Affirmed as Reformed and Opinion filed September 7, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00524-CR

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LEON ANDREW WOLT, III, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 801,892

O P I N I O N

Over his plea of not guilty, a jury convicted Leon Andrew Wolt, appellant, for the felony offense of aggravated assault with a deadly weapon. *See* TEX. PEN. CODE ANN. § 22.02(a) (Vernon 1995). The jury found the allegations in two enhancement paragraphs to be true, and it assessed appellant's punishment at twenty-five years in the Texas Department of Criminal Justice, Institutional Division. We affirm the judgment of the trial court for the following reasons: (1) appellant was not entitled to his requested jury instruction on a lesser included offense; (2) appellant waived his objection to the State's remarks during its closing argument; (3) appellant was not improperly restricted during voir dire; (4) appellant was properly impeached with his prior felony convictions; (5) appellant waived his objection to the cross-

examination of the State's witness; (6) it was proper to allow limited impeachment of appellant regarding his pre-arrest silence; and (7) appellant's punishment range did not constitute cruel and unusual punishment. However, we also reform the judgment because the trial court improperly entered an affirmative deadly weapon finding.

FACTUAL BACKGROUND

After smoking some marijuana, appellant and two of his friends, Rhodus and Boudreaux, drove into a neighborhood to look for some kids who had harassed Rhodus's mother a few days earlier. Appellant and Boudreaux each carried a nine millimeter gun with them. As they were driving through the neighborhood, appellant and his friends noticed a group of teenagers walking down the street. They stopped their vehicle next to the teenagers, and appellant and Boudreaux stepped out of the truck and pointed their handguns at the kids.

Appellant and Boudeaux said something about Rhodus' mother, Salina, and told the kids they would shoot them if they moved. Appellant and Boudreaux pointed their guns at one of the kids, Arlene, and as she turned to walk away, she heard two gunshots and saw Boudreaux shoot his gun toward the ditch. Appellant said that "he was not going to shoot girls," but he shot his gun's entire clip into the air. Appellant and Boudreaux then returned to their truck and drove away. Arlene told her mother and uncle about the incident, and they called the police. Appellant was, thereafter, indicted for aggravated assault with a deadly weapon on Arlene.

At trial, appellant testified in his defense. He denied being armed on the day of the incident, and said he never threatened Arlene. Appellant also denied knowing that Boudeaux had a weapon, and claimed that he only asked the group of teenagers if they knew who threatened Rhodus's mother. Appellant said he was frightened and angry when Rhodus shot his gun into the ditch. The jury, thereafter, convicted appellant of aggravated assault.

DISCUSSION AND HOLDINGS

Lesser Included Offense of Deadly Conduct

In his first point of error, appellant argues that the trial court erred in refusing to instruct the jury as to the lesser included offense of deadly conduct. We disagree.

A trial court is required to submit a jury charge on a lesser included offense only if both prongs of a two prong test are satisfied. *See Moore v. State*, 969 S.W.2d 4, 8 (Tex. Crim. App. 1998). First, the lesser included offense must be included within the offense charged. *See id.* Second, some evidence in the record must establish that if the defendant is guilty, he is guilty of only the lesser offense. *See id.* Additionally, a charge on a lesser included offense is not required if a defendant presents evidence that he committed no offense at all, and the evidence does not raise the issue of the lesser offense. *See Aguilar v. State*, 682 S.W.2d 556, 558 (Tex.Crim.App.1985); *Espinoza v. State*, 828 S.W.2d 53, 55 (Tex. App.—Houston [14th Dist.] 1991), *aff'd on other grounds*, 853 S.W.2d 36 (Tex. Crim. App. 1993).

Deadly conduct is a lesser included offense of aggravated assault.[1] *See Bell v. State*, 693 S.W.2d 434, 438-39 (Tex. Crim. App. 1985). Therefore, the only questioning remaining is whether the record contains evidence that appellant is guilty only of deadly conduct.

