

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-18-00338-CR**

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**RANDY GENE BAUER, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 253rd District Court  
Liberty County, Texas  
Trial Cause No. CR32082**

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**MEMORANDUM OPINION**

Randy Gene Bauer appeals his conviction and life sentence on a felony DWI.<sup>1</sup> In his first issue, Bauer argues the judgment should be reversed because, during the guilt-phase of the trial, the trial court admitted evidence that concerned prior convictions for DWI. In his second and third issues, Bauer argues his sentence is a

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<sup>1</sup> See Tex. Penal Code Ann. §§ 12.42(d), 49.04, 49.09(b).

cruel and unusual punishment that violated the state and federal constitutions.<sup>2</sup> Because Bauer failed to properly preserve these issues for appellate review, we affirm.

In 2015, a grand jury indicted Bauer on a felony DWI. The indictment contains six paragraphs. The first paragraph alleges Bauer operated a motor vehicle in a public place while intoxicated, while the second paragraph alleges Bauer, before committing the offense alleged in the indictment, incurred convictions on other prior DWIs. The remaining paragraphs were alleged to increase Bauer's punishment. They assert Bauer had prior convictions for bribery, assaulting a public servant, felony DWI, and attempted aggravated kidnapping.

In 2018, Bauer pleaded not guilty and tried his case to a jury.<sup>3</sup> When the guilt-phase began, and without objection, the State read the first two paragraphs of the indictment to the jury, including the allegations that Bauer has two prior convictions for DWI. During the trial, and based on the State's offer, the trial court admitted copies of two certified judgments of the two prior DWIs. Bauer did not object when the State offered these exhibits. Using fingerprints associated with those two

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<sup>2</sup> See U.S. CONST. amend. VIII; Tex. Const. art. I, § 13.

<sup>3</sup> Initially, Bauer pleaded guilty to the indictment. The trial court assessed his punishment at 25 years in prison. But Bauer moved for a new trial for reasons unrelated to his appeal. And following a hearing, the trial court granted his request and set aside his plea.

judgments, a fingerprint expert tied the judgments to Bauer. When the guilt-phase ended, the jury found Bauer guilty of felony DWI.

During punishment, the State introduced evidence that Bauer committed the four previous felonies mentioned above. When the punishment phase ended, the jury found the enhancement allegations in the indictment “true” and assessed a life sentence.<sup>4</sup> Bauer neither objected to his sentence when the court announced it, nor did he file a motion for new trial.

To preserve a complaint for appellate review, the complaining party must, while in the trial court, present a timely request, objection, or motion stating the specific grounds for the ruling the party desires.<sup>5</sup> Generally, a reviewing court cannot address the merits of an issue upon appeal unless the party followed the rules of error preservation and allowed the trial court a chance to rule on the complaint at the appropriate point in the trial.<sup>6</sup> While the error-preservation requirements are not

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<sup>4</sup> See Tex. Penal Code Ann. § 12.42(d) (authorizing a maximum punishment of life in prison under the circumstances established by the evidence in Bauer’s case).

<sup>5</sup> Tex. R. App. P. 33.1(a).

<sup>6</sup> *Id.*

absolute, they generally apply when the complaint concerns admitting evidence or an allegedly excessive sentence.<sup>7</sup>

Here, the record does not reflect Bauer objected to the evidence he is complaining about in his appeal. Nor does the record reflect Bauer objected to his sentence at any time in the court below. As a result, Bauer failed to preserve his complaints for our review.<sup>8</sup> We overrule Bauer’s three issues and affirm the trial court’s judgment.

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on March 24, 2020  
Opinion Delivered June 24, 2020  
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.

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<sup>7</sup> See *Saldano v. State*, 70 S.W.3d 873, 889 (Tex. Crim. App. 2002) (“We have consistently held that the failure to object in a timely and specific manner during trial forfeits complaints about the admissibility of evidence.”); *Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995) (applying the preservation requirement to complaints that a sentence violates the constitutional prohibition on cruel and unusual punishment).

<sup>8</sup> See Tex. R. App. P. 33.1(a).