IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-77,045

HARLEM HAROLD LEWIS III, Appellant

v.

THE STATE OF TEXAS

ON DIRECT APPEAL FROM CAUSE NO. 1428102
IN THE 351ST JUDICIAL DISTRICT COURT
HARRIS COUNTY

RICHARDSON, J., delivered the opinion of the Court in which KELLER, P.J., and KEASLER, HERVEY, ALCALA, YEARY, KEEL, and WALKER, JJ. joined. NEWELL, J., did not participate.

O P I N I O N

In July 2014, a jury convicted Appellant, Harlem Harold Lewis III, of capital murder for shooting and killing Corporal Jimmie Norman, a Bellaire Police Department (BPD) patrolman, and Terry Taylor, a bystander, during the same criminal transaction. *See* TEX. PENAL CODE § 19.03(a)(7)(A). Pursuant to the jury's answers to the special issues set forth

in Texas Code of Criminal Procedure Article 37.071, §§ 2(b) and 2(e), the trial judge sentenced Appellant to death. TEX. CODE CRIM. PROC. Art. 37.071, § 2(g).[1] Direct appeal to this Court is automatic. Art. 37.071, § 2(h). Appellant raises fourteen points of error. After reviewing Appellant's points of error, we find them to be without merit. Consequently, we affirm the trial court's judgment and sentence of death.

FACTUAL BACKGROUND

At the guilt-innocence phase of trial, the State presented evidence that Corporal Norman was patrolling Bellaire, Texas, in a marked police vehicle on the morning of December 24, 2012. While Norman was stopped at a traffic light, his attention was drawn to a black Honda automobile that crossed the intersection as Norman's light changed from red to green.[2] Although the information was unknown to Norman at the time of the shootings, investigators subsequently learned: the Honda belonged to Appellant's girlfriend; Appellant was driving the Honda that morning; and Appellant had an outstanding bond forfeiture warrant against him for failing to appear in court regarding a misdemeanor marijuana possession charge.

---

[1] Unless otherwise indicated, all future references to Articles refer to the Code of Criminal Procedure.

[2] Other than a reasonable inference that Appellant came close to running a red light, the record does not clearly indicate why the Honda initially drew Norman's attention. Evidence before the jury also showed that Norman had conducted roll call at the BPD on the morning of the shootings. Outside the jury's presence, the prosecutor asserted that Norman had disseminated information at that roll call about a recent burglary. The prosecutor suggested that the Honda was generally consistent with the description of a vehicle that was reportedly used by the burglar(s).

Norman, who was in uniform, began to follow the Honda. Norman's dashboard camera video showed Appellant immediately turning onto a residential street and pulling far into one of the residences' driveways. Norman passed the residence and entered the Honda's license plate number into his patrol car's mobile data terminal. While awaiting a response, Norman drove past the residence again and turned a corner.

Moments later, Norman received the result of the license plate check, which showed that the Honda lacked a confirmation of insurance and was not registered to the residence. When Norman drove back to the residence, the Honda was no longer in the driveway, but it was visible down the street, traveling in the opposite direction. Norman activated the patrol car's lightbar, which automatically activated his microphone, and he quickly caught up with the Honda as it neared a stop sign.

Appellant obeyed the stop sign, but then kept going. Although Norman blew his air horn several times, appellant continued driving, made turns, and accelerated. Norman thereafter activated his siren. When Appellant eventually stopped at another stop sign, Norman got out of his vehicle and approached the Honda. Before Norman reached the Honda or spoke, Appellant opened the driver's-side door instead of rolling down the window. A law enforcement official testified that Appellant's action would have been an "immediate red flag" for a police officer because "when [a person] opens the door, [he is] confronting the officer."

At that time, Norman ordered Appellant to step out of the car and warned that he

would handcuff Appellant if he failed to do so. Appellant did not comply with Norman's order. Instead, Appellant remained in the Honda and asked Norman, "What did I do?" and "Why would you put handcuffs on me?" Norman responded by reaching for the driver's-side door, but Appellant pulled it shut and sped away. Norman radioed that Appellant was fleeing the traffic stop and pursued him.

During the ensuing high-speed chase, Appellant ran stop signs at busy thoroughfares, attempted to pass a white pickup truck, struck a parked car, and swerved into the white truck. The driver of the white truck was subsequently identified as Selvin Romero-Amaya. Because Appellant continued driving after damaging Romero-Amaya's truck, Romero-Amaya also began pursuing Appellant. Romero-Amaya's truck stayed between Norman's patrol car and the Honda for the remainder of the chase.

Romero-Amaya struck the rear of the Honda with his truck to make Appellant stop. Romero-Amaya testified that the impact caused the Honda's trunk to open, but Appellant continued driving. Shortly afterward, however, Appellant abruptly pulled the Honda into a Maaco autobody shop's parking lot.

Romero-Amaya followed Appellant into the lot and used his truck to block the Honda from leaving. As Norman pulled into the lot, Romero-Amaya got out of his truck, carrying insurance papers. Norman's dashboard camera showed that Romero-Amaya stayed near his truck, which was parked on the Honda's passenger side, and that Romero-Amaya did not confront Appellant.

Norman's dashboard camera recorded Appellant opening the Honda's driver's-side door and placing his left foot on the ground as the Honda rolled slowly forward and then backward. Norman ran to the Honda and ordered Appellant to place the Honda in "park." Appellant told Norman that there was something wrong with the car. Norman reached into the Honda to arrest and handcuff Appellant. Appellant resisted, asking, "What did I do?" and "What did I do, sir?"

Because Appellant continued to resist, a struggle ensued. Norman warned Appellant that Norman was going to "tase" him. Appellant responded, "Let me go." Norman then stated, "Get your hand [unintelligible]." Appellant replied, "I'm looking for my phone. I need to call my phone." Appellant repeated, "I need to call my phone" several more times, followed by, "Let me go. Let me go." While Norman struggled to handcuff Appellant, an older man walked out of the Maaco shop and stood next to the Honda's driver's side door. The man was subsequently identified as Terry Taylor, the Maaco's co-owner.

Norman's dashboard camera did not clearly capture what happened inside the Honda during the struggle. However, Stephanie Pacheco testified that she worked next to the Maaco and had observed the struggle from an area behind the Honda. Pacheco stated that it looked like Norman was trying to get Appellant out of the Honda, and that she saw both of Appellant's feet on the ground. She then saw Appellant's feet come off the ground and his head dip below the "Honda" emblem on the trunk as he leaned back into the car, as if he were reaching for something. Pacheco testified that Appellant "leaned back up" and "started

shooting," and that she saw Norman hit the ground. Pacheco saw Appellant stand up and shoot at Taylor, after which she turned and ran for safety.

Romero-Amaya testified that he was standing between his truck and the Honda, watching the struggle through the Honda's front passenger window. Romero-Amaya stated that he saw Appellant move around in the car, check the glove box and beneath the seats, pull out a pistol, and shoot Norman in the face. Norman fell on his back. Romero-Amaya testified that Appellant then shot Taylor, who was trying to flee. Taylor fell face down on the ground. Romero-Amaya said that he hunched on the ground and watched Appellant's feet to see where Appellant was going. When he did not see Appellant's feet move, Romero-Amaya sought cover behind his truck as another patrol car arrived. Romero-Amaya testified that Appellant "pulled out his weapon" and shot at the other officers, after which Appellant "took off." Romero-Amaya stated that he then tried to help Taylor, who seemed to be choking.

Norman's microphone and dashboard camera recorded the sound of a gunshot and Norman falling backward onto the ground. Appellant immediately emerged with a black handgun in his right hand, extended his right arm, pointed the gun at Taylor, who was flinching away from Appellant, and fired. As Taylor fell to the ground, Appellant turned and aimed the gun at Romero-Amaya, who ducked down. But Appellant then looked toward the street, relaxed his arm, bent down, and reached into the Honda for something. Appellant looked back toward the street, turned and pointed his gun in that direction, started firing, and

ran to his right, out of the dashboard camera's range. Moments later, a plainclothes police officer with a badge at his waist entered camera range. The plainclothes officer was subsequently identified as BPD Detective Doug Clawson. Clawson ran towards the Honda, firing his gun in the direction in which Appellant had fled. A uniformed officer, subsequently identified as BPD Lieutenant William Bledsoe, approached Norman.

