Affirmed and Majority and Dissenting Opinions filed August 23, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00847-CR

TORRY WAYNE ELLIOT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 183rd District Court
Harris County, Texas
Trial Court Cause No. 807,797

M A J O R I T Y O P I N I O N

Torry Wayne Elliott appeals a felony conviction for driving while intoxicated ("DWI") on the grounds that the trial court erred in denying appellant's stipulation and motion to suppress evidence (collectively, the "motion") which sought, during the guilt-innocence phase of trial, to prohibit any mention of appellant's prior convictions to the jury. We affirm.

Appellant was charged by indictment with felony DWI. He thereafter filed the motion which: (1) stipulated that the three prior DWI convictions and one prior burglary conviction alleged in the indictment were true; and then (2) requested only the following

relief: "defendant moves that the court enter an order prohibiting the state, during the arraignment, voir dire, guilt/innocence phase of trial, or at any other time from mentioning or introducing evidence before the jury that [appellant] has three prior driving while intoxicated convictions and one prior burglary conviction." The record does not reflect whether any type of hearing was held on the motion. The operative portion of appellant's proposed order (the "proposed order"), which the trial court signed with the handwritten notation "denied," states, "It is ordered that the State shall not mention, allude to, or in any way refer or introduce evidence of defendant's prior driving while intoxicated convictions during voir dire, opening statement, or at any other time during the guilt/innocence phase of trial." On the day that order was signed (as denied), appellant pled guilty, and the trial court assessed punishment of eight years confinement pursuant to an agreed punishment recommendation.

Appellant's three points of error all challenge the trial court's denial of the motion. A trial court's ruling on a motion to suppress which does not turn on an evaluation of credibility and demeanor is reviewed *de novo*. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000). However, where a complaint on appeal does not comport with an objection at trial, error is not preserved on the complaint. *Goff v. State*, 931 S.W.2d 537, 551 (Tex. Crim. App. 1996), *cert. denied*, 520 U.S. 1171 (1997).

In this case, in contrast to the broad manner in which the motion and proposed order sought to simply exclude any mention of appellant's prior convictions during the guilt-innocence phase of trial, appellant's three points of error on appeal seek to challenge the denial of the motion to the extent of the following individual aspects: (1) prohibiting testimonial or documentary evidence of the prior DWI convictions during the guilt-innocence phase of trial; (2) excluding the stipulation from the jury's consideration during

the guilt-innocence phase of trial; and (3) prohibiting reading of the indictment's allegations of prior convictions to the jury.[1]

In a felony DWI case, where a defendant agrees to stipulate to two previous DWI convictions, the State is permitted to read the indictment at the beginning of the trial, mentioning only the two jurisdictional prior convictions, but is foreclosed from presenting evidence of those convictions during its case-in-chief. *Tamez v. State*, 11 S.W.3d 198, 202-03 (Tex. Crim. App. 2000).[2] In this case, there is no record that appellant ever asked the trial court for anything less than complete exclusion of any mention of all prior convictions during the guilt-innocence phase. Because he was not entitled to such broad relief,[3] the trial court's denial of his order asking only for complete exclusion of any mention of the prior convictions was not error. We do not believe that a trial court is obligated to *sua sponte* grant a request other than that presented by a party or is subject to reversal for failing to ascertain what, if any, lesser or different relief a party might be entitled to than that which he has requested. Because the record does not reflect that appellant ever raised any of the lesser forms of relief to which he seeks to assign error on appeal, there is no indication that the trial court ever ruled on any such relief. Because his

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[1] In support of these contentions, appellant essentially argues that the purpose of alleging and proving the various prior convictions is to establish the felony grade of the offense, and, thus, the subject matter jurisdiction of the district court, and to authorize consideration of a higher range of punishment. Therefore, he contends that making the jury aware of prior convictions during the guilt-innocence phase accomplishes nothing for the State in making its case, but only allows the jury's determination of guilt to be skewed by consideration of those prior convictions.

[2] This allows the jury to be informed of the precise terms of the charge, meeting the rationale for reading the indictment, without subjecting the defendant to substantially prejudicial and improper evidence during the guilt-innocence phase of the trial. *Tamez*, 11 S.W.3d at 202.

[3] Under *Tamez*, appellant's stipulation to the two prior jurisdictional DWI convictions did not preclude the State from reading the portions of the indictment alleging those convictions. *See Tamez*, 11 S.W.3d at 202.

points of error therefore present nothing for our review, they are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed August 23, 2001.

Panel consists of Justices Edelman, Frost, and Murphy.[4] (Frost, J. dissenting).

Publish — TEX. R. APP. P. 47.3(b).

[4] Senior Chief Justice Paul C. Murphy sitting by assignment.