At the end of the guilt-innocence phase, appellant requested the trial court to include the following two statutory elements of deadly conduct: (1) a person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury, and (2) recklessness and danger are presumed of the actor knowingly pointed a firearm at or in the direction of another, whether or not the actor believed the firearm to be loaded. *See* TEX. PEN. CODE ANN. § 22.05 (a) & (c) (Vernon 1994). Although the statute provides that recklessness and danger are presumed under section (c), the presumption

[1] A person commits the offense of aggravated assault when that person intentionally or knowingly threatens another with imminent bodily injury and uses or exhibits a deadly weapon during the commission of the assault. *See* TEX. PEN. CODE ANN. § 22.02 (a) (Vernon 1994).

is inapplicable where the evidence shows that all of the actor's conduct with the weapon was intentional.[2] *See Franklin v. State*, 992 S.W.2d 698, 705 (Tex. App.—Texarkana 1999, pet. ref'd).

Here, the evidence shows that appellant intentionally threatened Arlene with his weapon. Appellant contends that the instruction on deadly conduct was required because after appellant pointed his gun at Arlene, he said that he was not going to "shoot no girls," and Arlene testified that the only person who fired a weapon was appellant's co-defendant. However, this evidence does not show that appellant only acted "recklessly." Instead, the evidence shows that appellant intentionally pointed his gun at Arlene with intent to threaten her with imminent bodily injury.

Testimony of several witnesses at trial shows that appellant intentionally threatened Arlene with his weapon. Arlene testified that appellant and Boudreaux pointed their guns very close to her head, she was afraid when appellant pointed his gun at her, and she heard gunshots. Kenneth, who was one of the teenagers with Arlene, also testified that appellant pointed a gun at him and the others, and threatened that he would shoot him and the other kids if they moved. Rhodus, appellant's cohort, testified that appellant and Boudreaux pointed guns at the kids, shot their guns into the kids' direction, and appellant fired his gun's entire clip into the air. Rhodus knew that appellant and Boudreaux were going to threaten the kids with their guns because the kids harassed his mother a few days earlier. On the other hand, appellant testified at trial that he did not threaten the teenagers, and that he did not know that Boudreaux had a gun and was frightened himself when Boudreaux fired it. Thus, the testimony at trial showed one of two things: (1) that appellant threatened the teenagers with imminent bodily injury or (2) that he did not threaten them or point a gun and that he did not know Boudreaux had a gun.

In light of this evidence, we conclude that the evidence does not show that if guilty, appellant was guilty only of deadly conduct; no evidence shows that appellant acted only "recklessly." Thus, the trial court did not err in refusing to submit appellant's requested instruction on deadly conduct to the jury. We overrule his first point or error.

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[2] A person acts intentionally when his conscious objective is to engage in the conduct or cause the result. *See* TEX. PEN. CODE ANN. § 6.03(a) (Vernon 1994). On the other hand, a person acts recklessly when he is aware of the risks and circumstances surrounding his conduct, but consciously disregards a substantial and unjustifiable risk that they will occur. *See* TEX. PEN. CODE ANN. § 6.03(b).

Comment on the Truthfulness of the Witness

In his second point of error, appellant argues that the trial court erred in permitting the prosecutor to express, over objection, her personal opinion as to the truthfulness of her witnesses. Appellant objects to the following remarks the State made during its closing argument:

> STATE: Then Ronnie Rhodus testified. . . . He admitted to being in a gang, he admitted being in TYC. He admitted what he was there for. He admitted knowing what they had gone to do to those kids. He did not lie to you about what this defendant did.
>
> DEFENSE COUNSEL: Judge, I will object to her saying that he didn't lie.
>
> THE COURT: Sustained. The jury will disregard the personal opinion of the district attorney.

> STATE: The only way you start considering these lesser included offenses is if you don't believe those children's testimony that he had a gun like that in his hands . . . Their stories match because that's what happened, because that's –
>
> DEFENSE COUNSEL: Your Honor, I would object to her saying what happened.
>
> THE COURT: That will be overruled.

> STATE: He had a weapon of his own, that's what the evidence showed. That type of weapon. Those kids don't forget that. Those kids didn't imagine that. Those kids didn't make it up.
>
> DEFENSE COUNSEL: Judge, I object to what those kids did or didn't.
>
> THE COURT: It will be overruled.

