In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-18-00051-CR

JAKE CHARLES ABEL, Appellant

V.

THE STATE OF TEXAS

On Appeal from the 271st District Court
Wise County, Texas
Trial Court No. CR19555

Before Gabriel, Bassel, and Womack, JJ.
Per Curiam Memorandum Opinion

MEMORANDUM OPINION

In four paragraphs, a grand jury indicted Appellant Jake Abel for intentionally or knowingly causing his girlfriend Soccorro Taylor's death by cutting her with a knife or striking her with a blunt object and for committing an act clearly dangerous to human life—cutting her with a knife or striking her with a blunt object—with the intent to cause her serious bodily injury that caused her death. An enhancement paragraph alleged that he had been convicted in 2012 for the felony offense of injury to a child. A jury convicted Jake of murdering Soccorro and assessed his punishment at life imprisonment and a $10,000 fine. The trial court sentenced him accordingly.

Jake raises five issues.[1] In three issues, he challenges the denial of his motion to suppress (issue one), the admission of alleged hearsay (issue two), and the denial of his motion for mistrial regarding the State's final closing argument in the guilt stage of trial (issue three). In the remaining two issues, which Jake argues together, he complains of cumulative error and the trial court's failure to grant a mistrial after the State's alleged repeated misconduct (issues four and five). We affirm.

[1]We note that except for the first issue, the issues contained in the "Issues Presented" section of Jake's brief do not match the issues discussed in the brief's body. We treat the issues presented in the body of the brief as Jake's appellate issues.

I. BACKGROUND FACTS

A. Jake and Soccorro's Relationship

Jake and Soccorro's relationship was described as volatile, and Soccorro showed signs of abuse at all stages of it. Soccorro's friends and coworkers and Jake's family tried unsuccessfully to get them to break up.

In December 2014, Jake and Soccorro met at work, and by March 2015, they were in a relationship, and he had bruised her arms. Soccorro was still married to but estranged from a man who had gone to prison after abusing her on multiple occasions. Jake was living with another woman, so his relationship with Soccorro was secret at first. But in June 2015, Jake left his girlfriend, and he and Soccorro made their relationship public. Soccorro moved in with Jake, who was living in Fort Worth in a cabover camper owned by his fictive father Robert Bridges (Father). The cabover camper sat on the ground in Father's backyard. The camper had no running water, so the couple also used Father's house.

Jake lost his job in June 2015, and Soccorro lost hers the next month. Both were using methamphetamine. In July 2015, they got engaged. Friends noticed more bruising on Soccorro's arm while she tried on wedding dresses that month.

Jake gave Soccorro an engagement ring in August 2015. In September, Jake drove Soccorro to her friend Teila Boeglin's house. Boeglin testified that Soccorro "appeared like she had [had] a long night. She looked tired. She looked stressed. Her hair was a mess. . . . [H]er eyes were puffy[,] . . . her face was swelled up a little, and

she just wasn't smiling like she normally d[id]." Soccorro told Boeglin that "Jake had beat her ass the night before and tried to kill her." Specifically, Jake "had choked [Soccorro] until she blacked out[,] and . . . she thought she had died."

At some point, Father told the couple to leave, and they began staying in a friend's mobile home in Alvarado. On October 31, 2015, Soccorro called her friend Camryn Sotelo. Soccorro told Sotelo that she and Jake had been fighting and that he had been abusive. Sotelo went to get Soccorro in Alvarado and drove her back to Sotelo's home. Sotelo saw several bruises on Soccorro, including one on her eye and one on her chest. Sotelo told Soccorro not to call Jake from Sotelo's house because Sotelo was concerned about the safety of her children. But Sotelo was worried that Soccorro would call Jake anyway "[b]ecause she would go back to him every time." Sotelo took Soccorro to Boeglin's house, and they warned Soccorro that if she did not get away from Jake, they would be planning a funeral instead of a wedding.

Soccorro returned to Jake the very next day. Within the next two weeks, they moved back to Father's cabover camper in his backyard.

November 2015 entries in Soccorro's journal[2] show the continued tensions in her relationship with Jake:

[2]The words *journal* and *diary* are used interchangeably to refer to the purple book found on Jake's person when he was arrested on December 26, 2015.

