

**Affirmed and Memorandum Opinion filed August 3, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-09-00018-CR**

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**TREYVEON MARCELLE PIPKIN, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 263rd District Court  
Harris County, Texas  
Trial Court Cause No. 1166297**

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**MEMORANDUM OPINION**

Appellant Treyveon Marcelle Pipkin, a juvenile certified to stand trial as an adult, appeals his conviction for aggravated robbery with a deadly weapon. Appellant claims that the juvenile court erred in failing to consider a complete diagnostic study when certifying appellant to stand trial as an adult. Appellant also claims the juvenile court reversibly erred in allowing appellant's counsel to waive psychiatric and psychological examinations ordered by the juvenile court because the purported waiver reflected in the record did not comply with the requirements of section 51.09 of the Texas Family Code. We affirm.

## I. FACTUAL AND PROCEDURAL BACKGROUND

The State filed a petition in juvenile court, alleging that appellant, who was fifteen years old at the time, had engaged in delinquent conduct. According to the petition, appellant committed aggravated assault with a deadly weapon. The State later sought to amend its petition and moved the trial court to waive its jurisdiction and certify appellant to stand trial as an adult in criminal district court pursuant to section 54.02 of the Texas Family Code.<sup>1</sup>

The juvenile court granted the State's motion for a certification hearing. By written order, dated April 16, 2008, the juvenile court ordered that a "complete diagnostic study, social evaluation, and full investigation" be conducted on appellant, his circumstances, and the circumstances surrounding the offense. The juvenile court ordered the chief juvenile probation officer to present the study at the certification hearing. The State also filed a motion requesting the juvenile court to order a complete psychiatric and psychological examination of appellant. The record contains an order dated April 23, 2008, in which the juvenile court granted the State's motion requesting a psychiatric and psychological evaluation.<sup>2</sup>

At the certification hearing, the juvenile court took judicial notice of the contents of appellant's case file. The State sought to tender five State's exhibits into evidence. Appellant's counsel responded, "Your Honor, I think I have had an opportunity to examine these documents, and I have no objection." The trial court admitted the exhibits. One of the exhibits was a three-page report, entitled "Juvenile Probation Certification Report," that was compiled by a juvenile probation officer. Attached to the report were copies of appellant's birth certificate, social security card, and results of a physical

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<sup>1</sup> TEX. FAM. CODE ANN. § 54.02 (Vernon 2009) (governing waiver of exclusive original jurisdiction by juvenile court and discretionary transfer to a criminal court).

<sup>2</sup> Although the State refers to a second order dated April 23, 2008, which the State claims purportedly conflicts with the order directing a psychological or psychiatric evaluation, this second purported order is not included in the appellate record and cannot be considered by this court.

examination. As relevant to our review, a section of the report, entitled “Testing/Physical Examination,” contains the following two sentences pertaining to psychological and psychiatric evaluations:

Certification Psychological Evaluation was waived on April 23, 2008[,] by the juvenile’s attorney, Daniel Kundiger.  
Certification Psychiatric Evaluation was waived on April 23, 2008[,] by the juvenile’s attorney, Daniel Kundiger.

The report also contains a reference to a previous offense involving appellant’s possession of a firearm at school. This previous offense resulted in a juvenile court’s finding that appellant had engaged in delinquent conduct for which he was on probation at the time of the charged offense.

The State presented testimony from a single witness, a police officer, who testified without objection about his investigation of the charged offense. According to the officer’s testimony, appellant entered a retail store, displayed a handgun, demanded money from an employee, and fled with \$2,517.57. Officers located appellant after the incident with assistance from witnesses. Officers recovered a bag containing \$2,517.57 and the handgun from a location where appellant had discarded the items. The officer testified that appellant gave a written statement to the magistrate in which appellant admitted committing the offense and admitting purchasing the handgun one month before the offense. Officers learned that appellant had been documented in police records as being affiliated with a criminal street gang. Appellant’s mother and grandfather testified, requesting that the juvenile court refuse to certify appellant as an adult.

By written order, the juvenile court waived its jurisdiction and certified appellant to stand trial as an adult. The juvenile court’s order is set forth in relevant part:

On the 7th of May 2008, a hearing was held in the above styled and numbered cause number under section 54.02 of the Family Code, on the issue of waiver of jurisdiction. Prior thereto the Court had ordered and obtained a diagnostic study, social evaluation, a full investigation of the child, HIS circumstances, and the circumstances of the alleged AGGRAVATED ROBBERY/DEADLY WEAPON . . . .

The trial court found, “[a]fter full investigation,” that appellant is charged with the felony offense of aggravated robbery with a deadly weapon. The trial court found that appellant was fourteen years or older at the time of the offense and found probable cause to believe that appellant committed the alleged offense. The juvenile court transferred appellant’s case to the criminal district court, noting the serious nature of the offense and the welfare of the community. In making its determination, the juvenile court considered the following factors: the alleged offense was committed against a person, appellant’s sophistication and maturity, the record and appellant’s previous history, the adequate protection of the public, and the likelihood of rehabilitation by resources available to the juvenile court.

Appellant was charged by indictment with the felony offense of aggravated robbery. In the trial court, appellant waived his constitutional rights and judicially confessed to committing the charged offense without an agreed recommendation as to punishment. The trial court found appellant guilty of the charged offense. After a pre-sentence investigation, the trial court assessed punishment at twenty years’ confinement.