Appellant's argument on appeal lacks merit for two reasons. First, after the State's first remarks, the trial court instructed the jury to disregard the comments, and such an instruction generally serves to cure any error committed by the argument. *See Audujo v. State*, 755 S.W.2d 138, 144 (Tex. Crim. App.1988). Second, appellant's subsequent objections on appeal do not comport with his objections at trial. On appeal, he maintains that the trial court erred by permitting the State to express her personal opinion as to the truthfulness of her witnesses, an objection he did not make at trial to any of the State's challenged comments. An objection expressing a different legal ground from that urged on appeal may not

be reviewed. *See Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App.1995). Therefore, we overrule appellant's second point of error.

Questioning of Prospective Jurors

In his third point of error, appellant argues that he was denied effective assistance of counsel when the trial court prohibited his attorney from inquiring of prospective jurors whether they would automatically believe the testimony of several witnesses whose testimony agreed with one another.[3] We disagree.

During voir dire, defense counsel asked the panel, "Say the State brings in a lot of different people who are all saying the same thing. Will you automatically believe those people simply because there's a lot of them, three, four?" The State objected to defense counsel's question, without specifying any grounds, and the trial court sustained the State's objection. Defense counsel requested three additional peremptory challenges because he wanted to ask the jury if it would automatically believe a "multitude of witnesses saying the same thing." Defense counsel then objected to the jury as seated, arguing that if he had been given additional peremptory challenges, he would have stricken two particular jurors. The trial court overruled defense counsel's objection.

The right to be represented by counsel, guaranteed by Article I, Section 10, of the Texas Constitution, includes counsel's right to question members of the jury panel so that counsel may intelligently exercise peremptory challenges. *See Shipley v. State*, 790 S.W.2d 604, 608 (Tex. Crim. App.1990). A trial judge is given wide discretion to control voir dire, and a trial court's decision to restrict voir dire may only be reviewed for an abuse of discretion. *See Allridge v. State*, 762 S.W.2d 146, 163 (Tex. Crim. App. 1988), cert. denied, 489 U.S. 1040, 109 S.Ct. 1176, 103 L.Ed.2d 238 (1988). A trial court abuses its discretion during voir dire when it prohibits a proper question about a proper area of inquiry. *See id*.

A question is proper during voir dire if it seeks to discover a juror's views on an issue applicable to the case. *See Cadoree v. State*, 810 S.W.2d 786, 789 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd). While counsel may properly use hypothetical fact situations to explain an application of the law,

[3] Although the phrase "effective assistance of counsel" appears in appellant's point of error, appellant actually complains that he was improperly restricted during voir dire.

counsel may not use such questions to inquire how a venireman would respond to particular circumstances presented in a hypothetical question. *See Cuevas v. State*, 742 S.W.2d 331, 336, n. 6 (Tex. Crim. App.1987), cert. denied, 485 U.S. 1015, 108 S.Ct. 1488, 99 L.Ed.2d 716 (1988); *Cadoree*, 810 S.W.2d at 789. A question based on facts peculiar to the case on trial is improper if it requires jurors to commit themselves before hearing the evidence, i.e., a question which requires jurors to commit themselves as to how credible they would find a particular witness. *See Hernandez v. State*, 508 S.W.2d 853, 854 (Tex. Crim. App.1974); *DeLeon v. State*, 867 S.W.2d 138, 140, (Tex. App.—Corpus Christi 1993, pet. ref'd).

Here, appellant argues that the trial court denied him the right to question the jury panel to detect jurors' views on an issue applicable to the case. However, appellant used a hypothetical fact situation that did not attempt to explain the law. Instead, the hypothetical was based on facts particular to appellant's case; three of the State's witnesses and one defense witness would testify to the same version of events - that appellant threatened Arlene with his gun. Although the issue is a close one, defense counsel's question asking the panel if it would automatically believe three or four witnesses who say the same thing probably required the panel to commit themselves as to how credible it would find these witnesses. Consequently, we cannot say that the trial court abused its discretion in prohibiting counsel from asking the question. We, therefore, overrule appellant's third point of error.

Appellant's Impeachment by Prior Convictions

In his fourth point of error, appellant argues that he is entitled to a new trial because the trial court erred in permitting the State to impeach him with two prior felony convictions - a 1988 felony conviction for forgery and a 1990 felony conviction for burglary.