Bledsoe and Clawson testified that they responded to Norman's radio calls about the chase. They arrived in the Maaco parking lot in a marked patrol car that had its lightbar on. Immediately before they reached the Maaco, Bledsoe heard three gunshots. As they entered the Maaco's parking lot, they saw Norman's patrol car. The vehicle's door was ajar and its lightbar and siren were on. Ahead of Norman's patrol car, they saw a small black vehicle with a damaged front end.

Norman was lying on the ground. A black male, later identified as Appellant, was standing over Norman with a gun in his hand. Another man, later identified as Taylor, was lying on the ground a few feet away. As the officers got out of their vehicle, Appellant "square[d] up," pointed his gun at them, and began firing. As he fired at the officers, Appellant ran toward an adjacent parking lot and strip mall that included a child daycare center at one end.

Bledsoe and Clawson returned fire. Appellant started to "go down," as if he had been hit, but then he got up and started running again. Clawson continued to pursue Appellant while Bledsoe attempted to help Norman.

Appellant, who was bleeding and leaving a trail of blood drops, ran down a narrow walkway between the side of the daycare center and a wooden fence. Appellant then turned down an alley that ran behind the strip mall. Due to the potential for an ambush, Clawson did not pursue Appellant down the walkway until he was joined by a uniformed officer, Gil Macedo, who was wearing a bulletproof vest. Macedo used his body to shield Clawson as they followed the blood trail down the walkway and into the alley.

When Clawson and Macedo entered the alley, they saw a black semiautomatic handgun with blood on it lying on the ground. The gun was a few feet away from the daycare center's back door. Subsequent investigation revealed that the gun's safety was off and the hammer was cocked. One bullet was in the gun's chamber and two more bullets were in the magazine. A weapons trace showed that the gun had been reported stolen.

Clawson and Macedo saw Appellant trying to crawl underneath a pickup truck that was parked near the alley. Although Appellant had sustained gunshot wounds and was bleeding heavily, he struggled with the officers as they tried to handcuff him, yelling, "Let me up, let me up, let me leave!" Macedo was finally able to handcuff Appellant with a third officer's assistance. After he was handcuffed, Appellant kept trying to get up and had to be held down. Paramedics transported Appellant to a local hospital.

The daycare center's director testified that she had seen a black male run down the side walkway toward the alley, followed by a police officer who was wearing a badge at his waist. A few minutes later, the director heard someone pulling on the daycare center's back

door, which was locked. Macedo testified that neither he nor Clawson attempted to open the daycare center's back door.

Norman was not moving when Bledsoe came to his aid. Bledsoe observed blood on Norman's forehead and a lot of blood around Norman's eyes. He also saw a lot of blood coming out of Norman's nose, mouth, and ears. Bledsoe was unable to detect a pulse or any sign of breathing, and he believed that Norman was dead. Norman's firearm was still snapped inside its holster. The only equipment missing from Norman's duty belt were his handcuffs. Bledsoe saw a Hispanic man, later identified as Romero-Amaya, kneeling next to Taylor. Taylor was not moving and blood was pooling around his head and shoulders.

Although paramedics who responded to the scene detected some faint signs of life and transported Norman to a local hospital, he was pronounced dead on arrival. Norman's autopsy showed that he died from a single gunshot that was fired from one to three feet away. The bullet, which was recovered during the autopsy, entered Norman's left forehead and penetrated his brain. Dr. Robert Condron, the assistant medical examiner who performed Norman's and Taylor's autopsies, testified that Norman's wound was not survivable, that death would have been almost instantaneous, and that a firearm is a deadly weapon.

Forensic examination testimony suggested that the handgun recovered in the alley fired the bullet that killed Norman. DNA analysis could not exclude Norman and Appellant as sources of the blood found on the weapon, nor could it exclude Appellant as the source of blood found in numerous locations throughout the crime scene.

Taylor died at the scene from a single gunshot that was fired from a maximum range of three to five feet. Dr. Condron testified that the bullet entered the left front side of Taylor's neck and traveled "backward, a little bit leftward, and a little bit down" through the left carotid artery, lung, aorta, and ribs before exiting the body through the back muscles. Condron stated that the injuries were probably not survivable, unless Taylor had received immediate surgical intervention. Condron testified that Taylor would have died within a few minutes from general blood loss, as well as from internal bleeding into the chest cavity, which would have impeded Taylor's ability to breathe.

A crime scene investigator testified that he found the Honda idling in neutral gear. He reached into the Honda and had no difficulty putting the vehicle into "park" and turning off the ignition. The investigator thereafter stood outside the Honda and photographed its interior while he waited for a warrant allowing him to process the inside of the vehicle for evidence. Among the items the investigator photographed was a cell phone that was sitting on top of the vehicle's console. Although the Honda belonged to Appellant's girlfriend, Shamika Hudson, the cell phone found in it did not belong to her. Investigators also found a fired, .380-caliber cartridge casing on the driver's side floorboard.

The State's firearm analyst testified that she examined the handgun recovered from the alley. She stated that the gun fired the cartridge casing found in the Honda. She also testified that, if the gun's hammer was not already pulled back (i.e., if the gun was in "double-action" mode), it would require 8½ to 9½ pounds of pressure to pull the trigger and

fire the gun. If the gun's hammer was already pulled back (i.e., the gun was in "single-action" mode), it would take 5½ pounds of pressure to pull the trigger and fire the gun. The analyst further explained that the gun had multiple built-in safety features that must be disengaged for it to fire. She testified that, even if someone disengaged these safety devices, the gun still would not fire unless the trigger was pulled.

Appellant testified in his defense. On direct examination, Appellant acknowledged that: Shamika Hudson was his girlfriend; he had been driving her Honda through Bellaire on the morning of December 24; he had seen Norman behind him; and he had tried to avoid the officer. Appellant explained that he knew that he had a misdemeanor warrant against him, and he had been concerned that the Honda would be towed if Norman stopped him. But because Norman eventually came up behind Appellant again, Appellant stopped the car.

Appellant asserted that he opened the Honda's driver's-side door because its window was broken. Appellant agreed that Norman and he had some sort of verbal exchange, during which Norman told Appellant to step out of the car. But Appellant admitted that he "t[oo]k off" and "got on [sic] a high-speed chase," and he conceded that this behavior was "irresponsible."

Appellant testified that, during the ensuing chase, a white pickup truck came from behind the Honda and hit it hard in the rear. Appellant stated that the impact caused him to hit his head on the steering wheel. Appellant asserted that, afterward, the Honda would not drive properly. Appellant therefore pulled into the Maaco parking lot, where he knew there

would be a lot of people around and he would be "safe." Appellant asserted that he was afraid of Norman at that point.

Appellant stated that he put his foot on the ground outside of the Honda because he had been trying to stop the car from moving. He denied that he had been preparing to run from Norman, and he asserted that he had been unable to put the car in "park" when Norman told him to do so. Appellant stated that he and Norman got into a struggle, during which Norman pulled Appellant out of the car. Appellant asserted that, at this point during the struggle, he was feeling afraid and wanted to call his father. Appellant contended that Romero-Amaya lied when he testified that Appellant checked the glove box and beneath the seats. However, Appellant acknowledged that he had reached for a gun.

Appellant testified that Norman and he struggled over the gun inside the car and "the gun went off." Appellant acknowledged that he then "pull[ed] the gun and fir[ed] it again." Appellant testified that he did not remember firing at police officers when he exited the car and that he also did not remember running from the scene.

On cross-examination, the prosecutor challenged Appellant's suggestion that Norman's shooting had been unintentional. Appellant acknowledged that he had previously given a statement in which he asserted that he could not remember anything about the offense. However, Appellant denied fabricating his trial testimony that the gun had simply gone off inside the car as he and Norman struggled.

The prosecutor also challenged Appellant's testimony that Romero-Amaya's truck hit

the back of the Honda with sufficient force to cause Appellant's head to hit the steering wheel, as well as the defense's suggestion that the blow had affected Appellant's behavior during the offense. Appellant agreed with the prosecutor's characterization of the damage to the back of the Honda as a "little dent below [the] license plate." Appellant also acknowledged that he had denied a history of head injuries when a doctor examined him after the offense. However, Appellant asserted that he had understood the doctor to have been referring to head injuries that occurred before the offense. But Appellant acknowledged that hitting his head on the steering wheel did not keep him from having the presence of mind to look for his gun.