- **November 8, 2015**

I love you[,] Jake Charles Abel[, and] nothing will change that! Well[,] I'm glad we're here and relaxing[,] and I want more than anything for us to have an amazing life together and [to] put the past behind us. I believe in you[,] and I don't care what anyone thinks. My life is with you[,] and I'm happy. . . . It's hard sometimes[,] but either way we can make it anywhere. Well[,] Lovee, you['re] the best[,] and everything will be alright[, n]o matter what[.]

- **November 9, 2015**

[H]ating life right now[.] I love you[,] Jake[,] but I'm scared!

- **November 10, 2015**

Well[,] feeling stressed all day[—]worried. . . . I love you Jake. I believe in you[, B]abe. I am worried though. . . . As for myself[,] never give up!

- **November 13, 2015**

Ready for a great life with my Lovee[,] and I'm ready for Jake Jr. I'm excited about being a mom again and for Jake to be a daddy[.]

To be continue[d.]

- **November 15, 2015**

Being grateful for [Father's] letting us come back to stay[,] and I'm grateful for Jake loving me. My loving man!

- **November 17, 2015**

I'm hurt. . . . I'll just keep praying please give me strength.

- **November 20, 2015**

I'm so proud of him[.] I knew and had faith in him[;] it was just killing me that he was treating me like a whore[.]

- **November 25, 2015**

> I'm sick of him taking advantage that I'll always be there. Well[,] maybe I should stop[.]
>
> Maybe I should go stay with [someone else] and get back on my feet[] and not worry about Jake?
>
> I just want to be happy[. I]s that to[o] much to ask for?

- **November 26, 2015 (Thanksgiving)**

> I feel that all he cares about is his needs[.] . . . I'm alone in the camper on Thanksgiving. This sucks. . . . I hate feeling insecure now[;] it's not a good feeling at all. . . . God[,] please watch over me[.] I need your strength!

On Thanksgiving, Jake's mother (Mother) and sister (Sister) had Thanksgiving with Father, Father's girlfriend, Father's son, and Jake at Father's house. Father's girlfriend testified that Soccorro had put the turkey in the oven but had then left.

The November difficulties recorded in Soccorro's journal culminated in a violent assault the day after Thanksgiving. On November 27, 2015, Jake borrowed Sister's car and went to White Settlement with Soccorro. Durande Smith was at a gas station when he saw a man later identified as Jake pull the car up to a gas pump near him. A woman (Soccorro) got out of the front passenger seat of the car, walked toward Smith, mouthed the words "Help me," and walked behind him. Jake came toward Smith and Soccorro, brandishing "a knife or something," and then Jake reached around Smith to grab her and dragged her by her hair to the right of Smith,

yelling at her and acting like a "monster." Another bystander intervened and pointed what appeared to be a handgun at Jake, ordering him to release Soccorro. Instead of releasing Soccorro, Jake, still holding Soccorro by her hair, approached the bystander with the gun, told the man to shoot him in the head, and then beat Soccorro. The bystander hit Jake in the head with the gun, and a fight ensued. Jake overpowered the bystander, and the bystander escaped. When the police arrived, Soccorro refused to press charges, but the police decided to separate Jake and Soccorro for the night out of concern for her safety, giving her a ride elsewhere and arresting Jake for a Class C assault.

Soccorro's friend Amanda Salazar picked Soccorro up at Father's house soon after the assault. Salazar saw a large bruise on the right side of Soccorro's face. Salazar's boyfriend saw multiple bruises on Soccorro, including around her neck and on her legs. Around December 3, 2015, Soccorro was staying with her mother. Soccorro's young niece saw "bruises all over [Soccorro's] back." But Soccorro asked her not to tell anyone. By December 7, 2015, according to her journal, Soccorro was back in Father's cabover camper with Jake.

Soccorro's December 2015 journal entries continued to show her love for Jake but also demonstrated continued tensions in their relationship. Her December 7 entry noted, "Jake is watching the Mexican channel [and] getting off on it." On December 12, she wrote, "Jake isn't hi[m]self[.] All I want to do is love him[.] . . . I guess he[']s in a mood. . . . I really am hurt[.] . . . I wonder if he's trying to really just

br[eak] away from me or something[.] . . . On December 18, 2015, she wrote that she felt like he wanted his freedom or someone else. On December 19, she wrote that he was "acting weird" but that he was saying that nothing was wrong. She wrote that her "only concern [was] Jake" and that he was "in his mood[.]"