The State argues that appellant did not preserve his complaint for appellant review because he objected when the State offered evidence of his prior felony convictions by stating, "same objection." However, a general or imprecise objection is sufficient where the correct ground of exclusion is obvious to the judge and opposing counsel. *See Zillender v. State*, 557 S.W.2d 515, 517 (Tex. Crim. App. 1977). Here, defense counsel objected to the State's use of appellant's previous convictions during a motion in limine immediately before appellant testified. The motion in limine appears only sixteen pages

before the challenged objection in the record. Therefore, although appellant merely said "same objection" during trial, we conclude that the grounds for his objection were apparent to judge and opposing counsel, thereby preserving his complaint for our review.

The Texas Rules of Evidence provide that felony convictions shall be admissible for impeachment purposes once the trial court decides that the probative value of the conviction outweighs its prejudicial effect. *See* TEX. R. EVID. 609(a). The rules also provide that evidence of the conviction is not admissible if more than ten years have elapsed since the date of the conviction. *See* TEX. R. EVID. 609(b). Among the factors courts consider in weighing the probative value of a conviction against its prejudicial effect are the following: (1) the impeachment value of the prior crime, (2) the temporal proximity of the past crime to the present offense and the witness' subsequent history, (3) the similarity between the past crime and the present offense, (4) the importance of the defendant's testimony, and (5) the importance of the credibility issue. *See Theus v. State*, 845 S.W.2d 874, 880 (Tex. Crim. App. 1992).

The State has the burden to demonstrate, pursuant to rule 609, that the probative value of the conviction outweighs its prejudicial effect. *See id.* In performing this balancing test, the first two factors weigh in favor of admission if the prior crimes were related to deception, as opposed to violence. *See id.* at 881. Also, the second factor will favor admission if the past crimes were recent, and if the witness has demonstrated a propensity for running afoul of the law. *See id.* If, however, the past crime and the present offense are similar, the third factor weighs against admission because impeaching a defendant with a similar crime may cause a jury to convict on the perception of a past pattern of conduct, rather than the facts of the present offense. *See id.* Additionally, in cases involving only the defendant's testimony and the testimony of the State's witnesses, a defendant's credibility is important, and courts favor the need to allow the State an opportunity to impeach the defendant's credibility. *See id.*

We review the trial court's weighing of these factors for an abuse of discretion. *See id.* An abuse of discretion occurs when the trial court's decision lies outside the zone of reasonable disagreement. *See Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990) (op.on reh'g).

Applying rule 609 factors to this case, we conclude that the probative value of appellant's two prior felony convictions outweighs their prejudicial effect; at least three factors weigh in favor their admission.

First, appellant's convictions were relatively recent and demonstrated appellant's propensity to run afoul of the law.[4] Second, the prior crimes were not related to appellant's presently charged offense. Third, appellant's case involved only his testimony and the testimony of the State's witnesses, and appellant testified that he committed no crime at all. Thus, appellant's credibility was important, and the trial court properly afforded the State an opportunity to impeach his credibility with the prior convictions.

We conclude that the trial court did not abuse its discretion in allowing the State to impeach appellant with his prior felony convictions. Accordingly, we overrule appellant's fourth point of error.

Appellant's Restriction During Cross-examination

In his fifth point of error, appellant argues that he is entitled to a new trial because the trial court limited his cross-examination. Specifically, appellant argues that the trial court erred in refusing to permit him to ask the investigating officer whether he obtained a description of the weapon in question from the complainant. We disagree.

During cross-examination of the investigating officer, defense counsel asked the following question:

> DEFENSE COUNSEL: [W]hen you spoke with Arlene, did she describe the weapon that she saw the driver with?
>
> THE STATE: Objection, hearsay.
>
> THE COURT: Sustain the objection.
>
> DEFENSE COUNSEL: We would request the opportunity to make a Bill of Exception on that point.
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> THE COURT: That will be denied.