Appellant also admitted that he put his finger on the gun's trigger, "put [the gun] at [Norman's] head," and pulled the trigger. Although he had testified on direct examination that he felt afraid during the struggle, Appellant acknowledged that the only thing Norman had in his hands during the struggle was a set of handcuffs. Appellant also acknowledged that he had many opportunities to avoid the situation, and he agreed that he chose to bring a gun. Appellant further admitted that the gun was stolen, although he asserted that he did not know it was stolen when he obtained it.

Investigators found a cell phone on the Honda's console after the shooting, in plain sight and within easy reach. Appellant nevertheless denied that his statements to Norman during the struggle (i.e., that Appellant was "looking for his phone" and "need[ed] to call his phone") had been a ruse to obscure his efforts to find the gun. But Appellant acknowledged

that, after he killed Norman, he decided to "take out everybody that [he could] from that point on." Appellant asserted that he did so "out of fear."

Appellant testified that he pointed his gun at Taylor, who was standing next to him, and pulled the trigger. Appellant acknowledged that Taylor had been unarmed and had not touched or spoken to him. Appellant admitted that he then pointed the gun at the driver of the white truck. However, Appellant denied that he would have shot the driver but for the distraction of Lieutenant Bledsoe and Detective Clawson's arrival. Appellant agreed that he fired a third shot in Clawson's direction, but he denied that he had done so because he wanted to kill more police officers. Appellant also agreed that he chose to retain his gun and run from Clawson rather than dropping the gun and putting his hands up. Appellant, however, denied that he had failed to comply with the commands of officers who apprehended him after the shooting.

The jury convicted Appellant of capital murder as alleged in the indictment. At the punishment phase, the State presented evidence of Appellant's criminal history and unadjudicated bad acts.

Appellant stipulated that, on November 7, 2012, he pleaded guilty to theft of property valued between $50 and $500 for stealing a woman's earrings and bracelets, and he had been sentenced to six days in jail. Appellant also stipulated that he had been charged with misdemeanor marijuana possession for an incident that occurred on November 23, 2012, and that he had failed to appear at a November 29, 2012 court setting regarding that charge.

The State presented testimony that, during the November 23rd incident, Appellant was driving and passed a police car on the side of the road. Although one of Appellant's passengers warned Appellant that "a police" was "right there," Appellant replied, "No, I ain't worried about all that" and proceeded to light and smoke a marijuana cigarette. A police officer subsequently stopped the car, found remains of smoked marijuana cigarettes in the driver's-side door compartment, and arrested everyone who was in the car.

The State also presented evidence that Appellant and his friends Bernard Lewis[3] and James Branch graduated high school in 2010. After graduation, Appellant and Bernard began attending the University of Houston-Downtown, and Appellant shared an apartment with Branch.

Because they needed money, the three of them began to discuss using guns to rob people. Bernard thereafter acquired a gun. On the night of April 13, 2011, Branch acted as a lookout while Appellant and Bernard approached Kouamepros Baklewa at a bus stop. While Bernard held a gun to Baklewa's stomach, Appellant took Baklewa's laptop case and Bernard took Baklewa's wallet and cell phone. Baklewa testified that he was shaking and "scared to death."

After robbing Baklewa, the trio drove to a Walmart, where they attempted to rob a woman who was walking out of the store. Bernard gave the gun to Appellant, who approached the woman and told her to give him her purse. When the woman screamed and

---

[3] We refer to Bernard Lewis by his first name in this opinion to distinguish him from Appellant.

ran away, they did not pursue her.

Two nights later, Daryn Thomas joined the trio as they returned to the bus stop to try another robbery. Thomas and Appellant approached a woman who was at the bus stop. Thomas "cocked the gun at" the woman and told her to hand over her purse. When they ran back to the car where Branch and Bernard were waiting, Appellant was carrying the woman's purse.

Later that night, Branch, Bernard, and Appellant returned to the bus stop. Branch served as a lookout while Appellant and Bernard approached a young man who was waiting at the stop. Appellant "cocked the gun at" the man's stomach and told him to hand over his bag and cell phone. Bernard took the man's bag and Appellant took the man's cell phone. Bernard testified that the man looked as if he was "scared out his mind" and "in fear of his life."

In September 2011, Bernard and Appellant drove to the University of Houston–Downtown and parked next to a truck. When Bernard noticed that the truck's door had no lock, he and Appellant burglarized the vehicle. Bernard took a parking pass and Appellant took stereo speakers. On June 15, 2012, Appellant admitted to a friend that he also had thrown a brick through a car window and had taken a radio and other items that were inside the car. Subsequent examination of a print lifted from the vehicle showed that the print belonged to Appellant.

From December 2011 to April 2012, Bernard, Branch, Appellant, and their friend Curt

Berrard sold marijuana to make money. In 2012, Appellant and various friends burglarized several apartments and stole property that they found inside. One apartment resident was home when they broke in. The resident testified that she screamed, "Please don't hurt me," ran to the apartment complex's office, and called the police. The resident testified that, after the burglary, she could not sleep at night due to anxiety, and she was scared to stay home alone.

The State also presented evidence that Appellant had physical altercations with his girlfriend, Hudson, in which he slapped and choked her. Appellant had another altercation with a different girlfriend in which he shattered her car window by punching his hand through it. Appellant showered his girlfriend with broken glass and cut his arm, causing himself to bleed profusely.

On December 11, 2012, Appellant purchased the handgun that he would later use to kill Corporal Norman and Taylor. Between the time he purchased the gun and the time of the offense, Appellant texted with a friend about wanting to use the gun to shoot and rob people.

While Appellant was in the Harris County Jail awaiting trial for capital murder, he and several other inmates participated in a credit card abuse scheme. Appellant received $400 through the scheme before it was discovered. Appellant also tampered with the pan hole in his cell door, a major disciplinary offense. As a result, Appellant lost some of his jail privileges. During a subsequent telephone call that he made from the jail, Appellant stated

that every time he saw the detention officer who had written him up, he wanted to punch the officer in the face. In another recorded telephone call, Appellant complained about an inmate who had used the jail telephone when Appellant had wanted to use it. Appellant stated that he wanted to hit that inmate.

In another incident, jail officers conducted a routine search of Appellant's cell for contraband. Appellant refused to submit to a visual search of the space between his buttocks. Appellant grew agitated and officers lost control of him. He struggled with several officers for some time before they finally regained control of him. While the officers were attempting to bring Appellant under control, Appellant kicked one of them in the upper thigh. Officers ultimately discovered that Appellant was hiding pills between his buttocks. Appellant was found guilty of misusing medication, another major disciplinary offense.

The jury answered the future dangerousness special issue in the affirmative and the mitigation special issue in the negative. *See* Art. 37.071, §§ 2(b), (e). The trial court accordingly sentenced Appellant to death. *See* Art. 37.071, § 2(g).

SUFFICIENCY OF THE EVIDENCE—GUILT-INNOCENCE

The State indicted Appellant for capital murder under a multiple-murder, same-transaction theory. *See* TEX. PENAL CODE § 19.03(a)(7)(A). Because the indictment alleged that Appellant knowingly and intentionally caused more than one death during the same criminal transaction, the State had to prove beyond a reasonable doubt that Appellant possessed the requisite culpable mental state as to each complainant. *See Roberts v. State*,

273 S.W.3d 322, 328–29 (Tex. Crim. App. 2008). In points of error one and two, Appellant alleges that, even if the evidence was legally sufficient to show that he knowingly and intentionally caused Taylor's death, "no fact, circumstantial or otherwise" showed that Appellant knowingly and intentionally caused Norman's death. Therefore, Appellant argues, the evidence was legally insufficient to support his conviction for capital murder. In point of error three, Appellant alleges that, because the evidence was legally insufficient to prove beyond a reasonable doubt that he knowingly and intentionally caused Norman's death, the trial court erred in denying Appellant's motion for an instructed verdict of not guilty as to capital murder.