B. Soccorro's Last Day

In her final journal entry, dated December 20, 2015, Soccorro wrote,

> [S]pending Sunday by myself[.] . . . Jake is here and not paying attention to me[.] . . . So fed up, I miss Jake so much. . . . I hate feeling alone & not appreciated[.] . . . Another lonely day[.] . . . I feel so out of place with him[.] . . . [M]y head hurts for trying to make him happy[.] . . . I'm in [l]imbo[.] I know I love him to death[,] but will it be this way all the time? Bye for now[.]

The couple's methamphetamine dealer delivered an "eight ball" (about three grams) of the drug in the middle of the day. Jake was in the backyard outside the camper chopping weeds with a machete, and he told the dealer to go inside the camper and wait for him. Soccorro was inside the camper, "acting kind of strange[,] . . . like she was kind of scared or . . . didn't want to be there." She apparently asked the dealer if she could go home with her, but the dealer refused. The dealer left and returned a couple of hours later with her niece. They spoke to Jake outside and then went inside the camper to visit Soccorro. At trial, the dealer and her niece told slightly different versions of what transpired the rest of that day.

The dealer's niece testified that inside the camper, Soccorro, who was wearing her engagement ring, was upset, did not look happy, and did not talk much, which

was out of character. Jake was making a lot of noise outside the camper, and the niece jokingly yelled, "Keep it down." Soccorro looked scared and said, "Don't do that." In response to the niece's joking yell, Jake then replied, "I'll kill y'all." About five minutes later, Jake joined the women in the camper, and Soccorro got really quiet and told the other two women to leave and to come get her later to stay with them because "[s]he planned on leaving Jake." The niece testified that she could tell that there was tension between Jake and Soccorro. Jake stared at Soccorro, and she would not maintain eye contact with him. The niece testified that she and the dealer left around 4:00 p.m. or after. They never returned to get Soccorro.

Instead, according to the dealer's niece, they saw Jake outside their home after midnight wearing shorts and a tank top. "He was real sweaty and nervous" and "was trying to get some gas money" because "he needed to go somewhere that was . . . a long drive [away]." The niece saw Jake give the dealer a ring that she recognized as Soccorro's engagement ring. The niece heard the dealer ask where Soccorro was, and Jake replied that she was with her son.

In the dealer's account of her afternoon visit with her niece and Socorro, she testified that while she, her niece, and Soccorro were talking softly in the camper and Jake was outside,

> Jake asked . . . what [they] were whispering about, and [they] said nothing. And he said, yeah, y'all are. And [they] said, no, [they were not]. And he said, don't make me come in there and chop your head off, and he started laughing. [The dealer] thought it was a joke at first, but it wasn't a joke. He was serious.

Soccorro acted scared and again indicated that she wanted to go home with the dealer. The dealer refused because she said her mother did not want company. Jake came in and asked why they were whispering. When they denied whispering, he got mad and went back outside, slamming the door. The dealer and her niece then left.

The dealer never saw Soccorro again, but according to the dealer's testimony, later that night, Jake visited her outside her house and asked to buy more drugs; she did not have any. She noticed Soccorro's engagement ring on his finger. When the dealer asked Jake why he had the ring, he told her that he and Soccorro had fought and were not getting married, so he was going to sell the ring. He gave the dealer the ring to sell, and she sold it that night. At trial, the dealer believed that she sold the ring around 9:30 or 10 p.m. that night, but she admitted in her testimony that she had been using methamphetamine on the evening in question. She testified that Jake was wearing a toboggan and overalls.

C. Disposing of the Evidence

In the early morning hours of December 21, 2015, Jake loaded Father's red and white pickup, which had a camper shell, with what he told Father was garbage that he was hauling to the dump. At 7:58 a.m., Jake, driving Father's pickup, was captured on video at the EECU Credit Union drive-thru in downtown Fort Worth. Screen shots of the video showed Jake alone in the pickup wearing a black button-down western shirt with pearl snap buttons. He withdrew $499.00 from his savings account.

