



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00002-CR

JOHN CHRISTOPHER HILL

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 97TH DISTRICT COURT OF MONTAGUE COUNTY
TRIAL COURT NO. 2015-0032M-CR

MEMORANDUM OPINION¹

Appellant John Christopher Hill made an open plea of guilty to possession of a controlled substance in an amount of less than one gram (methamphetamine) in a drug free zone, and the trial court sentenced him to three years' confinement. See Tex. Health & Safety Code Ann. §§ 481.102(6),

¹See Tex. R. App. P. 47.4.

481.115(a)–(b) (West 2010), § 481.134(d)(1) (West Supp. 2016); Tex. Penal Code Ann. § 12.34 (West 2011).

In two points, Hill complains that health and safety code section 481.134(d)(1) is unconstitutional under the Fourteenth Amendment’s Due Process Clause because it is void for vagueness and does not require a culpable mental state. However, as pointed out by the State, Hill did not raise these points as objections in the trial court.

To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling if they are not apparent from the context of the request, objection, or motion. Tex. R. App. P. 33.1(a)(1); *Douds v. State*, 472 S.W.3d 670, 674 (Tex. Crim. App. 2015), *cert. denied*, 136 S. Ct. 1461 (2016). Further, the trial court must have ruled on the request, objection, or motion, either expressly or implicitly, or the complaining party must have objected to the trial court’s refusal to rule. Tex. R. App. P. 33.1(a)(2); *Everitt v. State*, 407 S.W.3d 259, 263 (Tex. Crim. App. 2013). Most complaints, “whether constitutional, statutory, or otherwise, are forfeited by failure to comply with Rule 33.1(a).” *Mendez v. State*, 138 S.W.3d 334, 342 (Tex. Crim. App. 2004); *see Henderson v. United States*, 133 S. Ct. 1121, 1126 (2013); *Henson v. State*, 407 S.W.3d 764, 767 (Tex. Crim. App. 2013), *cert. denied*, 134 S. Ct. 934 (2014). A reviewing court should not address the merits of an issue that has not been preserved for appeal. *Ford v. State*, 305 S.W.3d 530, 532 (Tex. Crim. App. 2009).

The court of criminal appeals has held that “a defendant may not raise for the first time on appeal a facial challenge to the constitutionality of a statute.” *Karenev v. State*, 281 S.W.3d 428, 434 (Tex. Crim. App. 2009). And it has held that “[a]s applied’ constitutional claims are subject to the preservation requirement and therefore must be objected to at the trial court in order to preserve error.” *Reynolds v. State*, 423 S.W.3d 377, 383 (Tex. Crim. App. 2014) (citing *Flores v. State*, 245 S.W.3d 432, 437 n.14 (Tex. Crim. App. 2008); *Curry v. State*, 910 S.W.2d 490, 496 & n.2 (Tex. Crim. App. 1995)). Thus, regardless of whether Hill has couched his two constitutional points as facial challenges or as-applied challenges, because he failed to raise any complaint about the statute’s constitutionality in the trial court, Hill has failed to preserve both points for our review. See Tex. R. App. P. 33.1; *Reynolds*, 423 S.W.3d at 383; *Karenev*, 281 S.W.3d at 434; see also *Fluellen v. State*, 104 S.W.3d 152, 165 (Tex. App.—Texarkana 2003, no pet.) (“As the State points out, Fluellen’s argument concerning the ‘premises’ rather than ‘real property’ language has been waived because that argument was never brought to the attention of the trial court.”). Therefore, we overrule Hill’s two points and affirm the trial court’s judgment.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: August 26, 2016