ The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

COURT COST IN THE AMOUNT OF \$319.00 CREDITED FOR TIME SERVED

HABITUAL OFFENDER NOTICE - TRUE

DEADLY WEAPON FINDING NOTICE - SPECIAL ISSUE NO. 1 - THE JURY AFFIRMATIVELY FINDS THE DEFENDANT USED OR EXHIBITED A DEADLY WEAPON, TO-WIT: A MOTOR VEHICLE DURING THE COMMISSION OF THE OFFENSE.

Signed and entered on 6/29/2018

X. George Gallagher

JUDGE PRESIDING

NOTICE OF APPEAL FILED: JUNE 27, 2018

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**Additional material
from this filing is
available in the
Clerk's Office.**