



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

**NO. 02-16-00102-CR
NO. 02-16-00103-CR**

DONALD R. DAVIS

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NOS. 1383100D, 1383101D

MEMORANDUM OPINION¹

I. INTRODUCTION

Appellant Donald R. Davis appeals his convictions for theft of property under \$1,500 with two prior convictions and for evading arrest or detention with a previous conviction. See Tex. Penal Code Ann. §§ 31.03(e)(4)(D), 38.04(b)(1)(A) (West Supp. 2016). In two issues, Davis argues that the evidence

¹See Tex. R. App. P. 47.4.

is insufficient to link him to the two prior theft convictions and the prior evading-arrest conviction. For the reasons set forth below, we will affirm the judgments as modified.²

II. THE LAW ON PROVING UP PRIOR CONVICTIONS

To establish that the defendant was convicted of a prior offense for enhancement purposes, the State must (1) prove the existence of the conviction and (2) link the conviction to the defendant. *Flowers v. State*, 220 S.W.3d 919, 921–22 (Tex. Crim. App. 2007); *Davis v. State*, 268 S.W.3d 683, 715 (Tex. App.—Fort Worth 2008, pet. ref'd). No specific document or mode of proof is required to prove these two elements. *Flowers*, 220 S.W.3d at 921; *Paschall v. State*, 285 S.W.3d 166, 174 (Tex. App.—Fort Worth 2009, pet. ref'd).

The State may establish a defendant's previous conviction through certified copies of a judgment and sentence. *Beck v. State*, 719 S.W.2d 205, 209 (Tex. Crim. App. 1986). However, the State must provide independent evidence linking these documents to the defendant on trial. *Id.* at 210. This is frequently done by expert testimony identifying known fingerprints of the defendant with the fingerprints in a pen packet, but the necessary proof may come from other means as well. *Id.* Courts have identified several other ways in which the link has been made, including (1) the defendant's admission or stipulation, (2)

²Because this appeal focuses solely on the sufficiency of the evidence linking Davis to the enhancement convictions, we omit a detailed background of Davis's actions proving the events giving rise to the convictions that are on appeal.

testimony by a person who was present when the person was convicted of the specified crime and can identify the defendant as that person, or (3) documentary proof (such as a judgment) that contains sufficient information to establish both the existence of a prior conviction and the defendant's identity as the person convicted. *Flowers*, 220 S.W.3d at 921–22; *Beck*, 719 S.W.2d at 209–10. The evidence used to establish that the defendant on trial is one and the same person that is named in an alleged prior criminal conviction or convictions often resembles “pieces of a jigsaw puzzle.” *Human v. State*, 749 S.W.2d 832, 835–36 (Tex. Crim. App. 1988). “The pieces standing alone usually have little meaning. However, when the pieces are fitted together, they usually form the picture of the person who committed the alleged prior conviction or convictions.” *Id.* at 836.

III. SUFFICIENT EVIDENCE LINKS DAVIS TO THE TWO PRIOR THEFT CONVICTIONS

In his first issue, Davis argues that the State presented insufficient evidence during the guilt-innocence phase of the trial to link him to the two prior theft convictions.

Here, State's Exhibits 4 and 5 each consist of certified copies of a docket sheet, a felony indictment, and a judgment and sentence reflecting a prior conviction for theft. Davis's unique Criminal Identification Number (“CID number”) is located on the felony indictment and on the docket sheet in each exhibit, but the judgment in each exhibit does not contain a CID number. Fingerprint examiner Deputy Joel Garcia of the Tarrant County Sheriff's Office

testified that he was unable to identify the fingerprints in both exhibits because they are of “poor quality.”

Davis complains on appeal that, because State’s Exhibits 4 and 5 did not contain an identifiable thumbprint, photograph, or physical description of Davis and because the State did not present any witnesses to testify that Davis had been involved in either theft case, the State failed to “forge a link beyond a reasonable doubt between Davis and the prior theft convictions with independent evidence.” However, the judgment in each exhibit contains the same named defendant, the same cause number, the same court, and the same charge as contained in the corresponding indictment and on the docket sheet, which do contain Davis’s unique CID number. Additionally, State’s Exhibit 2 consists of a “Certification Of Fingerprints As Official Copy” from the Tarrant County Sheriff’s Office Identification Bureau. Deputy Garcia testified that the fingerprints he took from Davis during the trial matched the fingerprints contained in State’s Exhibit 2. [RR3:26–29] State’s Exhibit 2 lists Davis’s name as Donald R. Davis and contains Davis’s physical description, date of birth, and home address, all of which are also contained in the indictments in State’s Exhibits 4 and 5.