## II. ANALYSIS

### **Did the juvenile court err in failing to consider a complete diagnostic study?**

In appellant’s first issue, he claims the trial court failed to consider a complete diagnostic study as required by section 54.02(d) of the Texas Family Code<sup>3</sup> because the diagnostic study presented to the juvenile court did not contain the psychological and psychiatric evaluations previously ordered by the juvenile court. Appellant also asserts that because the diagnostic report did not include the psychological and psychiatric evaluations ordered by the juvenile court, a full investigation of his circumstances was not made.

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<sup>3</sup> Unless otherwise specified, all references to a “section” will be to the Texas Family Code

A juvenile court may waive its exclusive original jurisdiction and transfer a juvenile to a criminal district court for criminal proceedings if (1) the child is alleged to have committed a felony, (2) the child meets one of two age requirements, and (3) after a full investigation and hearing, the juvenile court determines that probable cause exists to believe the juvenile committed the alleged offense and that the community's welfare requires criminal proceedings because of the serious nature of the offense or the child's background. *See* TEX. FAM. CODE ANN. § 54.02(a) (Vernon 2009). Section 54.02(d) of the Texas Family Code requires that prior to a transfer hearing, a "juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense." *Id.* § 54.02(d). A juvenile may test the fullness of an investigation. *See Turner v. State*, 796 S.W.2d 492, 497 (Tex. App.—Dallas 1990, no writ). However, whether a diagnostic study is complete is a determination for the juvenile court. *In re J.S.C.*, 875 S.W.2d 325, 329 (Tex. App.—Corpus Christi 1994, writ dism'd by agr.). A juvenile court's ruling on the completeness of a diagnostic report will not be overturned absent a showing of abuse of discretion. *Id.*

Appellant did not raise this objection at the certification hearing, and, therefore, appellant has not preserved error on this issue. *See* TEX. R. APP. P. 33.1(a); *see also McBride v. State*, 655 S.W.2d 280, 284 (Tex. App.—Houston [14th Dist.] 1983, no writ) (overruling appellant's complaint of alleged deprivation of due process at a transfer hearing because it was raised for the first time on appeal); *In re I.B.*, 619 S.W.2d 584, 586 (Tex. Civ. App.—Amarillo 1981, no writ) (providing that juvenile court at transfer hearing did not err in overruling juvenile's objections pertaining to the fullness of an investigation). An appeal of transfer from a juvenile court to a criminal court is a criminal matter governed by the Texas Code of Criminal Procedure and the Texas Rules of Appellate Procedure. TEX. CODE CRIM. PROC. ANN. art. 44.47(c) (Vernon 2006). Under the Texas Rules of Appellate Procedure, to preserve a complaint for appellate review, a party must make a timely request, objection, or motion with sufficient

specificity to apprise the trial court of the complaint and to afford the trial court an opportunity to rule on the objection. TEX. R. APP. P. 33.1(a); *Saldano v. State*, 70 S.W.3d 873, 886–87 (Tex. Crim. App. 2002). Requiring a party to make a complaint to the trial court by specific, timely objection, request, or motion as a prerequisite to presenting a complaint for appellate review ensures the trial court will have an opportunity to prevent or correct errors. *Gillenwaters v. State*, 205 S.W.3d 534, 537 (Tex. Crim. App. 2006). In this case, had an objection been raised regarding the completeness of the diagnostic study, possible corrective action could have included ordering a subsequent psychological evaluation. See *In re R.L.H.*, 646 S.W.2d 499, 502 (Tex. App.—Houston [1st Dist.] 1982, no writ) (concluding trial court had authority to reopen hearing and order a second psychological evaluation when the trial court lacked confidence in the psychologist who conducted an evaluation).

In this case, appellant did not voice any objection to the completeness of the diagnostic study as tendered and admitted in the transfer hearing. See *In re I.B.*, 619 S.W.2d at 586 (“The juvenile can, of course, test the fullness of the investigation made. If tested, the matter of the completeness of the investigation is one for initial determination by the trial court which ordered it.”). Appellant has not cited and we have not found any place in the appellate record showing that appellant raised this issue in the juvenile court or in the trial court. With few exceptions, not applicable here, even constitutional complaints may be waived by the failure to raise a timely objection in the lower court. See *Saldano*, 70 S.W.3d at 886–89. Based on the record before this court, appellant has not preserved error on this issue. See TEX. R. APP. P. 33.1(a). We overrule appellant’s first issue.

In his second issue, appellant points to the two sentences in the probation officer’s report indicating that appellant’s attorney waived psychological and psychiatric evaluation prior to the certification hearing. According to appellant, his trial counsel’s waiver on his behalf was not effective under section 51.09. Because appellant has failed

to preserve error on his first issue pertaining to whether the diagnostic study was complete, we do not reach the merits of appellant's second issue bearing on the reason the diagnostic study was allegedly incomplete, namely, appellant's assertions that his counsel's waiver of the psychological and psychiatric evaluations was ineffective. We therefore overrule appellant's second issue.

The judgment of the trial court is affirmed.

/s/      Kem Thompson Frost  
Justice

Panel consists of Justices Frost, Boyce, and Sullivan.

Do Not Publish — TEX. R. APP. P. 47.2(b).