Affirmed and Opinion filed March 29, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-99-01350-CR

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PERRY DOYLE TYSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 805,945

O P I N I O N

Appellant was charged by indictment with aggregate theft of $100,000 or more but less than $200,000. *See* TEX. PEN. CODE ANN. § 31.03 (Vernon Supp. 2000). On June 11, 1999, the indictment was amended and an interlineation added to change the date of the offense and add the name of a complainant. On August 9, 1999, the indictment was again amended, with the State abandoning language alleging that appellant engaged in organized criminal activity and to correct a typographical error by deleting the letter "y" from the word "thefty." Both amendments were made with court approval. Notations were made on appellant's plea papers

to reflect the changes. On August 19, 1999, appellant pleaded guilty without an agreed punishment recommendation. After appellant requested a presentence investigation, the trial court deferred a finding of guilt until the investigation was completed. At the conclusion of the presentencing hearing, the trial court found appellant guilty and assessed punishment at ten years in prison. We affirm.

On appeal, appellant complains the indictment "fundamentally varies from the crime as presented by the undisputed facts." His argument seems to be that the evidence adduced at the presentencing hearing is insufficient to support a finding of unlawful appropriation.

Where an accused pleads guilty, the state must introduce sufficient evidence to support the judgment on the plea. TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon Supp. 2000). If the defendant consents in writing and in open court to waive the appearance, confrontation, and cross-examination of witnesses, and further consents either to an oral stipulation of the evidence and testimony, or the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment, the defendant may stipulate to the supporting evidence. *Id*.; *Burger v. State*, 920 S.W.2d 433, 435 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd). A conviction on a guilty plea and the requirements under article 1.15 can be supported sufficiently by a judicial confession standing alone. *Dinnery v. State*, 592 S.W.2d 343, 353 (Tex. Crim. App. [Panel Op.] 1979); *Scott v. State*, 945 S.W.2d 347, 348 (Tex. App.—Houston [1st Dist.] 1997, no pet.).

Here, we have no reporter's record of the plea hearing. The clerk's record, however, contains appellant's written guilty plea, signed by appellant, appellant's attorney, the State's attorney, and the trial judge. In the plea, appellant confessed that the allegations in the indictment were true and that in open court he consented to the oral and written stipulation of the evidence in the case and to the introduction of affidavits, written statements, of witnesses, and other documentary evidence. He also waived, in writing, the appearance, confrontation, and cross-examination of witnesses. There is no requirement under state law that evidence

sufficient to support a conviction be reintroduced as a presentencing hearing. Appellant's judicial confession and stipulation of evidence is sufficient to satisfy the requirements of article 1.15 and to support the conviction.

Appellant also complains that because the indictment did not accuse him of "unlawful" appropriation, such indictment did not track the language of the statute and was, therefore, fatally defective.

The indictment alleged that appellant committed the offense of theft, as follows:

> by acquiring and otherwise exercising control over property other than real property, namely money, which property was owned by [the complainants] ... with the intent to deprive the complainants of the property by withholding the property from the complainants permanently or for so extended a period of time that a major portion of the use and enjoyment of the property was lost to the complainants, and *without the effective consent* of the complainants, by deception ... [Italics added.]

Generally, an indictment that tracks the statutory language proscribing certain conduct is sufficient to charge a criminal offense. *State v. Edmond*, 933 S.W.2d 120, 127 (Tex. Crim. App. 1996). To constitute theft, an appropriation of property must be unlawful. *See* § 31.03(a). A party's appropriation can be unlawful if the appropriation is without the owner's effective consent. *See* § 31.03(b)(1). Here, the indictment alleged that the appellant's appropriation was "without the effective consent" of the owner. Within the meaning of the statute, therefore, such appropriation without effective consent was unlawful. Contrary to appellant's complaint, the indictment did, in fact, track the language of the statute. The indictment simply alleged with specificity how the appropriation was unlawful.

We overrule appellant's single appellate issue and affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed March 29, 2001.
Panel consists of Justices Anderson, Hudson, and Seymore.
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