By 8:45 a.m., Jake had arrived at his aunt Cheryl Cornstubble's (Aunt's) home in a rural area in Boyd. Aunt had been sick and was in bed. Jake was wearing the same shirt that he could be seen wearing in the bank video and a pair of pants that were far too short for him. He carried a six-pack of Shiner Bock beer. Jake told his Aunt that he and Soccorro had broken up. Aunt's son, James Cornstubble (Bubba), who lived with Aunt and owned the property, saw Jake and also noticed that the camper shell of the pickup was filled to the roof with what appeared to be rubbish. Aunt's friend David Leija visited while Jake was on the property and saw the pickup but not Jake.

When Aunt woke up, she saw that Jake had moved the pickup to the back side of the property. Aunt walked to where Jake parked to find him unloading rubbish from the back of his truck. Aunt went back to bed. Later, Jake entered Aunt's room saying, "I owe you a shovel because I broke yours." Jake had changed his clothes.

That same day, while Jake was gone, Father's girlfriend walked into his backyard and saw a knife on the ground between the driveway gate and the cabover camper. She picked up the knife but immediately dropped it because it appeared to have blood all over it. She left the knife on the ground.

When Jake returned to Father's home that evening, Father was angry because Jake had been gone so long and because trash still filled the pickup bed and camper shell.

Jake continued trying to dispose of evidence. According to the forensic extraction of the phone that he purchased on December 21—the same day that he went to Aunt's—a text conversation occurred at 10:17 p.m. between Jake and a person identified in his contacts as "M" in which Jake unsuccessfully asked for help in cleaning up his "place." Later that evening or possibly on December 22, Father and his girlfriend both saw Jake in the cabover camper doorway on his knees, scrubbing the floor "like a mad man."

Jake was working for a roofing company in December 2015. He did not work on December 21 but returned to work on December 22. Around noon, he texted Mother's phone saying, "I miss Soccorro." Mother replied, "Where did she go?" Jake answered, "Her mom's, her friend[']s, I miss her so much, [M]omma." Father's girlfriend had plans with Soccorro that day. When Soccorro did not show up as planned, Father's girlfriend began to worry that something had happened to her.

Early on December 23, 2015, Jake drove Father's pickup without permission. Father called Jake and threatened to call the police if Jake did not immediately return his truck. Jake was at the EECU Credit Union again. He withdrew $101.00, leaving an available balance of only $10 in his savings account. Jake next drove to a Haltom City dump and dumped the 260 pounds of rubbish that he had first loaded into the camper-covered pickup bed on December 21.

Mother picked Jake up at Father's house later that day, but sometime before Jake left, Father noticed that the camouflage tarp he had bought to cover the cabover camper's leaky roof was no longer on it.

After Jake's departure, Father's girlfriend looked in the backyard where she had seen the knife; it was gone. She and Father went inside the cabover camper. The girlfriend was concerned because she found Soccorro's purse, and inside it was Soccorro's only ID that the girlfriend knew of. Father's girlfriend also noticed that the cabover camper's carpet and bedding had been removed, and the camper was "cleaner than [she] had ever seen it." Father testified at trial that the inside of the cabover camper "was just sort of bare"; the mattress and more than half of the items that had been in the camper were gone. Father called Jake and asked where Soccorro was. Jake said she was at somebody's house. Father told Jake to have Soccorro call Father.

On December 24, at 6:35:29 p.m., Jake accessed a YouTube video on his phone entitled, "Kill Your Wife—A Good Husband." On Christmas Day, Soccorro's mother called Father looking for Soccorro. Father had not heard from her.

D. Finding the Evidence

1. The Boyd Property

On Saturday, December 26, 2015, Leija visited Aunt again to give her a Christmas present. Aunt was curious about what Jake had been doing on the property, so they walked toward the back of the property where he had been parked.

They stopped at a bench behind a small camping trailer, and as they were about to sit down, Aunt noticed a green camouflage tarp stuffed under the bench. Aunt and Leija pulled the tarp out and noticed what appeared to be a lot of blood on it. They then continued walking to where Jake had parked the pickup at the back of the property. There they discovered drag marks leading across the creek bed, under the low point in the fence, and into the woods on the neighbor's property. After following the tracks into the neighbor's woods, Aunt and Leija came to an area of freshly turned, soft earth that appeared to be some type of gravesite. Leaves and branches had been placed on top of the fresh dirt. Aunt and Leija told Bubba about what they had discovered and showed him the tarp. Bubba noticed "bloody or dirty" clothes hanging over the handle of a lawn mower located where the drag marks started.[3] After Bubba noticed the clothes, it started to rain, so he moved the clothes and a muddy pickax found near a horse trailer to the covered porch of a house on his property. Bubba called 911 to report his mother's discovery of a possible unmarked grave.

