



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-1043-16

JOHNTAY GIBSON, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTEENTH COURT OF APPEALS
HARRIS COUNTY**

KELLER, P.J., filed a concurring opinion.

Appellant raised certain claims in his motion to suppress and at the hearing on the motion. At trial, he raised a new claim, arguing that the officers failed to give certain constitutionally and statutorily required warnings at the time of his second interrogation. In his brief in the court of appeals, he said that the motion to suppress was re-litigated at trial, and he argued the merits of the new claim. The court of appeals relied on what was pled in the motion (because Appellant said it was re-litigated at trial), saw that the new claim was not made there, considered whether the error was preserved before turning to the merits of the claim, and held that Appellant failed to preserve

error. I agree with the Court that Appellant preserved error regarding his new claim, but I think that his brief was the cause of the court of appeals's failure to recognize that. I think the court of appeals was justified in relying on the motion to suppress and the suppression hearing to find that the claim was not preserved.

Nevertheless, Appellant did preserve his claim, and even though his brief misled the court of appeals, he did include a citation in a footnote that led to the part of the record where he made his new claim at trial. Because of the footnote citation, I think Appellant has shown that he is entitled to have his claim reviewed on the merits.¹

I concur in the judgment of the Court.

Filed: November 8, 2017

Publish

¹ A brief must contain “appropriate citations to authorities and to the record.” TEX. R. APP. P. 38.1. That includes pointing out where in the record error was preserved, if error needs to be preserved. *See Leza v. State*, 351 S.W.3d 344, 358 (Tex. Crim. App. 2011) (“appellant directs us to nowhere in the record where any such complaints were registered in the trial court Nor does he offer any justification for treating these arguments as immune from ordinary principles of procedural default For this reason, we regard his arguments under this point of error as inadequately briefed and decline to reach their merits.”).