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[4] Appellant's burglary conviction occurred within the rule's ten year statutory time limitation and was, therefore, admissible under the rule. *See* TEX. R. CIV. P. 609(b). Although appellant's forgery conviction is more than ten years old, it is admissible because appellant's subsequent burglary conviction indicates appellant's lack of reformation and causes his forgery conviction to be treated as not remote. *See McClendon v. State*, 509 S.W.2d 851, 855-57 (Tex. Crim. App.1974); *Hernandez v. State*, 976 S.W.2d 753, 755 (Tex. App.—Houston [1st Dist.] 1998, pet. ref'd) (holding that the standard under TEX. R. CIV. P. 609(a) is appropriate when the "tacking" of intervening convictions causes a conviction older than 10 years to be treated as not remote).

Appellant argues that because he was not permitted to confront the officer or make a bill of exceptions, his rights under the Sixth Amendment and Article I, Section 10 of the Texas Constitution were violated.[5]

Appellant has not preserved his complaint on appeal. During trial, he did not offer any of the above reasons in response to the State's hearsay objection; he did not argue that the testimony was admissible pursuant to some hearsay exception, nor did he argue that the court's ruling violated his state or federal rights. Consequently, he has waived any error and presents nothing for review. *See* TEX. R. APP. P. 33.1(a)(1)(A); *Long v. State*, 800 S.W.2d 545, 548 (Tex. Crim. App. 1990) (holding that once an objection to hearsay is raised, the burden shifts to the non-objecting party to show the evidence is admissible pursuant to an exception to the hearsay rule). Appellant's fifth point of error is overruled.

Comment on Appellant's Silence During Police Investigation

In his sixth point of error, appellant complains that the trial court erred in permitting the State to comment on his silence after he became the focus of police investigation. During cross-examination, the prosecutor asked appellant the following question: "So, I imagine logically you would have told the police officer what had happened when the police officer asked you what happened, but you didn't do that, did you?" Appellant objected to this question as a comment on his silence after being confronted with law enforcement, and his objection was overruled.

After an accused is advised of his *Miranda* rights and invokes his rights, his silence cannot be used to impeach his testimony at trial. *See Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); *Doyle v. Ohio*, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976). However, a defendant's rights are not violated when his credibility is impeached with his pre-arrest silence or failure to mention exculpatory facts. *See Cisneros v. State*, 692 S.W.2d 78, 84 (Tex. Crim. App. 1985). While the Fifth Amendment to the United States Constitution prevents the prosecution from commenting on a

[5] When evidence is excluded, the right to make an offer of proof or perfect a bill of exception is absolute. *See Spence v. State*, 758 S.W.2d 597, 599 (Tex. Crim. App.1988), cert. denied, 499 U.S. 932, 111 S.Ct. 1339, 113 L.Ed.2d 271 (1991). Thus, appellant had a right to make a bill of exceptions for the officer's excluded testimony, however, as we explain below, we need not discuss this right further because appellant did not offer specific reasons why the hearsay testimony was admissible.

defendant's silence who asserts the right to remain silent during his criminal trial, it is not violated when a defendant testifies in his own defense and is impeached with his prior silence. *See id.*

Here, appellant testified in his own behalf that he did not threaten Arlene, and did not know that Boudreaux had a weapon. During cross-examination, the prosecutor then interrogated appellant as to why he did not assert these facts to the officer during his pre-arrest investigation. The prosecutor's question was not an improper impeachment by use of appellant's pre-arrest silence; appellant was subject to limited impeachment regarding his pre-arrest silence to test his credibility, and such impeachment did not violate appellant's right against self-incrimination. *See Ayers v. State*, 606 S.W.2d 936, 940 (Tex. Crim. App. 1980) (holding impeachment with pre-arrest silence proper when defendant in murder case testified that he acted in self-defense and "blacked out," but did not assert those facts in his pre-arrest statement to police officers); *Marshall v. State*, 471 S.W.2d 67, 70 (Tex. Crim. App.1971) (holding impeachment with pre-arrest silence proper when the defendant in murder case waived his right to remain silent at trial and testified the homicide was an accident, but failed to tell the police the homicide was an accident before he was arrested). We, therefore, overrule appellant's sixth point of error.