When Wise County Sheriff's Office (WCSO) Deputy Zachary Bryden arrived, Aunt, Leija, and Bubba showed him the tarp, and then Aunt and Leija took Bubba and the officer to see the possible gravesite. Deputy Bryden took statements from Bubba, Aunt, and Leija. The WCSO and Texas Rangers dug enough into the grave to

[3]Aunt identified the clothes at trial as the clothes Jake had worn when he arrived on December 21.

determine a human was buried there and then secured the gravesite until the next morning, when the digging resumed.

Law enforcement dug up the body on December 27. It was wrapped in "two muddy blankets" and "clad in a muddy blue T-shirt and muddy black pants," and was later identified as Soccorro. Soccorro's autopsy revealed her cause of death to be three mortal wounds: a sharp force injury to the front of her neck caused by a single cut with a knife, reaching a depth of two and one-fourth inches and severing the carotid artery and larynx, and two large blunt-force, chopping wounds on the back of her head. Multiple abrasions or scratches covered most of her middle back and the back of her left arm. The abrasions were consistent with her body having been dragged. The manner of Soccorro's death was homicide.

Law enforcement also collected other physical evidence from Aunt's and her neighbor's properties, including Jake's clothes (a pair of blue pants with the name Manuel Robledo[4] sewn into the hem and a black western shirt with pearl snap buttons), two Shiner Bock bottles from inside the grave, a Shiner Bock bottlecap from near the grave, the green camouflage tarp, a broken sharp-shooter shovel, a third Shiner Bock bottle found near the shovel, a pickax with orange mud that matched the dirt at the gravesite, and an SD adapter or data chip. A swab from the left sleeve of

[4]Robledo was a coworker of Jake's at the roofing company. Their boss testified that Robledo worked eleven and a half hours on December 21, 2015.

Jake's black western shirt was positive for blood and showed Soccorro was the likely source. Swabs from the green tarp also contained her blood.

2. Mother's Home

On December 26, after the body was discovered in Boyd, WCSO Lieutenant Chad Lanier and Captain Wes Wallace went to Mother's home in Decatur hoping to obtain information useful in locating Jake. Jake was at Mother's home. The officers arrested him on a parole warrant. Jake had removed the battery from his cell phone. The jacket he was wearing contained several items in the pockets, including Soccorro's journal. His wallet contained two December 23, 2015 receipts: one from EECU documenting his last savings withdrawal and one from the Haltom City dump.

3. Father's Sun Valley Home

On December 26, law enforcement determined that Jake was a possible suspect in the apparent murder and that he lived at Father's Sun Valley address in Fort Worth. Texas Ranger Ron Pettigrew wanted to find Jake and interview him while the officers were waiting for daylight to extract the body from the Boyd crime scene. He directed Texas Ranger Don Stoner to go to Father's home to determine if the pickup Jake drove to Aunt's home was there and to gather information about the location of Soccorro. Father consented to Ranger Stoner's search of the unlocked cabover camper and escorted Ranger Stoner to it. Stoner noticed that rain was entering the cabover camper through a hole in the roof before they entered the camper. After they entered the camper, he noticed blood spatter almost immediately and decided to

get a search warrant, even though Father told him that he did not need to get a warrant and consented to another search. Because Father's home was in Fort Worth, Ranger Stoner gave information to Fort Worth Police Department (FWPD) detective Ernest Pate, who then drafted the search warrant affidavit for the Sun Valley property.

On December 27, FWPD crime scene investigator Officer Tim Lee processed the crime scene at the Sun Valley home. The primary focus of the search was the cabover camper and Father's red and white pickup with a camper shell located in the driveway. In the cabover camper, Officer Lee photographed the blood spatter and located what appeared to be a small piece of bone with blood and hair on it. The FWPD ultimately seized the entire cabover camper (and all its contents) and transported it to a secure bay at the FWPD auto pound because Officer Lee was concerned that the evidence they were finding was going to be destroyed by the rain.[5] Officer Lee's more detailed evidence-gathering occurred there.

