

**Affirmed and Opinion filed March 29, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-01243-CR**  
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**JUAN EDMUNDO TREVINO, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 228th District Court  
Harris County, Texas  
Trial Court Cause No. 784,811**

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**OPINION**

Upon his guilty plea, appellant was convicted of the offense of aggravated assault. The trial court assessed his punishment at five years' confinement in the Texas Department of Criminal Justice, Institutional Division. In his sole point of error, appellant asserts that a fundamental defect exists in the indictment. Specifically, appellant argues that the indictment is flawed because it alleges the commission of aggravated assault on a date after presentment of the indictment. We affirm.

In order for appellant to complain on appeal about a defect in either the form or the

substance of an indictment, appellant must object to the indictment before trial. TEX. CODE CRIM. PROC. ANN. art. 1.14(b) (Vernon 1989); *Duron v. State*, 956 S.W.2d 547, 550 (Tex. Crim. App. 1997); *Ex parte Morris*, 800 S.W.2d 225, 227 (Tex. Crim. App. 1990); *Ex parte Gibson*, 800 S.W.2d 548, 551 (Tex. Crim. App. 1990).

An indictment which fails to allege the commission of an offense anterior to the presentment of the indictment is a defect in the form of the indictment. TEX. CODE CRIM. PROC. ANN. art. 21.02 (Vernon Supp. 2000). Appellant failed to object to this defect before trial, and as such has waived any right to complain of this defect for the first time on appeal. We overrule appellant's sole point of error.

Accordingly, the judgment of the trial court is affirmed.

/s/ Norman Lee  
Senior Justice

Judgment rendered and Opinion filed March 29, 2001.

Panel consists of Justices Edelman, Frost and Lee.<sup>1</sup>

Do Not Publish — TEX.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

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<sup>1</sup> Senior Justice Norman Lee sitting by assignment.