

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

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**NO. 09-11-00119-CR**

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**CHRISTOPHER JAMES JOHNSON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the Criminal District Court**  
**Jefferson County, Texas**  
**Trial Cause No. 09-06011**

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**MEMORANDUM OPINION**

In accordance with a plea agreement, Christopher James Johnson entered a plea of guilty to the offense of aggravated assault with a deadly weapon. The trial court found evidence sufficient to find Johnson guilty, deferred further proceedings, placed Johnson on community supervision for 5 years, and assessed a \$1,000 fine. The State subsequently filed a motion to revoke Johnson's unadjudicated community supervision. At the hearing on the motion to revoke, Johnson pleaded "not true" to the alleged violations. After hearing evidence, the trial court found the evidence sufficient to find

two allegations in State's motion to revoke "true." The trial court found that Johnson violated the terms of his community supervision, found him guilty of aggravated assault with a deadly weapon, and assessed his punishment at 20 years confinement. The court ordered Johnson's sentence to run concurrent with his sentences in Cause Numbers 09-06101 and 09-06711. Johnson timely filed a written notice of appeal.

The record reflects that Johnson waived indictment and was charged by information with the offense of aggravated assault with a deadly weapon. The information alleged that "on or about the 27th day of November, 2007, in the said County of Jefferson and State of Texas, CHRISTOPHER JAMES JOHNSON did then and there intentionally and knowingly threaten imminent serious bodily injury to [complainant] with the use of a deadly weapon, namely with his Hands[.]"

In a single issue, Johnson argues that the trial court abused its discretion in adjudicating guilt because the information to which Johnson pleaded guilty is void and therefore, failed to invoke the trial court's jurisdiction. Specifically, Johnson complains that the Information failed to allege that the manner and means by which Johnson used his hands was capable of causing serious bodily injury, and thus failed to allege aggravated assault. The State argues that Johnson failed to preserve error on this issue. We agree.

Article 1.14 of the Code of Criminal Procedure states that,

[i]f the defendant does not object to a defect, error, or irregularity of form or substance in an indictment or information before the date on which

the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other postconviction proceeding.

Tex. Code Crim. Proc. Ann. art. 1.14 (b) (West 2005); *see Sanchez v. State*, 120 S.W.3d 359, 367 (Tex. Crim. App. 2003) (explaining that the right to be charged by an instrument free of defects, errors, and omissions is forfeitable and any error in the charging instrument must be objected to pretrial); *Studer v. State*, 799 S.W.2d 263, 268, 273 (Tex. Crim. App. 1990) (holding that failure to allege an element of an offense in an indictment or information is a defect of substance that is waived by failing to make an objection before trial). As long as the charging instrument charges “someone of a crime with enough clarity and specificity to identify the penal statute under which the State intends to prosecute,” then it is not fundamentally defective even if it fails to allege an element of the offense. *Duron v. State*, 956 S.W.2d 547, 550-51 (Tex. Crim. App. 1997).

The information here is not fundamentally defective. The information pointed to the penal statute for aggravated assault by alleging that Johnson intentionally and knowingly threatened imminent serious bodily injury to the complainant with the use of his hands, a deadly weapon. *See* Tex. Penal Code Ann. § 22.02 (West 2011); *see also Duron*, 956 S.W.2d at 551.

The record reflects that Johnson did not present his objections to the trial court regarding any alleged defect in the information. Johnson did not file a pre-trial motion to quash the information or file any other pre-trial objection to the information. Because

Johnson did not timely object to the information, he waived and forfeited his right to complain about any defects regarding the information on appeal. *See* Tex. Code Crim. Proc. Ann. art. 1.14. We overrule Johnson's sole issue and affirm the judgment of the trial court.

AFFIRMED.

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CHARLES KREGER  
Justice

Submitted on May 24, 2012  
Opinion Delivered September 5, 2012  
Do not publish

Before Gaultney, Kreger, and Horton, JJ.