When reviewing the legal sufficiency of the evidence to support a conviction, we consider all of the evidence in the light most favorable to the verdict and determine whether any rational juror could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *Adames v. State*, 353 S.W.3d 854, 860 (Tex. Crim. App. 2011). This standard "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319; *see Adames*, 353 S.W.3d at 860. On appellate review, we therefore determine whether the necessary inferences made by the trier of fact are reasonable based on the cumulative force of all of the evidence. *See id.* We treat a challenge to the denial of a directed or instructed verdict as a challenge to the sufficiency of the evidence. *Williams v. State*, 937 S.W.2d 479,

482 (Tex. Crim. App. 1996); *see Freeman v. State*, 340 S.W.3d 717, 730 (Tex. Crim. App. 2011) (equating a request for an "instructed" verdict with a request for a "directed" verdict).

"Capital murder is a result-of-conduct oriented offense; the crime is defined in terms of one's objective to produce, or a substantial certainty of producing, a specified result, i.e.[,] the death of the named decedent." *Roberts*, 273 S.W.3d at 329. Intent to murder can be inferred from circumstantial evidence such as a defendant's acts, words, and the extent of the victim's injuries. *See Ex parte Weinstein*, 421 S.W.3d 656, 668–69 (Tex. Crim. App. 2014); *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995). It is "a common-sense inference" that "a person intends the natural consequences of his acts, and that the act of pointing a loaded gun at someone and shooting it toward that person at close range demonstrates an intent to kill." *Ex parte Thompson*, 179 S.W.3d 549, 556 n.18 (Tex. Crim. App. 2005) (internal citations omitted); *see Brown v. State*, 122 S.W.3d 794, 800 (Tex. Crim. App. 2003) (stating that a jury may infer an intent to kill from the use of a deadly weapon).

By itself, Appellant's testimony would have been sufficient to prove beyond a reasonable doubt that he knowingly and intentionally caused Corporal Norman's death. On direct examination, Appellant admitted that he reached for a gun that he already had in the car and that he and Norman struggled over the weapon. Appellant asserted that the gun then "went off" during the struggle, implying that Norman's death had been unintentional. On cross-examination, however, Appellant admitted that he put his finger on the gun's trigger, "put [the gun] at [Norman's] head," and pulled the trigger. *See Thompson*, 179 S.W.3d at

556 n.18; *Brown*, 122 S.W.3d at 800. The jury, "as the sole judge of the weight and credibility of the evidence," was entitled to disbelieve Appellant's earlier, conflicting testimony that the gun simply "went off." *See Jackson*, 443 U.S. at 319.

But, notwithstanding Appellant's self-serving direct testimony, the State presented abundant evidence from which the jury could have reasonably inferred that Appellant knowingly and intentionally caused Norman's death. Romero-Amaya testified that he watched through the Honda's passenger-side window as Norman and Appellant struggled inside the vehicle. Romero-Amaya stated that Appellant checked the Honda's glove box and under the seats, pulled a gun, shot Norman in the face, and then shot Taylor, who was trying to flee. *See Thompson*, 179 S.W.3d at 556 n.18; *Brown*, 122 S.W.3d at 800. Pacheco, who was farther away from the struggle than Romero-Amaya, gave consistent testimony. She stated that Appellant leaned back into the car and his head dipped below the Honda emblem on the trunk, as if he was reaching for something. Appellant then "leaned back up" and started shooting, and Norman fell to the ground. *See Thompson*, 179 S.W.3d at 556 n.18; *Brown*, 122 S.W.3d at 800. Pacheco testified that Appellant then stood up and shot at Taylor. *See Weinstein*, 421 S.W.3d at 668–69; *Patrick*, 906 S.W.2d at 487. Although video recorded by Norman's dashboard camera and published to the jury did not clearly show what occurred inside the Honda, it was otherwise generally consistent with Romero-Amaya's and Pacheco's testimony. It was also consistent with Lieutenant Bledsoe's and Detective Clawson's accounts of their encounter with Appellant immediately after Norman and Taylor were shot.

See Weinstein, 421 S.W.3d at 668–69; *Patrick*, 906 S.W.2d at 487.

Further, the State's firearms analyst testified about the safety features that would have to be disengaged and the pressure that would have to be exerted on the handgun's trigger before the weapon would fire. From that testimony, the jury could have reasonably inferred that it was unlikely that the gun fired spontaneously. Moreover, Dr. Condron, the assistant medical examiner, testified that the bullet that caused Norman's grievous injury was fired at a distance of no more than three feet away. Condron's testimony about the close-range discharge, coupled with evidence that Appellant pointed and fired his loaded gun at Norman, raised a reasonable inference that Appellant intended to kill the officer. *See Thompson*, 179 S.W.3d at 556 n.18; *Brown*, 122 S.W.3d at 800.

Viewed in the light most favorable to the verdict, the evidence of Appellant's conduct and the extent of Norman's injury was sufficient to prove beyond a reasonable doubt that Appellant knowingly or intentionally caused Norman's death by shooting him with a firearm. *See Weinstein*, 421 S.W.3d at 668–69; *Patrick*, 906 S.W.2d at 487. Accordingly, points of error one through three are overruled.

SUFFICIENCY OF THE EVIDENCE—PUNISHMENT PHASE

In point of error twelve, Appellant contends that the evidence was legally insufficient to support the jury's affirmative answer to the future dangerousness special issue. Appellant's allegation has no merit.

The future dangerousness special issue requires the jury to determine "whether there

is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society." Art. 37.071, § 2(b)(1). In deciding that special issue, the jury is entitled to consider all of the evidence admitted at both the guilt-innocence and punishment phases of trial. *Devoe v. State*, 354 S.W.3d 457, 462 (Tex. Crim. App. 2011). The circumstances of the offense and the events surrounding it may be sufficient in themselves to sustain an affirmative answer to the future-dangerousness special issue. *Id.*; *Hayes v. State*, 85 S.W.3d 809, 814 (Tex. Crim. App. 2002). An escalating pattern of violence or disrespect for the law may also support a finding of future dangerousness. *Swain v. State*, 181 S.W.3d 359, 370 (Tex. Crim. App. 2005); *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997).

We review the evidence in the light most favorable to the verdict. *Jackson*, 443 U.S. at 319; *Williams*, 273 S.W.3d at 213. Assessing the evidence and all reasonable inferences from it in this light, we determine whether any rational trier of fact could have believed beyond a reasonable doubt that there is a probability the defendant would commit criminal acts of violence that would constitute a continuing threat to society. *Williams*, 273 S.W.3d. at 213.

Viewed in the light most favorable to the verdict, the evidence and reasonable inferences from it showed that, by the time of the offense, Appellant had: possessed and sold marijuana; committed theft; actively participated in three aggravated robberies and one attempted aggravated robbery, all of which involved a handgun; committed two burglaries

of a vehicle and three burglaries of a habitation; slapped and choked his current girlfriend; used his fist to break the car window of another girlfriend, showering her with broken glass; purchased a stolen semiautomatic handgun, with which he hoped to shoot people and to commit more aggravated robberies; and disregarded a court date that stemmed from his openly violating the law despite being warned that a law enforcement officer was nearby.

On the day of the offense, Appellant chose to drive with his loaded pistol in the car. He led Corporal Norman on a dangerous high-speed chase rather than submit to a lawful traffic stop. During the chase, Appellant damaged at least two other vehicles, one of which was occupied. When his vehicle would allegedly no longer run, Appellant resisted being arrested and handcuffed. Although Norman only had handcuffs in his hand, Appellant pretended to search for his cell phone until he found his pistol, and then he shot Norman in the head at close range. Appellant also shot Taylor, an unarmed bystander. The jury could have reasonably inferred that Appellant most likely would have shot Romero-Amaya, too, but for the arrival of Lieutenant Bledsoe and Detective Clawson. And, instead of dropping his gun and surrendering to them, Appellant shot at Bledsoe and Clawson. The gun's safety was off and the trigger was cocked when Appellant discarded the weapon by a child daycare center's back door. Appellant also attempted to enter the back door of the daycare center. Further, Appellant continued to resist police officers when they finally apprehended him.

Moreover, Appellant was not chastened by his arrest for the present offense. While

he was incarcerated in Harris County Jail awaiting trial for capital murder, Appellant engaged in credit card abuse, violated jail rules, and kicked a detention officer.