Officer Lee collected seven swabs from the blood-spatter area. He believed some of the blood spatter was cast off from the weapon being used by the killer

[5]WCSO Lieutenant Pat Golden (who was a sergeant at the time of the investigation) served as the primary detective on the case. He testified that the pickup and the cabover camper were transferred from the FWPD to the WCSO in early January 2016. The pickup was searched again pursuant to a warrant and then returned to Father. The WCSO still had possession of the cabover camper at the May 2017 suppression hearing, and Lieutenant Golden had received no indication that Father wanted it back.

because some of it was under the counter and was moving in an upward direction. The different areas of blood spatter indicated multiple blows to the injured person. A swirl pattern indicated the blood had been wiped after it was deposited—most likely to clean up the crime scene.

Swabs from the floorboard of Father's pickup and a swab from the cabover camper were confirmed to contain Soccorro's blood.

4. Ranger Pettigrew's Interviews with Jake

Ranger Pettigrew interviewed Jake three times, once on December 27, 2015, and twice on December 28, 2015. Only the first interview and a portion of the second interview were admitted at trial. Jake told Ranger Pettigrew that he had not been to Aunt's property for a long time but later admitted that he had been in Boyd "just the other day." When Ranger Pettigrew asked Jake about how Soccorro died, Jake responded, "I don't remember what all took place that evening or morning. I don't remember why it happened. . . . I don't know who caused [her death] exactly. [H]ad to have been one of us." Jake admitted seeing Soccorro lying dead on the ground.

5. Jailhouse Informant

In June and July 2016, Raymond Walker, who was awaiting transfer to prison, was Jake's cellmate in the Wise County jail. On July 21, 2016, Walker asked what Jake was charged with, and Jake responded that he "went savage on a bitch." Jake told Walker that all he regretted was not getting to finish his beers before his arrest. Jake

also told Walker that it was a good thing law enforcement found him when they did because he would have been gone the next day. Walker wrote down the details of what Jake had told him. Walker later wrote a note to a corrections officer at the jail, reporting what Jake had said. When Jake found out, he sent Mother a letter in which he threatened to harm Walker for informing on him.

II. DISCUSSION

A. Motion to Suppress

In his first issue, Jake contends that the trial court erred by denying his motion to suppress evidence collected at his arrest, evidence collected from the cabover camper, and his interviews with law enforcement.

1. Findings of Fact and Conclusions of Law

After denying Jake's motion to suppress and motion to reconsider that ruling, the trial court issued the following findings of fact and conclusions of law:

> **I. <u>FINDINGS OF FACT</u>**
>
> 1. On December 21, 2015, [Jake] went to [Aunt's] Wise County home . . . . [Jake] told [her] he needed to let the dog out.
>
> 2. [Jake] was driving . . . [F]ather's red and white Ford pickup.[Jake] had backed the pickup to the west side of [Aunt]'s property.
>
> 3. [Aunt] noted that the pickup bed had what she described as "trash" in it.
>
> 4. Later, when [Jake] came inside [Aunt]'s house, [he] was dressed in a dark colored shirt and blue pants; his clothing

was covered in mud. He told [Aunt] he had been digging in the pasture and that he apologized for breaking [Aunt]'s shovel.

5. On December 26, 2015, [Aunt] and a friend walked around her property and discovered a camouflaged tarp pushed under a small trailer. They saw what they suspected was blood on the tarp. There was blue tape on one end of the tarp.

6. [Aunt] and the friend followed drag marks on the ground leading to the woods adjacent to the property. The marks led to what looked like a freshly dug grave. 911 was called.

7. [Aunt] gave officers written consent to search her property.

8. [Lieutenant] Golden found a dark colored shirt and blue pants covered in mud. Golden also found a pickaxe on the porch and a broken shovel on the ground near a horse trailer.

9. [Lieutenant] Golden found the camouflaged tarp with what looked like blood on it near an RV at the back of the property. The tarp had blue tape on one end.

10. [Lieutenant] Golden and Ranger Pettigrew observed the freshly dug grave where [Aunt] had described it was. There were small tree limbs on top of the grave.

11. The officers dug down approximately three feet and discovered the knees of a human body. The body was wrapped in bedding and the legs were clad in a female's pajama bottoms.