Affirmative Deadly Weapon Finding

In his seventh point of error, appellant argues that the trial court erred in entering an affirmative deadly weapon finding in the judgment. Appellant elected to have the jury assess his punishment. While the trial court's charge instructed the jury on the law of parties, the court did not present a special issue to the jury asking it to decide if appellant used or exhibited a deadly weapon. An affirmative deadly weapon finding was entered by the judge, but it does not specifically state that appellant knew that a deadly weapon would be used, or that he personally used or exhibited one. Rather, the word "yes" is circled under the phrase "deadly weapon" on a pre-printed form containing a section entitled "Affirmative Findings." As a result, appellant argues that the deadly weapon finding should be deleted from the judgment. We agree.

We recently addressed this exact issue in *Taylor v. State*, 7 S.W.3d 732 (Tex. App.—Houston [14th Dist.] 1999, no pet.). There, we could not tell whether the jury convicted the appellant as a party or as a principal because a special issue was not submitted to the jury. The jury was instructed on the law of parties, and an identical pre-printed form was used to reflect a deadly weapon finding, although the jury

did not specifically find that appellant knew that a deadly weapon would be used or exhibited or that he used one himself. We noted that when the jury is instructed on the law of parties, it must expressly state that appellant either used or exhibited a deadly weapon or knew that one would be used, or exhibited one during the commission of the offense. *See id.* at 740-41; *see also Pritchett v. State*, 874 S.W.2d 168, 172 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd); *Mulanax v. State*, 882 S.W.2d 68, 71 (Tex. App.—Houston [14th Dist.] 1994, no pet.). Because we could not tell whether the jury convicted the appellant as a party or as a principal, we deleted the affirmative deadly weapon finding in the judgment.

Our case is analogous to *Taylor*; the jury did not expressly state that appellant either used or exhibited a deadly weapon, or knew that one would be used or exhibited during the commission of the offense. We cannot tell whether the jury convicted the appellant as a party or as a principal. Thus, the trial court erred in entering an affirmative deadly weapon finding, and we must delete it from the judgment. Appellant's seventh point of error is affirmed.

Cruel and Unusual Punishment

In his eighth point of error, appellant contends that the trial court erred in overruling his objection to the punishment charge because the punishment range constituted cruel and unusual punishment.

With appellant's two prior felony convictions, - a first degree and a third degree felony - the punishment range for the second degree felony of aggravated assault is confinement for life, or not more than ninety-nine years or less than twenty-five years. *See* TEX. PEN. CODE ANN. § 12.42(d) (Vernon Supp. 2000). Appellant contends that, after his conviction and punishment in these prior felonies, the legislature changed his first degree felony to a second degree felony and his third degree felony to a fourth degree felony. With a second degree and fourth degree felony, his punishment range would be five to ninety-nine years, rather than twenty-five to ninety-nine years or life. Consequently, appellant argues that the punishment range as applied to him violates equal protection because a person convicted of the same crimes he committed would be subject to a punishment range of five to ninety-nine years, instead of the higher range applied to him.

When the punishment assessed by the judge or the jury is within statutorily prescribed limits, it is not cruel and unusual punishment. *See Samuel v. State*, 477 S.W.2d 611, 614 (Tex. Crim. App. 1972);

Benjamin v. State, 874 S.W.2d 132, 135 (Tex. App.—Houston [14th Dist.] 1994, no pet.). Additionally, a defendant is to be sentenced under the law that exists at the time of the commission of the offense for which he is being punished. *See Davila v. State*, 930 S.W.2d 641, 654 (Tex. App.—El Paso 1996, pet. ref'd); *Perry v. State*, 902 S.W.2d 162, 163 (Tex. App.—Houston [1st Dist.] 1995, pet. ref'd). Appellant received twenty-five years' imprisonment in the Texas Department of Criminal Justice. Because the trial court sentenced appellant to a punishment within the range provided for by statute, we hold that the trial court did not assess a cruel and unusual punishment. Appellant's eighth point of error is overruled, and the judgment of the trial court is affirmed as reformed.

We delete the affirmative deadly weapon finding and affirm the remainder of the judgment.

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Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed September 7, 2000.

Panel consists of Justices Fowler, Edelman, and Baird.[6]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[6] Former Justice Baird sitting by assignment.