



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

**NO. 02-18-00149-CR  
NO. 02-18-00150-CR**

JOSHUA MONTREL LEWIS

APPELLANT

V.

THE STATE OF TEXAS

STATE

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FROM CRIMINAL DISTRICT COURT NO. 2 OF TARRANT COUNTY  
TRIAL COURT NOS. 1437673D, 1437444D  
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**MEMORANDUM OPINION<sup>1</sup>**  
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Appellant Joshua Montrel Lewis appeals from his convictions and life sentences for murder on his open pleas of guilty in two separate cases. In one point, Appellant argues his right to confront witnesses was violated when the trial court considered a presentence investigation report (PSI) at his trial on punishment. We will affirm both judgments.

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<sup>1</sup>See Tex. R. App. P. 47.4.

## Background

A grand jury indicted Appellant for the murders of Tyera Mukes and Alton Young. Appellant entered open pleas of guilty in both cases. The trial court deferred sentencing pending preparation of a PSI.

At the punishment hearing, the State offered the completed PSI into evidence. Asked by the trial court whether he had any objections, Appellant's counsel said, "I've had a chance to review it, Your Honor, and we have no objections." At the conclusion of the hearing, the trial court assessed punishment of incarceration for life in each case and ordered the sentences to run concurrently.

## Analysis

Appellant argues that his right to confront the witnesses against him was violated when the court considered the PSI at the punishment hearing. See U.S. Const. amend. VI.<sup>2</sup> The State argues that Appellant has failed to preserve this issue for our review. See *Reyna v. State*, 168 S.W.3d 173, 179–80 (Tex. Crim. App. 2005) (holding that defendant forfeited Confrontation Clause objection by failing to clearly articulate objection in trial court).

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<sup>2</sup>Appellant concedes that "current Texas law is adverse to Appellant's argument on this point." See, e.g., *Stringer v. State*, 309 S.W.3d 42, 48 (Tex. Crim. App. 2010) (holding the right to confront witnesses does not apply when a PSI is used in a non-capital case in which the defendant has elected to have the trial court assess punishment); *Sell v. State*, 488 S.W.3d 397, 398 (Tex. App.—Fort Worth 2016, pet. ref'd) (same).

But Appellant contends that his failure to object to the PSI did not forfeit review because “under circumstances where the law is well-settled to the point where any objection in the trial court would be futile, the claim will not be considered forfeited for later review,” citing *Ex parte Hathorn*, 296 S.W.3d 570, 572 (Tex. Crim. App. 2009).

We rejected the identical no-objection-required argument in *Sell*. See 488 S.W.3d at 398–99. There, Sell entered an open plea of guilty to the offense of aggravated assault. *Id.* at 398. At the punishment hearing, when the State offered a PSI, Sell affirmatively stated that he had no objection. *Id.* at 399. We held that Sell failed to preserve his Confrontation Clause argument for our review. *Id.*

This case is indistinguishable from *Sell*. For the reasons articulated in that opinion, we hold that Appellant failed to preserve his complaint for our review. See *id.* We overrule Appellant’s sole point.<sup>3</sup>

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<sup>3</sup>In *Sell*, we noted that even assuming Sell had not forfeited his Confrontation Clause complaint, “the court of criminal appeals has held that when a PSI is used in a non-capital case in which the defendant has elected to have the trial court determine sentencing, there is no violation of a defendant’s Sixth Amendment right to confrontation.” 488 S.W.3d at 399 (citing *Stringer*, 309 S.W.3d at 48). “That is precisely what occurred in this case, and we are bound by the court of criminal appeals’s holdings.” *Id.* (citing *Wiley v. State*, 112 S.W.3d 173, 175 (Tex. App. —Fort Worth 2003, pet. ref’d)).

## Conclusion

Having overruled Appellant's sole point, we affirm the trial court's judgments.

/s/ Sue Walker  
SUE WALKER  
JUSTICE

PANEL: WALKER, GABRIEL, and PITTMAN, JJ.

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

DELIVERED: May 17, 2018