



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-14-00021-CR

CLINT WELDON WILSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 8th District Court
Franklin County, Texas
Trial Court No. F8775

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

In January 2013, Aldis Mendez¹ stood between two men, her then boyfriend, Clint Weldon Wilson, and her ex-boyfriend and father to her three children, Juvenal Gonzales, just before Wilson shot and killed Gonzales. Except for the central fact that Wilson shot Gonzales, Aldis' version of the events that ensued had little in common with Wilson's version. The jury believed Aldis and delivered a verdict that Wilson was guilty of murdering Gonzales.² On appeal, Wilson complains about the jury charge, the lack of a mistrial, and the amendment of the indictment after trial began. We affirm the judgment of the trial court, because (1) the jury instruction on provocation was warranted by the evidence, (2) a jury instruction on threats by the victim was properly refused, (3) a jury instruction on necessity was properly refused, (4) mistrial was not mandated, (5) Wilson's complaint regarding the lack of a jury instruction on justifiable force is inadequately briefed on appeal, and (6) we have no jurisdiction over the amendment of the indictment in a companion case not on appeal.

We set out the basics of the two different versions of the facts surrounding the shooting.

Wilson's version of the facts portrayed him as a disabled man seeking only to protect his girlfriend and himself from a drunken, violent ex-boyfriend. Wilson testified that he met Aldis in late August 2012 and had lived with her and her three children in her mobile home until late November of that year. He left her for another woman, but began seeing her again in December

¹Because we also refer herein to Aldis Mendez' mother, Supaya Mendez, we will refer to both women by their first names.

²On the murder charge, appealed here, Wilson was sentenced to life in prison and assessed a \$10,000.00 fine. Wilson was also found guilty of unlawful possession of a firearm by a felon and sentenced to ten years' confinement, to run concurrently, and assessed another \$10,000.00 fine. He does not appeal the firearm conviction.

when the other relationship faltered. Around Christmas, his hands and a foot were frostbitten from exposure.³ Aldis picked him up from the hospital and took him to her home where he stayed until the shooting. Several times during the period he lived with Aldis, she would receive telephone calls late at night from Gonzalez. Aldis would give Wilson the telephone. He would tell Gonzalez that she did not want to talk to him or get back together with him and to stop calling. Gonzalez would call two or three nights in a row, then stop and begin again two or three weeks later. During these conversations, Gonzalez would reportedly curse Wilson, threaten to “f*** [Wilson] up,” and threaten his life. About seven to ten days before the shooting, Gonzalez told Wilson he was “going to come out there, drag [him] from the house, hang [him] on a tree, and skin [him] like a fish.”

Wilson also testified that, on the morning of January 19, 2013, he and Aldis were sleeping in bed when they were awakened by yelling in the living room. Aldis looked at him with panic in her eyes and said, “It’s [Gonzales],” and ran into the living room. Wilson did not follow her because he thought she could handle the situation. But Aldis and Gonzales kept arguing, and it was getting louder and louder. Wilson heard her scream, grabbed a pistol, and proceeded to the kitchen. Wilson claimed he grabbed the pistol because he could not defend himself against Gonzalez. When Wilson got to the kitchen, Aldis was struggling to get away from Gonzalez. Wilson told him, “[L]et her go, motherf*****,” then pointed the pistol at Gonzalez. Gonzalez let Aldis go, and she ran behind Wilson. Wilson kept telling Gonzalez to leave, but Gonzalez just said, “[Y]ou ain’t going [to] do nothing, you little bitch.” Wilson then

³Wilson had been hanging out with his cousin, took methamphetamine, got lost, and passed out in a field in the snow for several hours.

fired a warning shot through the floor. He did not want to hurt Gonzalez, but he was afraid of him and wanted him to leave. Instead, Gonzalez got more aggressive, and Wilson fired a second warning shot through the wall. Gonzalez bowed up, cursed him, and lunged at him. Wilson then shot him four or five times “for [himself] and for -- Aldis and Lexi (Aldis’ daughter).” Wilson said he was afraid for his life, as well as the lives of Aldis and Lexi, and claimed he had no choice. Wilson then told the jury of a similar incident that occurred a year earlier in which he had to defend himself from the ex-boyfriend of his then girlfriend. Wilson ended up killing him, also. Although denying he posted it, Wilson admitted opening a Facebook page in which he bragged about having studied at the Harvard Law School of Self-Defense Class of 2011. He claimed self-defense in that case, also, and charges were dismissed in August 2012. On August 8, 2012, a post appeared on his Facebook in which he apparently bragged about it.