The facts of the offense, Appellant's criminal history and bad acts, and other evidence showing Appellant's escalating pattern of violence and disrespect for the law were sufficient to support the jury's affirmative answer to the future dangerousness special issue. *See Devoe*, 354 S.W.3d at 462; *Swain*, 181 S.W.3d at 370. Point of error twelve is overruled.

In point of error thirteen, Appellant alleges that the evidence was insufficient to support the jury's negative answer to the mitigation special issue. *See* Art. 37.071, § 2(e)(1). Although Appellant concedes that we have not established a burden of proof concerning the mitigation special issue, he contends that the Supreme Court's decisions in *Blakely v. Washington*, 542 U.S. 296 (2004), *Ring v. Arizona*, 536 U.S. 584 (2002), *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Jones v. United States*, 526 U.S. 227 (1999), require us to do so.

"[W]e do not engage in reviewing the jury's normative decision on mitigation." *Devoe*, 354 S.W.3d at 468. Further, we have previously rejected the argument that the *Jones-Apprendi-Ring-Blakely* line of cases requires a burden of proof concerning the mitigation special issue. *Roberts*, 220 S.W.3d at 535; *Rayford v. State*, 125 S.W.3d 521, 534 (Tex. Crim. App. 2003). Point of error thirteen is overruled.

JURY CHARGE

In point of error four, Appellant alleges that the trial court abused its discretion by overruling "his objection to the trial court's jury charge which shifted the burden of proof to [a]ppellant." Appellant directs us to the following portion of the court's guilt-innocence phase charge, which stated: "Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of guilt or innocence of the defendant."

Appellant argues that due process guarantees in the United States and Texas Constitutions place the burden on the State to prove every element of the offense beyond a reasonable doubt. Thus, Appellant contends, the jury's sole duty at the guilt-innocence phase was to determine whether the State had proven each of the elements of capital murder as alleged in the indictment beyond a reasonable doubt.

Appellant acknowledges that the charge informed the jury that the burden of proof rested on the State and never shifted to him. Appellant further acknowledges that the charge also informed the jury that he was not required to prove his innocence or produce any evidence at all. However, Appellant notes that he did produce evidence by testifying in his own defense and that the charge did not instruct the jury that the State's burden of proof was unaffected by his presentation of evidence. Appellant contends that, by instructing the jury that its sole duty was to determine guilt or innocence, the charge required the jury to weigh the State's evidence against his evidence rather than against the State's constitutional burden.

Because he objected at trial to alleged charge error, Appellant argues, we should apply *Almanza v. State*'s "some harm" standard and find reversible error. *See Almanza*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985).

In reviewing a purported error in a jury charge, we engage in a two-step process. *Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012). Initially, we determine whether the jury instruction at issue is erroneous. *Id*. If we conclude that error occurred, we then analyze the error for harm. *Id*.

Here, no harm analysis is necessary because we conclude that the trial court did not err by giving the instruction at issue, which tracked the statutory language of Article 37.07, § 2(a). We reject Appellant's contention that the instruction somehow changed the State's burden of proof. Rather, in keeping with Texas's bifurcated trial system in criminal cases, the instruction properly directed the jury to determine only Appellant's guilt or innocence and not to consider unrelated issues. TEX. CODE CRIM. PRO. Art. 37.07, § 2(a). Further, our examination of the entire charge shows that it properly instructed the jury on the presumption of innocence, the State's unchanging burden of proof to establish each and every element of the charged offense beyond a reasonable doubt, and the jury's duty to acquit Appellant if it determined that the State failed to carry its burden. *See Woods v. State*, 152 S.W.3d 105, 114–15 (Tex. Crim. App. 2004). Point of error four is overruled.

In point of error five, Appellant alleges that the trial court abused its discretion in denying his request for a jury instruction on felony murder. Appellant asserts that felony

murder is a lesser-included offense of capital murder. He continues:

> [A] subset of elements as to a lesser[-]included offense of felony murder would be that Appellant intentionally or knowingly killed Officer Norman, but did not intentionally or knowingly kill Taylor, or vice versa. Appellant could have caused one victim's death recklessly, or with criminal negligence. Therefore, there would have been no *intent* to kill two people in the same criminal episode. As such, Appellant could have been convicted of the lesser[-]included offense of felony murder.

(internal citation omitted; original emphasis). We understand Appellant to contend that he was entitled to a felony murder instruction because he might have had only the culpable mental state for manslaughter or criminally negligent homicide regarding one of the victims.[4] *See* TEX. PENAL CODE §§ 19.04(a) (stating that a person commits manslaughter if he "recklessly" causes the death of an individual), 19.05(a) (stating that a person commits criminally negligent homicide if he causes the death of an individual "by criminal negligence"). Therefore, Appellant asserts, it is possible that the jury would have convicted him only of felony murder if the jury charge had included the relevant instruction. Appellant alleges that the submission of a felony murder instruction was accordingly mandatory and that its omission from the charge constituted reversible error.

We disagree. Appellant is correct that felony murder can be a lesser-included offense of capital murder. *Threadgill v. State*, 146 S.W.3d 654, 665 (Tex. Crim. App. 2004). The theory of capital murder in this case was multiple murder. *See* TEX. PENAL CODE

---

[4] To the extent Appellant is attempting to advance any other argument in point of error five, that argument is inadequately briefed. *See* TEX. R. APP. P. 38.1.

§19.03(b)(a)(7). Because Appellant asserts that he could have been convicted of felony murder based on an underlying felony of manslaughter or criminally negligent homicide, we hold that he was not entitled to a felony murder instruction. *See id.* §19.02(b)(3).

Texas Penal Code §19.02(b)(3) defines the offense of felony murder. *Johnson v. State*, 4 S.W.3d 254, 255 (Tex. Crim. App. 1999). It states that a person commits an offense if he:

> commits or attempts to commit a felony, *other than manslaughter*, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

TEX. PENAL CODE § 19.02(b)(3) (emphasis added); *see Rodriguez v. State*, 454 S.W.3d 503, 507 (Tex. Crim. App. 2014) (explaining that felony murder is essentially an unintentional murder committed in the course of committing a felony); *Johnson v. State*, 4 S.W.3d 254, 255 (Tex. Crim. App. 1999) ("The felony murder rule dispenses with the necessity of proving mens rea accompanying the homicide itself; the underlying felony supplies the culpable mental state.").

Section 19.03(b)(3)'s plain language precludes manslaughter from serving as the underlying felony. *See Johnson*, 4 S.W.3d at 255. Further, we have interpreted § 19.03(b)(3) "as exempting from the felony murder rule not only manslaughter, but also lesser[-]included offenses of manslaughter." *Id.* "Criminally negligent homicide is a lesser-included offense of manslaughter because it includes all the elements of manslaughter except for manslaughter's higher culpable mental state." *Britain v. State*, 412 S.W.3d 518, 520 (Tex.

Crim. App. 2013). Accordingly, criminally negligent homicide cannot serve as the underlying felony in felony murder. *See Johnson*, 4 S.W.3d at 255.

In any event, Appellant's underlying premise—that the knowing and intentional killing of one victim plus the unknowing or unintentional killing of a second victim could constitute a single lesser-included offense of felony murder—is flawed. The knowing and intentional killing of one victim would still constitute murder, irrespective of the availability of additional charges for the unknowing or unintentional killing of a second victim. *See*, *e.g.*, *Ex parte Norris*, 390 S.W.3d 338, 339–41 (Tex. Crim. App. 2012) (discussing transferred intent when the defendant shoots and kills two victims, although he intended the death of only one of them); *Roberts*, 273 S.W.3d at 332 (reforming capital murder conviction, based on a charge of multiple murder in the same criminal transaction, to murder when there was no intention to kill as to the second victim); *see also Martinez v. State*, 225 S.W.3d 550, 554 (Tex. Crim. App. 2007) (holding that the law does not permit more than one conviction per count in an indictment). Significantly, Appellant received an instruction for the lesser-included offense of murder, which was all that he was entitled to. Point of error five is overruled.