12. Officers suspected the body might be that of [Jake]'s girlfriend, Soccorro . . . .

13. [Ranger] Pettigrew discovered [that Jake] had a parole warrant out of Tarrant County.

14. [Lieutenant] Lanier and [Captain] Wallace went to [Mother's] home . . . .

15. [Jake] was at [Mother]'s home. Officers arrested [Jake] on the parole warrant. Deputies seized [the] following items from [Jake]'s person: a purple diary belonging to [Soccorro], a wallet, a cell phone, blue lip balm, an old-timer knife, a metal cigarette container, one pack of spearmint gum, and a battery [that] had been removed from the cell phone.

16. [Lieutenant] Golden used some of the information from the victim's purple diary in the affidavit for [Jake]'s arrest for murder.

17. [Jake] asked officers to retrieve some personal items of his from the trunk of [Mother]'s car. [Mother] gave consent for officers to open her trunk and to remove items that belonged to [Jake].

18. The items identified as belonging to [Jake] were a red clothes basket, a brown and white purse, and a red back[]pack.

19. [Ranger] Pettigrew asked Ranger Stoner to go to 5425 Sun Valley, Fort Worth, Texas. Parole records listed that address as [Jake]'s home. Pettigrew asked Stoner to attempt to locate the red and white pickup and to speak to [F]ather regarding the whereabouts of [Soccorro].

20. [Ranger] Stoner went to [F]ather's home. He made contact with [F]ather . . . just after midnight on December 27, 2016. In the driveway of the home was a red and white pickup. The pickup matched the description of the vehicle [Jake] drove to [Aunt]'s residence.

21. [Father] told [Ranger] Stoner that [Jake] had borrowed his truck a couple of days before Christmas.

22. [Father] told [Ranger] Stoner that [Jake] and [Soccorro] had lived in a camper in the backyard. [Father] used past tense when telling Stoner the couple had stayed in the camper. Stoner interpreted [Father]'s statement to mean the couple had moved out. [Father] also said he had not seen [Soccorro] since before Christmas.

23. [Ranger] Stoner told [Father] that he was trying to find [Soccorro] and asked if [Father] would mind if Stoner took a look in the back where the couple had been staying. [Father] told Stoner he did not mind and added that the camper was unlocked.

24. As [Father] and [Ranger] Stoner were walking toward the camper, [Father] pointed to some trash piled up behind the house and told Stoner that it was trash that either [Jake] or [Soccorro] threw away. [Father] also told Stoner that [Soccorro] supposedly left. Stoner interpreted the statement to mean the couple discarded the junk when they had moved out.

25. [Father] took [Ranger] Stoner to the camper he had described. The camper [was] designed to sit in the bed of a pickup but was sitting on the ground. [Father] opened the door of the camper for Stoner. The door was unlocked.

26. [Ranger] Stoner told [Father] he saw that rain was leaking into the camper. [Father] said he had bought a tarp for [Jake] and [Soccorro] to put over the hole in the roof but that it was missing.

27. [Father] also told [Ranger] Stoner he had been inside the camper since [Jake] had left.

28. [Father] confirmed the only current residents of his property were himself and another son.

29. [Father] did not tell [Ranger] Stoner that [Jake] had previously paid rent to stay in the camper.

30. [Ranger] Stoner noticed that the camper was empty except for some women's clothing and a purse in the closet. There was also a single mattress but no bedding. Stoner asked [Father] where the bedding was. [Father] replied that there had been bedding there in the past.

31. [Ranger] Stoner also observed what looked like blood spatter inside the camper.

32. [Ranger] Stoner did not remove any evidence from the camper and was inside [it] for less than one minute.

33. [Ranger] Stoner reported his observations to [Ranger] Pettigrew; Pettigrew instructed Stoner to remain at the location until he could obtain a search warrant.

34. [Ranger] Stoner contacted [Father] again and told him he would be getting a search warrant for the camper and the pickup. [Father] told Stoner a search warrant was not necessary. [Father] invited Stoner to stay inside the house while he waited for the warrant; however, Stoner remained outside the residence.

35. After [Ranger] Stoner obtained the search warrant, the camper was moved to the [FWPD] to prevent spoliation of the evidence because of the rain coming inside the camper.