Aldis’ version was considerably different, and she was the only other surviving witness to the events inside the mobile home. She testified that Gonzalez was the father of her three children and that they had broken up in March 2012. She said that she met and began dating Wilson in September and that he would stay every other day or so. She confirmed that Gonzalez came over unannounced that morning and that she went out to talk with him. They began arguing “a little bit” and she told him to leave, then Wilson came out of the bedroom. Wilson was walking with his hand behind his back and she got scared because she thought he had a gun. Aldis told Wilson to go back to the bedroom and that she would handle it, not to worry about it. Wilson told Gonzalez to leave, and the two men began mouthing back and forth, cussing at each other. She kept telling Wilson that she would handle it and that she would make Gonzalez leave.

She was not afraid Gonzalez would hurt her. Then Wilson took a step forward and pulled out the gun. She told him not to do anything. She picked up her daughter, Lexi, and lifted her out through the back door because she did not want her to see whatever was going to happen. Then, Wilson fired a shot through the floor. Next, Wilson shot through the wall. Right after that, he shot Gonzalez the first time, then a second time. Gonzalez had only taken one step forward and then he was shot. She closed her eyes and kept telling Wilson to stop. The shots came back to back, and she opened her eyes after the third or fourth shot, when Gonzalez was going out the door. She was in shock.

She also testified that she did not feel threatened by Gonzalez that day and did not think he made any threat that deserved being shot. He never displayed a weapon and never threatened to kill anyone that day. Aldis acknowledged that Gonzalez and Wilson had argued over the telephone, but denied that Gonzalez ever threatened to come over and kill him. On cross-examination, she admitted that Gonzalez was “pissed off” at both she and Wilson that day. She also admitted that Wilson could not make a fist that day because of his frostbite.

Supaya Mendez, Aldis’ mother, testified that Gonzalez was a fighter but never used weapons. Supaya was never afraid of him killing anyone. She said that Aldis and Gonzalez would argue a lot because he drank a lot. He would get violent when he drank, but not toward her, just toward the walls.

The medical examiner who performed the autopsy on Gonzalez testified that, based on her examination, one shot entered the front of his body, one entered his left side, and two entered at his lower back/buttocks. One or two other bullets grazed his back.

(1) *The Jury Instruction on Provocation Was Warranted by the Evidence*

Wilson complains of the trial court’s inclusion of a charge on provocation, asserting there was no evidence that would support its inclusion.⁴ We find there was sufficient evidence to include the instruction and overrule this point of error.

Our review of an alleged error in a jury charge involves a two-step inquiry. *Abdnor v. State*, 871 S.W.2d 726, 731 (Tex. Crim. App. 1994). First, we determine whether an error occurred, and, if it did, then we “determine whether sufficient harm resulted from the error to require reversal.” *Id.* at 731–32; *Almanza v. State*, 686 S.W.2d 157, 172 (Tex. Crim. App. 1984) (op. on reh’g), *reaff’d* by *Middleton v. State*, 125 S.W.3d 450, 453 (Tex. Crim. App. 2003).

The level of harm an appellant must demonstrate as having resulted from the erroneous jury instruction depends on whether the appellant properly objected to the error. *Abdnor*, 871 S.W.2d at 732. When a proper objection is made at trial, reversal is required if the error is “calculated to injure the rights of defendant”—the appellant need only demonstrate “some harm” on appeal. *Id.*; *see also Almanza*, 686 S.W.2d at 171. In the case of unpreserved error, reversal is required only when “the error is so egregious and created such harm that [the defendant] ‘has not had a fair and impartial trial’ -- in short ‘egregious harm.’” *Almanza*, 686 S.W.2d at 171; *see Rudd v. State*, 921 S.W.2d 370, 373 (Tex. App.—Texarkana 1996, pet. ref’d). “Egregious harm” results from errors affecting the very basis of the case or that deprive the defendant of a valuable