PRESENCE OF UNIFORMED POLICE OFFICERS

In point of error six, Appellant alleges that the trial court "erred in allowing an unreasonable amount [sic] of peace officers in uniform to appear in the audience denying Appellant due process of law and a fair trial." In his brief, however, Appellant almost

exclusively focuses on and criticizes the trial court's denial of his pretrial motion to prohibit or limit the number of uniformed law enforcement officers who could attend the trial as spectators.[5]

Regarding his stated claim, Appellant makes only a vague allegation that a "great number of uniformed officers" were present at his trial. But Appellant does not direct us to any portion of the record, including contemporaneous objections or requests for judicial notice by defense counsel, indicating that any uniformed law enforcement officers actually attended his trial as spectators. In addition, our independent review of the record has not revealed any such indications. Thus, even assuming that Appellant's pretrial motion preserved his stated claim for our review, the record does not support the factual basis for his contention. *See* TEX. R. APP. P. 33.1; *Sterling v. State*, 830 S.W.2d 114, 118 (Tex. Crim. App. 1992) ("This court must accept the record as presented and cannot assume the existence of any circumstance or fact."). For similar reasons, Appellant's stated claim is also inadequately briefed. *See* TEX. R. APP. P. 38.1.

We understand Appellant to allege that the trial court erred in denying his pretrial motion to prohibit or limit the number of uniformed law enforcement officers who could

---

[5] The record shows that defense counsel argued the motion to the trial court on the final day of voir dire. Defense counsel asserted that the trial court should issue an order "either prohibiting officers who are not here on business from being in uniform" or "limiting, as an alternative, the number of officers who can appear to something reasonable like half a dozen." Defense counsel averred that such an order was appropriate to avoid "either intimidation or an expectation of a certain outcome from the jury." At the conclusion of defense counsel's oral argument, the trial judge denied the motion.

attend Appellant's trial due to the potential for external juror influence. To that extent, he is not entitled to relief on appeal. Even assuming *arguendo* that the trial court abused its discretion in denying Appellant's motion, Appellant cannot establish harm.

"[T]o prevail on an appeal claiming reversible prejudice resulting from external juror influence," a defendant "must show either actual or inherent prejudice." *Howard v. State*, 941 S.W.2d 102, 117 (Tex. Crim. App. 1996) (overruled in part on other grounds). To determine inherent prejudice, we consider "whether 'an unacceptable risk is presented of impermissible factors coming into play.'" *Id*. (quoting *Holbrook v. Flynn*, 475 U.S. 560, 570 (1986)). Noting that "inherent prejudice rarely occurs and is reserved for extreme situations," we "have long held that spectator conduct or expression which impeded normal trial proceedings [will] not result in reversible error unless the [A]ppellant show[s] a reasonable probability that the conduct or expression interfered with the jury's verdict." *Id*. (internal quotations omitted). The test for determining whether actual prejudice occurred is "whether jurors actually articulated a consciousness of some prejudicial effect." *Id.*

Here, the record does not show that any uniformed police officers attended Appellant's trial as spectators. Further, the record does not show that jurors were questioned regarding their conscious perception of any alleged impermissible external influence. Appellant cannot establish either inherent or actual prejudice where the record contains no supporting evidence. *Cf. id.* at 117–18 & nn.12–13 (declining to declare reversible error where we "ha[d] as a basis for review only the *presence* of twenty uniformed officers, sitting

near the back of the courtroom, mingled with 80 other spectators" and "[a]t no time were jurors questioned regarding their conscious perception of impermissible external influence") (original emphasis); *see Sterling*, 830 S.W.2d at 118. Point of error six is overruled.

JURY ARGUMENT

In point of error seven, Appellant asserts that "[r]eversible error occurred when the State was allowed to engage in prejudicial jury arguments which denied Appellant a fair trial."[6] By block-quoting certain portions of the State's argument from the guilt-innocence phase, defense counsel's objections, and the trial court's rulings, Appellant appears to identify seven arguments that he contends were improper.

Appellant asserts that trial counsel preserved error as to all seven of the allegedly improper jury arguments by objecting and obtaining a ruling. We disagree. "Proper jury argument generally falls within one of four areas: (1) summation of the evidence, (2) reasonable deduction from the evidence, (3) answer to an argument of opposing counsel, and (4) plea for law enforcement." *Freeman*, 340 S.W.3d at 727. We have explained that "a proper objection" to an allegedly improper jury argument would be "that the argument was outside the record, was not a reasonable deduction from the evidence, was not an answer to argument of opposing counsel, and was not a plea for law enforcement." *Hougham v. State*,

---

[6] Although Appellant's stated claim asserts that the prosecutor's jury arguments in question were objectionable because they were "prejudicial," in his briefing, he characterizes the arguments as "improper jury argument." To the extent Appellant intends to challenge the State's jury arguments on any other ground than that they constituted improper jury argument, his claim is multifarious. *See* TEX. R. APP. P. 38.1.

659 S.W.2d 410, 414 (Tex. Crim. App. 1983). In contrast, statements such as, "We will object to this line of argument, Your Honor," are "insufficient to preserve error" regarding a claim of improper jury argument. *Id*. Such statements are "clearly too general to apprise the trial court of the ground for [the Appellant's] objection." *Id*.; *see* TEX. R. APP. P. 33.1.

Appellant's objections to the first, second, fourth, and sixth complained-of jury arguments largely consisted of generic assertions that the challenged argument fell "outside proper argument." These objections were arguably too generalized to inform the trial court of the specific basis for Appellant's objection to the State's argument. *Cf. Hougham*, 659 S.W.2d at 414.

But even if we assume that he preserved error, Appellant has inadequately briefed this point of error as to all seven allegedly improper jury arguments. *See* TEX. R. APP. P. 38.1.

> An appealing party's brief must contain a "clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. Failure to provide substantive legal analysis—"to apply the law to the facts"—waives the point of error on appeal. If the appealing party fails to meet its burden of adequately discussing its points of error, this Court will not do so on its behalf.

Linney v. State, 413 S.W.3d 766, 767 (Tex. Crim. App. 2013) (Cochran, J., concurring in the refusal to grant petition for discretionary review) (internal citations omitted); *see* TEX. R. APP. P. 38.1(I); *see also Lucio v. State*, 351 S.W.3d 878, 896 (Tex. Crim. App. 2011); *Swearingen v. State,* 101 S.W.3d 89, 100 (Tex. Crim. App. 2003).

With the exception of the first prosecutorial argument that he finds objectionable,

Appellant does not provide a citation to the record. Further, Appellant does not apply the law to the facts. Although Appellant sets forth law regarding proper jury argument and the appropriate harm analysis, he fails to explain why he believes that any of the State's arguments were improper. Appellant simply states, "Applying this to the case at bar, it is clear from the record the State's impermissible argument contributed to Appellant's conviction and sentence. The jury rejected the one lesser[-]included offense available to them,[7] and ultimately sentenced Appellant to death." After citing additional law concerning the appropriate harm analysis, Appellant then states, "Under the facts of the case at bar, it is clear that the arguments fell outside the are[a] of permissible jury argument, and therefore had a 'substantial and injurious effect or influence in determining the jury's verdict,' as the jury rejected the lesser[-]included offense and thereafter sentenced Appellant to die."

In sum, Appellant provides a citation to the record for only one of the complained-of jury arguments. He has not, regarding any of those jury arguments, applied the law to the facts as the appellate rules require. Therefore, he has inadequately briefed this point and presents nothing for review on this ground. *See* TEX. R. APP. P. 38.1; *Lucio*, 351 S.W.3d at 896; *Swearingen,* 101 S.W.3d at 100. Point of error seven is overruled.

In point of error eight, Appellant alleges that the cumulative effect of the jury arguments he complains of in point of error seven constituted fundamental error requiring

---

[7] Appellant is apparently referring to the fact that the trial court's charge permitted the jury to consider the lesser-included offense of murder if the jury determined that the State had not satisfied its burden of proof regarding capital murder.

reversal. However, Appellant has not shown that error occurred. Without error, there is no cumulative effect. *See Wyatt v. State*, 23 S.W.3d 18, 30 (Tex. Crim. App. 2000); *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999).