Fitting all of the pieces of evidence together, we hold that sufficient evidence links Davis to the two prior theft convictions in State’s Exhibits 4 and 5. See *Flowers*, 220 S.W.3d at 921–22, 925; *Human*, 749 S.W.2d at 836, 840; *Newman v. State*, No. 02-09-00243-CR, 2010 WL 2636110, at *5 (Tex. App.—Fort Worth July 1, 2010, pet. ref’d) (mem. op., not designated for publication)

(holding that despite illegible fingerprints on prior convictions, the State sufficiently linked appellant to prior crimes via his CID number, name, charge, and fingerprints from pen packet); *Ortiz v. State*, No. 02-07-00397-CR, 2008 WL 4602243, at *2 (Tex. App.—Fort Worth Oct. 16, 2008, pet. ref'd) (mem. op., not designated for publication) (holding that State sufficiently linked defendant to prior conviction when his fingerprints matched those on jail card, which contained same CID number as that on indictment although judgment did not contain CID number). Accordingly, we overrule Davis's first issue.³

IV. SUFFICIENT EVIDENCE LINKS DAVIS TO THE PRIOR EVADING-ARREST CONVICTION

Davis phrases his second issue as a challenge to the sufficiency of the evidence to link him to the prior conviction for evading arrest or detention. His arguments under his second issue, however, challenge the qualifications of Deputy Garcia and the reliability of his testimony. Specifically, Davis argues that “Garcia’s lack of qualifications and unreliable expert testimony constitutes no evidence linking Davis to the prior evading arrest conviction.”

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

³We note that Davis’s brief includes a footnote stating that the theft judgment incorrectly reflects that he was convicted of theft under Texas Penal Code section 31.03(a). The State concedes that the penal code section reflected in the theft judgment is incorrect and should be modified. We agree and modify the theft judgment to reflect that Davis was convicted of theft under Texas Penal Code section 31.03(e)(4)(D). See Tex. R. App. P. 43.2(b); *Morrison v. State*, 480 S.W.3d 647, 667 (Tex. App.—El Paso 2015, no pet.) (modifying judgment to correct the penal code section under which appellant was convicted).

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).

Here, the record reflects that Davis did not object in the trial court to Deputy Garcia's testimony on the basis of his qualifications or the reliability of his opinions. Instead, when Deputy Garcia testified about the fingerprints on State's Exhibit 2, Davis objected based on hearsay and specifically stated, "That we -- we don't object to this witness testifying as a fingerprint expert, but we object to hearsay from whatever that document is." Because Davis did not challenge Deputy Garcia's qualifications or the reliability of his opinion in the trial court, Davis has not preserved for appellate review his complaints regarding Deputy Garcia's testimony. See *Resendiz v. State*, 112 S.W.3d 541, 546 (Tex. Crim. App. 2003) (holding appellant's challenge to reliability of expert's testimony was not preserved because appellant did not object to the reliability of the testimony at trial), *cert. denied*, 541 U.S. 1032 (2004).

The Texas Court of Criminal Appeals has recently reiterated in a sufficiency case that "a first-level appellate court has the obligation to conduct a thorough review of an appellant's claims, including any subsidiary issues." *Burks*

v. State, No. PD-0992-15, 2016 WL 6519139, at *8 (Tex. Crim. App. Nov. 2, 2016) (not designated for publication) (citing *Volosen v. State*, 227 S.W.3d 77, 80 (Tex. Crim. App. 2007)). Because Davis’s complaint on appeal also broadly challenges the sufficiency of the evidence to link him to the prior conviction for evading arrest or detention and because a challenge to the sufficiency of the evidence need not be raised in the trial court to be preserved for appellate review, we review the record to determine whether sufficient evidence exists to link Davis to the prior evading-arrest conviction. See *Gutierrez-Rodriguez v. State*, 444 S.W.3d 21, 23 (Tex. Crim. App. 2014).

Here, Deputy Garcia testified that he compared Davis’s known prints from State’s Exhibit 2 to State’s Exhibit 3—consisting of certified copies of a docket sheet, a misdemeanor information, and a judgment and sentence related to a prior evading-arrest conviction—and that the prints matched. Additionally, the docket sheet, misdemeanor information, and judgment in State’s Exhibit 3 all contain the same CID number, which matches the CID number in State’s Exhibit 2. Because Deputy Garcia identified the fingerprint on State’s Exhibit 3 as Davis’s fingerprint, and because the CID number on each of the items in State’s Exhibit 3 corresponds to Davis’s CID number, we hold that sufficient evidence linked Davis to the prior evading-arrest conviction in State’s Exhibit 3. See *Beck*, 719 S.W.2d at 209; *Flowers*, 220 S.W.3d at 921–22, 925. We overrule Davis’s second issue.

V. CONCLUSION

Having overruled Davis's first issue and having modified the judgment to reflect that Davis was convicted of theft under Texas Penal Code section 31.03(e)(4)(D), we affirm as modified the judgment in the theft case (cause number 02-16-00102-CR). Having overruled Davis's second issue, we affirm the judgment in the evading-arrest case (cause number 02-16-00103-CR).

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

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

DELIVERED: January 26, 2017