⁴The Jury Instructions included a definition of “Provoking the Use or Attempted Use of Force,” an instruction on “Failure to Retreat,” and an instruction on “Presumption,” all of which are substantially the same as those set forth in Sections B14.8 and B15.3 of the State Bar of Texas’ TEXAS CRIMINAL PATTERN JURY CHARGES—DEFENSES §§ (2013). The “Failure to Retreat” and “Presumption” instructions are based on Sections 9.32(b) and (c), respectively, of the Texas Penal Code. *See* TEX. PENAL CODE ANN. § 9.32(b), (c) (West 2011). It is unclear from the record and Wilson’s brief whether he is complaining of the definition only or also the mentioning of provocation in these other instructions.

right, vitally affect a defensive theory, or make the case for conviction or punishment clearly and significantly more persuasive. *Saunders v. State*, 817 S.W.2d 688, 692 (Tex. Crim. App. 1991); *Smith v. State*, 424 S.W.3d 588, 597 (Tex. App.—Texarkana 2013, no pet.).

“[T]he jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby.” TEX. CODE CRIM. PROC. ANN. art. 36.13 (West 2007). A trial court must submit a charge setting forth the “law applicable to the case.” TEX. CODE CRIM. PROC. ANN. art. 36.14 (West 2007); *Reeves v. State*, 420 S.W.3d 812 (Tex. Crim. App. 2013). “It is not the function of the charge merely to avoid misleading or confusing the jury: it is the function of the charge to lead and prevent confusion.” *Reeves*, 420 S.W.3d at 818 (quoting *Williams v. State*, 547 S.W.2d 18, 20 (Tex. Crim. App. 1977)).

The trial court must give a charge on provocation

when there is sufficient evidence (1) that the defendant did some act or used some words which provoked the attack on him, (2) that such act or words were reasonably calculated to provoke the attack, and (3) that the act was done or the words were used for the purpose and with the intent that the defendant would have a pretext for inflicting harm on the other.

Smith v. State, 965 S.W.2d 509, 513 (Tex. 1998).

Each of the three elements may be proved circumstantially. *Id.* at 515, 517–18. A provocation instruction should be submitted to the jury only “when there is evidence from which a rational jury could find every element of provocation beyond a reasonable doubt.” *Id.* at 514. Our inquiry is whether “a rational jury could have found provocation beyond a reasonable doubt, viewing the evidence in the light most favorable to giving the instruction.” *Id.*

There is ample evidence to support instructing the jury on provocation. From the above relevant testimony, it could be reasonably inferred that Wilson purposefully inserted himself into a domestic dispute and that threatening Gonzalez with a firearm and the words he used were calculated to provoke the attack by Gonzalez. In his brief, Wilson focuses on the lack of direct evidence of “words or acts” that prove the third element, i.e., that Wilson intended to provoke the difficulty as pretext for inflicting injury on the deceased. However, a jury does “not need to be able to put its hands on the particular act or words[;]” rather, “this finding can be made through inference relying on circumstantial evidence.” *Id.* at 515. From the medical examiner’s testimony, a jury could reasonably infer that Gonzalez stopped his advance after being shot once and began turning to retreat. Wilson, however, kept shooting and shot Gonzales in the side, then at least three times in the back. In addition, Wilson testified that he had had several run-ins with Gonzalez over the telephone and that a few days before this incident Gonzalez threatened to kill him. A rational jury could have inferred his intent from this evidence, coupled with Wilson’s recent prior homicide in which he successfully claimed self-defense. Thus, there is evidence of each element that supports the court’s decision to include the instruction.

Accordingly, we conclude that the trial court did not err in instructing the jury on provocation.

(2) *A Jury Instruction on Threats by the Victim Was Properly Refused*

Wilson also complains of the lack of an instruction on the prior threats made by Gonzalez.⁵ Because the proposed instruction would have been an impermissible comment on the weight of the evidence, we overrule this point of error.