VICTIM IMPACT EVIDENCE

Appellant presents points of error nine through eleven together, stating that they "involve similar argument and authorities." In point of error nine, Appellant alleges that the trial court "abused its discretion in allowing the State to present victim impact testimony in the guilt/innocence phase of the trial over Appellant's objection." In point of error ten, Appellant argues that the trial court "erred in denying Appellant's motion for a mistrial and allowing a victim's family member to present victim impact evidence during the guilt/innocence phase of the trial by remaining in the courtroom while openly responding to the testimony being presented." In point of error eleven, Appellant asserts that the trial court "erred in denying Appellant's request to remove a family member of the victim from the courtroom, and allowing her to present victim impact evidence during the guilt/innocence phase of the trial by remaining in the courtroom while openly responding to the testimony being presented." In support of these claims, Appellant directs us to the guilt-innocence phase testimony of Lieutenant Bledsoe, one of the first officers on the scene of the shootings, and the transcript of a bench conference that lead defense counsel requested after Bledsoe's testimony concluded.

The record shows that, after eliciting testimony that Norman had been Bledsoe's very

good friend, the prosecutor questioned Bledsoe about the offense and Bledsoe's activities at the scene following the shootings. The prosecutor then asked about Bledsoe's actions on the day of the offense after leaving the scene. Bledsoe stated that he returned to the Bellaire Police Station, where his wife was waiting. When the prosecutor asked why Bledsoe's wife had been waiting at the police station, the trial court sustained defense counsel's relevance objection. Bledsoe then testified that he and his wife left the station together and went to Norman's wife's house. The prosecutor continued to question Bledsoe as follows:

Q. And is Ms. Norman in the courtroom today?

[DEFENSE COUNSEL]: I'm going to object, once again, to the relevance of that line of questioning, Your Honor.

THE COURT: Overruled.

You can answer that question.

A. Yes, ma'am, she is.

Q. (By [prosecutor]) Can you point her out and describe what she's wearing?

A. She is the lovely lady in the gray blouse right there (indicating).

[DEFENSE COUNSEL]: Your Honor, once again, we would object to the relevance.

THE COURT: Overruled.

Q. (By [prosecutor]) Why did you go to her house?

A. To check on her.

Q. And was she there when you arrived?

A. She was.

Q. Was she alone or were there other people with her?

A. There was [sic] other people. Her whole family.

Q. And how were they doing?

[DEFENSE COUNSEL]: Once again, we renew our objection to the relevance –

THE COURT: Sustained.

Q. (By [prosecutor]) What did you do while you were there?

A. Hugged everybody –

[DEFENSE COUNSEL]: Once again, Judge, I would object to this line of questioning.

THE COURT: Sustained.

The prosecutor's remaining direct examination of Lieutenant Bledsoe spans eleven pages of the Reporter's Record. Appellant's subsequent cross-examination of Bledsoe spans an additional six pages. After Bledsoe left the witness stand, defense counsel asked the trial court to excuse the jury and allow the parties to approach the bench before the next witness testified. The trial court granted the request and excused the jury from the courtroom.

At the bench conference, defense counsel moved "for either a mistrial due to the introduction of victim impact evidence" or for Mrs. Norman's exclusion from the courtroom. Defense counsel argued that "[a] limiting instruction will not work in this instance because it will draw attention to the individual as opposed to trying to minimize it." Defense counsel

continued, "[S]he's now been pointed out by the prosecutor as an individual. She's sitting, breathing, weeping, and she was weeping earlier during the very emotional testimony of her friend, the officer. She is breathing, sitting, live victim impact witness testimony, all the time in the front row." Defense counsel reiterated his request for a mistrial or Mrs. Norman's removal, stating that he did not "see any other way to rectify this. The impact of this is too much. There's no way to rectify this with a limiting instruction."

Defense counsel also asked that the prosecutors refrain from eliciting "ongoing, continuing victim impact evidence that violates my client's right to a fair trial and his right to confrontation because those people are not on the witness list, particularly Officer Norman's widow . . ." This exchange followed:

> THE COURT: Okay. Denied. Both requests are denied. Now, having said that –
>
> [PROSECUTOR 1]: I'm sitting right in front of her and couldn't even hear her. I didn't even know she was crying until [defense counsel] said that.
>
> [DEFENSE COUNSEL 1]: We could hear her, Judge.
>
> [PROSECUTOR 1]: So, I couldn't hear a thing.
>
> THE COURT: Okay. Well, regardless –
>
> [PROSECUTOR 1]: I can hear [defense counsel] consoling his client. I can hear that.
>
> [DEFENSE COUNSEL 2]: Well, I'm certainly agreeing that she's struggling to maintain composure, but there was – she was weeping when that other fellow was testifying, when Officer Bledsoe was. And I don't – I understand that, and I don't want to sit there and keep making an issue of this, but I thought we had an understanding that the folks that were here were here

because they were not going to be called and we weren't going to get to this place. And that's fine with me.

[PROSECUTOR 1]: They're not going to be called.

[PROSECUTOR 2]: They're not called.

[DEFENSE COUNSEL 2]: They're sitting there weeping in front of the jury. That's the same thing as having victim impact –

[PROSECUTOR 2]: You can't control weeping in front of the jury.

[DEFENSE COUNSEL 2]: You can control identifying them.

[PROSECUTOR 2]: She's the widow. And the fact is, it's contextual. They went to the home after it was done on the context of that day. It has nothing to do with victim impact. Whether she weeps or not, we cannot control that –

THE COURT: But – I mean, I've denied the request, but I can't have people openly weeping during the testimony.

[PROSECUTOR 2]: Judge, we understand that, but I think everybody in their right mind understands that occasionally the widow is going to weep. She was not sobbing. She was not wailing –

THE COURT: This is not a debate, Mr. [Prosecutor]. I'm not going to have anybody openly weeping in the courtroom. If they can not [sic] handle the testimony, then they need to step out. And especially when we do the videotape of the actual offense, I don't think any – I mean, we cannot have reactions in front of the jury, just can't. They have to be able to be independent and render a verdict according to the law and the evidence.

So, I mean, I've done it before and I'll do it now. If anybody in the courtroom cannot handle the testimony, then they need to step out. So, that's that.

[DEFENSE COUNSEL 2]: We'd also ask that our colleagues be instructed not to identify any more family members of the deceased on record [sic].

THE COURT: Well, I can see no relevance to anybody else at this point. And if you feel like it is relevant, come and talk to me. Okay?

[DEFENSE COUNSEL 2]: Very well, Your Honor.

[PROSECUTOR 1]: All right.

[DEFENSE COUNSEL 2]: That's fair.

The record shows that the trial court thereafter addressed everyone who was then in the courtroom:

> Now, this is a difficult case for everyone involved in this case, but the jury has to be able to render their [sic] verdict without any outside influence and that includes people in the audience. Now, a little later today we're going to have testimony that will be extraordinarily graphic. And I don't want to take the chance of someone feeling that they might be able to handle it, but not being sure.
>
> And so, I'm telling everyone in this room if you feel that you cannot emotionally handle the testimony that's being presented, you need to leave the room. Now, that is a reality. The jury has to render a verdict according to the law and the evidence and they cannot have anyone outside of – in this courtroom influence their [sic] decision. So, I know this is emotional. I'm not saying it's anything else, but you cannot express emotion. You cannot say anything in front of the jury.
>
> So, does everyone understand that?

After the audience responded "Yes" in unison, the trial court continued:

> This is not optional. Okay? When we get to the point of presenting tape of the actual incident, I'm going to, at that point, take the jury out again before that's presented and give anybody a chance that needs to leave to do that, but you need to be able to be calm and not react in front of the jury.
>
> Does everybody understand that?
>
> Now, I'm not in the habit of kicking people out of the courtroom, but

> I cannot allow that to happen. So, you need to make decisions according to that and not react in front of the jury.
>
> All right. So we'll take another ten-minute break at this point and then we'll continue.

A recess followed.

In point of error nine, we understand Appellant to argue that Mrs. Norman gave the functional equivalent of victim impact testimony during Lieutenant Bledsoe's testimony because she was visibly crying and, at the prosecutor's behest, Bledsoe specifically identified her as Corporal Norman's widow.[8] In point of error ten, Appellant asserts that the trial court erred in denying his motion for a mistrial based on Mrs. Norman's demeanor during Bledsoe's testimony. However, Appellant failed to preserve either claim for appellate review.

