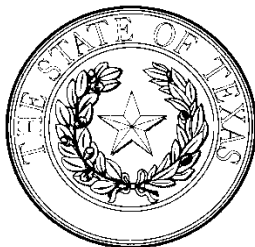


Concurring memorandum opinion issued April 12, 2016



**In The
Court of Appeals
For The
First District of Texas**

NO. 01-14-00925-CR

EX PARTE TERRY LYNN SPIES, Appellant

**On Appeal from the 337th District Court
Harris County, Texas
Trial Court Case No. 1343443-A**

CONCURRING MEMORANDUM OPINION

I join the court's holding that Terry Lynn Spies failed to preserve error on any legal argument that section 33.021(c) of the Texas Penal Code is unconstitutional as applied to him. Not only did Spies fail to present any substantive legal argument to the trial court, he also failed to present an adequate brief including a legal argument to this court. *See* TEX. R. APP. P. 33.1, 38.1(i).

For precisely that reason, I would not go further to address the merits of the constitutionality of section 33.021(c) by attempting to distinguish it from section 33.021(b) and the holdings in *Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013), and *Ex parte Chance*, 439 S.W.3d 918 (Tex. Crim. App. 2014) (mem.). See *VanDevender v. Woods*, 222 S.W.3d 430, 433 (Tex. 2007) (noting “the cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more”).

Michael Massengale
Justice

Panel consists of Justices Keyes, Massengale, and Lloyd.

Do not publish. TEX. R. APP. P. 47.2(b).