In asserting entitlement to an instruction on threats by Gonzalez, Wilson relies on *Fielder v. State*, 756 S.W.2d 309 (Tex. Crim. App. 1988). However, the complaint in *Fielder* was the exclusion of *evidence* related to the defendant's past relationship with the deceased and the reasonableness of her fear of him. *Id.* at 318. Wilson makes no such complaint on appeal.⁶ Rather, this case is controlled by *Walters v. State*, 247 S.W.3d 204 (Tex. Crim. App. 2007).

In *Walters*, the Texas Court of Criminal Appeals considered whether, in a murder case where the jury is charged on self-defense, the defendant is entitled to an instruction on prior oral threats by the deceased.⁷ The court held that,

generally speaking, neither the defendant nor the State is entitled to a special jury instruction relating to a statutory offense or defense if that instruction (1) is not grounded in the Penal Code, (2) is covered by the general charge to the jury, and (3) focuses the jury's attention on a specific type of evidence that may support an element of an offense or a defense. In such a case, the non-statutory instruction would constitute a prohibited comment on the weight of the evidence.

⁵Wilson requested the following instruction:

Where a defendant accused of murder seeks to justify himself on the ground of threats against his own life, he is permitted to introduce evidence of the threats made, but the same shall not be regarded as affording justification for the offense unless it be shown, at the time of the killing, the person killed by some acts then done, manifested in an intention to execute the threats so made, and provided that a reasonable person in the defendant's situation would not have retreated.

⁶Wilson testified at trial about the threats to his life made by Gonzalez, and his trial counsel emphasized these threats and Gonzalez' violent nature in his final argument.

⁷The proffered instruction was identical to the one in this case.

Id. at 212. As in *Walters*, the proffered instruction meets all three criteria. First, the Texas Penal Code does not recognize prior oral threats as a defense or justification. Second, the trial court included the statutory definition of “reasonable belief,” which would necessarily include threats made before the incident. *Id.* at 213. Third, giving the instruction would unduly focus attention on evidence in support of a finding of self-defense by “improperly tell[ing] the jury how to consider certain evidence before it.” *Id.* at 214.

Accordingly, we conclude that the trial court did not err in denying Wilson’s request for an instruction on prior oral threats.

(3) *A Jury Instruction on Necessity Was Properly Refused*

Wilson complains that he was entitled to a jury instruction on the defense of necessity.⁸ Since the trial court charged the jury on self-defense using deadly force, we find that the trial court did not err in refusing to include an instruction on necessity.

Under Section 9.22 of the Texas Penal Code, conduct is justified under necessity, if

(1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;

(2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and

(3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

TEX. PENAL CODE ANN. § 9.22 (West 2011).

⁸In his brief on this point of error, Wilson merely quotes verbatim his trial counsel’s argument made to the trial court. Since the argument below included appropriate legal authority and argument based on that authority, we will address the point of error. Our addressing this point of error should not be taken as approval of this very questionable practice.

Thus, if there is a plain legislative purpose to exclude the defense of necessity, then subsection (3) precludes its application. This Court has previously held that a defendant is not entitled to an instruction on necessity when self-defense using deadly force is an issue since including an instruction on necessity “would undermine the Legislature’s purpose in imposing the duty to retreat” in Section 9.32 of the Texas Penal Code. *Searcy v. State*, 231 S.W.3d 539, 544 (Tex. App.—Texarkana 2007, pet. ref’d); see *Butler v. State*, 663 S.W.2d 492, 496 (Tex. App.—Dallas 1983), *aff’d on other grounds*, 736 S.W.2d 668 (Tex. Crim. App. 1987).

However, these cases were decided under the former version of Section 9.32 that contained a “legislative purpose” to require retreat, if a reasonable person would, before using deadly force.⁹ See *Butler*, 663 S.W.2d at 496. In 2007, the Legislature amended Section 9.32, removing the retreat provisions and adding “provisions specifying when a person does *not* have a duty to retreat.” *Morales v. State*, 357 S.W.3d 1, 5 (Tex. Crim. App. 2011). Thus, a legislative purpose to require retreat before using deadly force no longer “plainly appear(s)” in Section 9.32, as required to preclude an instruction under Section 9.22. Nevertheless, we find that

⁹The former version of Section 9.32 of the Texas Penal Code provided,

A person is justified in using deadly force against another:

- (1) if he would be justified in using force against the other under Section 9.31 of this code;
- (2) if a reasonable person in the actor’s situation would not have retreated; and
- (3) when and to the degree he reasonably believes the deadly force is immediately necessary:
 - (A) to protect himself against the other’s use or attempted use of unlawful deadly force; or
 - (B) to prevent the other’s imminent commission of aggravated kidnapping, murder, rape, aggravated rape, robbery, or aggravated robbery.