Appellant's general relevance objections to the prosecutor's questions during Bledsoe's direct examination did not preserve Appellant's specific complaint on appeal, i.e., that Mrs. Norman somehow presented victim impact testimony via her demeanor during Bledsoe's testimony. *See* TEX. R. APP. P. 33.1. Further, Appellant's later motion for a mistrial cannot substitute for a timely, specific objection. *See id.*

"Generally, a party must complain in the trial court in order to preserve that complaint for appellate review." *London v. State*, 490 S.W.3d 503, 506–07 (Tex. Crim. App. 2016)

---

[8] To the extent Appellant intends to argue in point of error nine that Bledsoe's testimony itself constituted victim impact evidence, he has inadequately briefed this legal theory and we decline to address it. *See* TEX. R. APP. P. 38.1.

(internal quotation marks omitted). "This rule applies to all but the most fundamental rights." *Henson v. State*, 407 S.W.3d 764, 767 (Tex. Crim. App. 2013). "A defendant's complaint may take three forms: (1) a timely, specific objection, (2) a request for an instruction to disregard, and (3) a motion for a mistrial." *Young v. State*, 137 S.W.3d 65, 69 (Tex. Crim. App. 2004). An objection "serves as a preemptive measure," while "[t]he other two methods of complaint are corrective measures." *Id*. "A party satisfies the requirement of a timely trial-level complaint if the party makes the complaint as soon as the grounds for it become apparent." *London*, 490 S.W.3d at 507 (internal quotation marks omitted). "This means 'as soon as'" the defense "'knows or should know that an error has occurred.'" *Id*. (quoting *Hollins v. State*, 805 S.W.2d 475, 476 (Tex. Crim. App. 1991)).

"[T]he traditional and preferred procedure for a party to voice its complaint" is "to seek [the methods of complaint] in sequence – that is, (1) to object when it is possible, (2) to request an instruction to disregard if the prejudicial event has occurred, and (3) to move for a mistrial if a party thinks an instruction to disregard [is] not sufficient." *Young*, 137 S.W.3d at 69. We have explained, however, that "this sequence is not essential to preserve complaints for appellate review." *Id*. Rather, "[t]he essential requirement is a timely, specific request that the trial court refuses." *Id.*

We have reasoned that the lack of an objection to a reasonably unforeseeable event will not prevent appellate review because "[i]t is not possible to make a timely objection to an unforeseeable occurrence." *Id*. at 70. Further, "an objection after an [unforeseeable]

event occurs cannot fulfill the purpose of the objection, which is to prevent the occurrence of the event." *Id.* For similar reasons, a request for an instruction directing the jury to disregard an objectionable occurrence "is essential only when . . . such an instruction could have had the desired effect, which is to enable the continuation of the trial by an impartial jury." *Id*. Where an instruction to disregard "could not have had such an effect, the only suitable remedy is a mistrial, and a motion for mistrial is the only essential prerequisite to presenting the complaint on appeal." *Id*.

Thus, "when a party's first action is to move for mistrial," as occurred in this case, "the scope of appellate review is limited to the question whether the trial court erred in not taking the most serious action of ending the trial." *Id*. That is, "an event that could have been prevented by timely objection or cured by instruction to the jury will not lead an appellate court to reverse a judgment on appeal by the party who did not request these lesser remedies in the trial court." *Id*.

We have "recognize[d] the potential for abuse of a rule allowing a motion for mistrial without a preceding objection or request for an instruction to disregard." *Id*. Accordingly, we have stated that "[i]f a party delays [a] motion for mistrial, and by failing to object allows for the introduction of further objectionable testimony or comments and greater accumulation of harm," then on appeal, "the party [may] no more rely on the untimely motion for mistrial than on an untimely objection." *Id*.

Defense counsel's and the prosecutors' statements to the trial court during the bench

conference suggest that Mrs. Norman may have displayed some outward sign of emotional distress during Bledsoe's testimony concerning her husband's violent death. The timing and extent of the alleged display are not clear from the record. However, the record does not suggest that Mrs. Norman's alleged emotional display could reasonably be described as extreme. Therefore, the record also does not suggest that her emotional display was such that a timely instruction to disregard would have been ineffectual. *See*, *e.g.*, *Gamboa v. State*, 296 S.W.3d 574, 580 (Tex. Crim. App. 2009); *Miller v. State*, 741 S.W.2d 382, 391 (Tex. Crim. App. 1987); *Landry v. State*, 706 S.W.2d 105, 111–112 (Tex. Crim. App. 1985).

Even if we were to assume that a timely instruction to disregard would have been ineffectual, and thus, that a mistrial was the only suitable remedy, Appellant still failed to preserve his claim for appeal. Appellant's motion for a mistrial was untimely. *See Young*, 137 S.W.3d at 70. Defense counsel's statements at the bench conference indicate that they became aware of the basis for their motion during Bledsoe's direct examination. Instead of moving for a mistrial as soon as the grounds for it became apparent, defense counsel cross-examined Bledsoe and delayed their motion until after he left the witness stand, allowing for the introduction of further allegedly inadmissible victim impact evidence and greater accumulation of the alleged harm. *See Griggs v. State*, 213 S.W.3d 923, 927 (Tex. Crim. App. 2007); *Young*, 137 S.W.3d at 70.

Further, Appellant has inadequately briefed point of error ten, in which he asserts that the trial court erred in denying his motion for a mistrial. *See* TEX. R. APP. P. 38.1. Appellant

has not cited legal authorities governing appellate review of a trial court's denial of a motion for mistrial. In addition, Appellant does not substantively argue his contention. At most, Appellant states at the bench conference that defense counsel "correctly noted" that "a limiting instruction would not suffice as it would draw attention to the person as opposed to minimizing the error." Because Appellant has failed to cite relevant authority or to apply the law to the facts as the appellate rules require, he has inadequately briefed point of error ten and presents nothing for review on this ground. *See*, *e.g.*, *Linney*, 413 S.W.3d at 767; *Lucio*, 351 S.W.3d at 896; *Swearingen,* 101 S.W.3d at 100. Points of error nine and ten are overruled.

In point of error eleven, Appellant asserts that the trial court erred in denying his request to remove Mrs. Norman from the courtroom due to her emotional display during Bledsoe's testimony. Even assuming that Appellant preserved this claim for review, he has failed to cite relevant authority or to apply the law to the facts as the appellate rules require. *See* TEX. R. APP. P. 38.1. Thus, Appellant has inadequately briefed this point and presents nothing for review on this ground. *See*, *e.g.*, *Linney*, 413 S.W.3d at 767; *Lucio*, 351 S.W.3d at 896; *Swearingen,* 101 S.W.3d at 100. Point of error eleven is overruled.

EXTRANEOUS OFFENSE EVIDENCE—PUNISHMENT

In point of error fourteen, Appellant alleges that the trial court "erred in admitting evidence of extraneous offenses allegedly committed by Appellant as the prejudicial effect of the extraneous acts outweighed any probative value, and the introduction thereof was

reversible error." Appellant asserts that "[t]he record herein is replete with extraneous offenses and bad acts introduced into evidence by the State over Appellant's objections in furtherance of the State's goal of causing Appellant's death." He continues, "To restate them here would be to copy the entire punishment record from trial." Appellant therefore invites us "to review the record in full to fully appreciate the error in allowing the extraneous offenses into evidence." Appellant, however, does not specifically identify the extraneous offense evidence of which he complains, nor does he explain why he believes the prejudicial effect of this evidence substantially outweighed its probative value. *See* TEX. R. EVID. 403; *United States v. Jefferson*, 751 F.3d 314, 320 (5th Cir. 2014) (explaining that, by its very nature, all probative evidence is prejudicial); *see also* Art. 37.071 § 2(a)(1) (stating that, at the punishment phase of a capital murder trial, evidence may be presented as to any matter that the court deems relevant to sentence). Because Appellant has failed to apply the law to the facts as the appellate rules require, he has inadequately briefed this point and presents nothing for review on this ground. *See* TEX. R. APP. P. 38.1; *Lucio*, 351 S.W.3d at 896; *Swearingen,* 101 S.W.3d at 100. Point of error fourteen is overruled.

Having overruled all of Appellant's points of error, we affirm the judgment of the trial court.

DELIVERED: April 26, 2017

DO NOT PUBLISH