Act of May 27, 1995, 74th Leg., R.S., ch. 235, § 1, 1995 Tex. Gen. Laws 2141, 2141 (amended 2007) (current version at TEX. PENAL CODE ANN. § 9.32 (a) (West 2011)).

Section 9.32 still contains a plain legislative purpose that precludes the inclusion of an instruction on necessity when a Section 9.32 defense is implicated.

Section 9.32 provides, in pertinent part, as follows:

- (a) A person is justified in using deadly force against another:
 - (1) if the actor would be justified in using force against the other under Section 9.31; and
 - (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
 - (A) to protect the actor against the other's use or attempted use of unlawful deadly force; or
 - (B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

TEX. PENAL CODE ANN. § 9.32(a) (West 2011).

From a plain reading of the statute, it is clear that the Legislature intended to justify the use of deadly force only when one's life is immediately threatened by another's use of unlawful deadly force or to prevent the commission of specific violent crimes. By contrast, the defense of necessity has a much lower threshold before it can be asserted. Necessity requires only that the conduct be necessary to "avoid imminent harm." TEX. PENAL CODE ANN. § 9.22(1). "Harm" is defined as "anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested." TEX. PENAL CODE ANN. § 1.07(a)(25) (West Supp. 2014). Allowing an instruction on necessity when, as here, the evidence requires an instruction on self-defense using deadly force would undermine the

legislative purpose of only allowing deadly force to be used to prevent the immediate threat to one's life or to prevent the commission of specific violent crimes.¹⁰

Accordingly, we conclude that the trial court did not err in denying Wilson's request for an instruction on necessity.

(4) *Mistrial Was Not Mandated*

Wilson also complains about not being granted a mistrial after the State put on evidence of items used for "distributing narcotics." We find that the trial court properly instructed the jury and overrule this point of error.

During the State's direct examination of Robert Zinn, an inspector for the Franklin County Sheriff's Department, the following exchange took place:

Q. Besides the items directly related to the shooting, were there other things found in the house that were of interest?

A. Yes, sir.

Q. And what was that?

A. There was, I believe, some digital scales found, some methamphetamines found, and I believe that there was a price list of how much -- for someone that was distributing narcotics, it broke down the price of how much each of those --

MR. LONG: May we approach the bench?

THE COURT: You may.

Outside the presence of the jury, Wilson objected to any testimony regarding distributing narcotics, and the court sustained the objection. When the jury returned, the court gave the following instructions:

THE COURT: Please be seated. Thank you.

¹⁰Since we have found that Wilson was not entitled to an instruction on necessity when self-defense using a deadly weapon is implicated, we do not reach the State's contention that the necessity defense was not available to Wilson since he did not admit to the conduct. *See Juarez v. State*, 308 S.W.3d 398 (Tex. Crim. App. 2010).

Ladies and gentlemen, I have an instruction for you. It's one of those instructions that I told you you may very well be given. And what I'm going to tell you is that just before your break, you heard some testimony regarding digital scales, price lists, and some suggestion of distribution of narcotics. You are to disregard that testimony and consider it for no purpose whatsoever. All right?

Wilson then moved for a mistrial, which was denied. Thus, Wilson has properly preserved the point for appeal. *Hines v. State*, 269 S.W.3d 209, 214 (Tex. App.—Texarkana 2008, pet. ref'd).¹¹

Granting a mistrial is appropriate in “those cases in which an objection could not have prevented, and an instruction to disregard could not cure, the prejudice stemming from an event at trial—i.e., where an instruction would not leave the jury in an acceptable state to continue the trial.” *Young v. State*, 137 S.W.3d 65, 69 (Tex. Crim. App. 2004). However, a mistrial is not required where prejudice is curable by an instruction to the jury to disregard. *Ovalle v. State*, 13 S.W.3d 774, 783 (Tex. Crim. App. 2000). “A trial court’s denial of a mistrial is reviewed under an abuse of discretion standard and must be upheld if within the zone of reasonable disagreement.” *Brooks v. State*, 420 S.W.3d 337, 340 (Tex. App.—Texarkana 2014, no pet.) (citing *Coble v. State*, 330 S.W.3d 253, 292 (Tex. Crim. App. 2010)).

At the time this exchange occurred, there had already been unopposed testimony regarding the presence of marihuana and methamphetamine in the mobile home and Wilson’s own drug use. Later, Wilson testified of his prior convictions for aggravated assault and felony

¹¹“The proper method of preserving error in the admission of improperly offered evidence is for appellant’s counsel to: (1) state a timely specific objection, (2) obtain a ruling on the objection from the trial court, (3) move for an instruction for the jury to disregard, (4) obtain a ruling on the instruction and if sustained, have the jury instructed, (5) move for a mistrial, and (6) obtain a ruling on the motion for mistrial. These steps must be taken in sequence, and counsel cannot object and move for an instruction and mistrial without obtaining a ruling on the objection.” *Hines*, 269 S.W.3d at 214 (quoting *Hadden v. State*, 829 S.W.2d 838, 841 (Tex. App.—Corpus Christi 1992, pet. ref'd)).

possession of marihuana. In addition, the testimony and items mentioned were never mentioned again. In a case such as this, in which the bulk of testimony centered around the violent behavior and the abuse of drugs and alcohol by both Wilson and Gonzalez, it is unlikely that any prejudice caused by this one isolated comment could not be cured by the trial court's instruction to disregard it.

The trial court did not abuse its discretion in overruling Wilson's motion for mistrial.

(5) *Wilson's Complaint Regarding the Lack of a Jury Instruction on Justifiable Force Is Inadequately Briefed on Appeal*

Wilson also complains that the trial court erred by denying his request to include an instruction on justifiable force. In his brief, Wilson merely sets forth verbatim the argument made by his trial counsel to the trial court. The argument does not contain any citations to statutory or caselaw, other than one general reference to the "Penal Code."

It is the duty of an appellant to cite specific legal authority and provide legal arguments based on that authority. *Bell v. State*, 90 S.W.3d 301, 305 (Tex. Crim. App. 2002). Appellate counsel is required to "cite specific legal authority and to provide legal argument based on that authority." *Rhoades v. State* 934 S.W.2d 113, 119 (Tex. Crim. App. 1996) (citing *Vuong v. State*, 830 S.W.2d 929, 940 (Tex. Crim. App. 1992)); see TEX. R. APP. P. 38.1(i); *Ex parte Granger*, 850 S.W.2d 513, 515 n.6 (Tex. Crim. App. 1993). Where adequate briefing is not provided, the contention can be overruled. *Rhoades*, 934 S.W.2d at 119. We overrule this contention of error.

(6) *We Have No Jurisdiction Over the Amendment of the Indictment in a Companion Case Not on Appeal*

In his final point of error, Wilson asserts that the trial court erred when it allowed the State to amend the indictment on a related charge after trial began and over his objection. We overrule this contention.

Wilson was charged with two separate offenses that were tried together. The first, which is the subject of this appeal and over which we have jurisdiction, was for murder (trial court cause number F-8775). While the murder indictment was amended, that was done seventeen days before trial and is not part of Wilson's complaint.

The second charge was for the offense of unlawful possession of a firearm by a felon (trial court cause number F-8776). On the third day of trial, before introducing evidence of the prior offense, the State moved to amend the firearm indictment. Wilson timely objected to the amendment.

Although these charges were tried together, Wilson has not appealed from his conviction for unlawful possession of a firearm by a felon. Because no timely notice of appeal regarding that conviction was filed, we have no jurisdiction over the firearm possession case. *See Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Accordingly, we overrule this point of error.

We affirm the judgment of the trial court.

Josh R. Morriss III
Chief Justice

Date Submitted: August 28, 2014
Date Decided: November 7, 2014

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