36. The camper and [Father]'s truck were later moved to Wise County without a magistrate's order.

37. The body found on [Aunt]'s property was positively identified as that of [Soccorro].

II. CONCLUSIONS OF LAW

. . . .

C. [JAKE] HAS NO STANDING TO CONTEST OFFICER'S INITIAL ENTRY INTO CAMPER

1. [Jake] did not exhibit an actual subjective expectation [of] privacy by his actions and society would not recognize his expectation of privacy as objectively reasonable. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996).

2. Because [Jake] had vacated the camper, removed his belongings, and left the door unlocked, [he] did not have a legitimate expectation of privacy in the camper. [*Id.*]; *Angelo v. State*, 977 S.W.2d 169, 172–73 (Tex. App.—Austin 1998, pet ref'd).

3. [Jake] did not have complete dominion or control of the camper or the right to exclude others from it. *Villarreal* . . . , 935 S.W.2d [at] 138 . . . .

4. [Jake] did not take normal precautions customarily taken by those seeking privacy. [*Id.*]

5. [Jake] had no expectation of privacy in the camper because he did not own the camper, he had moved out of the camper, he left the door unlocked, and he allowed [Father] to have possession of the camper. *Angelo* . . . , 977 S.W.2d [at] 172–73 . . . .

D. [FATHER] HAD ACTUAL AUTHORITY TO CONSENT TO OFFICER'S INITIAL ENTRY INTO CAMPER

1. [Father] had actual authority to consent to [Ranger] Stoner's entry into the camper. [Jake] had vacated the camper, removed his belongings, and left the door unlocked. [Father] owned the camper and the property. *Illinois v. Rodriguez*, 497 U.S. 177, 182 (1990).

2. [Father] had common authority over the camper and voluntarily consented to [Ranger] Stoner's entry into the camper. *I*[*d.*]

3. Because [Father] had actual authority over the camper and the property, [Father] could consent . . . to a search without violating the Fourth Amendment. *Hubert v. State*, 312 S.W.3d 554, 560 (Tex. Crim. App. 2010).

[4.] [Jake] has no Fourth Amendment right to privacy in the camper because he assumed the risk that [Father] might permit a search of the property; [Jake] abandoned the camper and left the door unlocked. [*Id.*]

E. [FATHER] ALSO HAD APPARENT AUTHORITY TO CONSENT TO OFFICER'S INITIAL ENTRY INTO CAMPER

1. [Father] also had apparent authority to consent to [Ranger] Stoner's entry into the camper; he said he owned the

property and that [Jake] and [Soccorro] had moved out of the camper. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002).

2. It was reasonable for Ranger Stoner to proceed on the information he had at the time [Father] consented to his entry into the camper. [*Id.*]

3. There was no evidence that [Jake] still had a proprietary interest in the property at the time [Ranger] Stoner entered the camper. [*Id.*]

4. Ranger Stoner had the right to rely on [Father]'s apparent consent to enter the camper because it was reasonable for Stoner to believe [Father] had authority to consent to a search. . . . *Rodriguez*, 497 U.S. 177 [at] 179.

. . . .

G. [JAKE] HAS NO STANDING TO CONTEST THE SEIZURE OF THE VICTIM'S DIARY LOCATED ON HIS PERSON AT THE TIME OF HIS ARREST.

1. The warrantless search of [Jake]'s clothing at the time of his arrest did not violate the Fourth Amendment because [Jake] had no legitimate expectation of privacy in [Soccorro]'s journal. *Oles v. State*, 993 S.W.2d 103, 105 (Tex. Crim. App. 1999).

2. The search of [Jake]'s clothing at the time of arrest was an inventory and not a search and did not violate the Fourth Amendment. *Wilks v. State*, [No. 07-99-0089-CR,]2000 WL 290281, at *5 (Tex. App.—Amarillo 2000, pet. ref'd) (not designated for publication).

. . . .

I. [JAKE] GAVE CONSENT TO OFFICERS TO REMOVE ITEMS FROM THE TRUNK OF . . . MOTHER'S CAR.

1. Seizure of the items belonging to [Jake] located in his mother's car did not violate the Fourth Amendment because [Mother] gave consent for officers to enter her vehicle and [Jake] gave consent for officers to remove the items.

2. Standard of Review for Motions to Suppress

We apply a bifurcated standard of review to a trial court's ruling on a motion to suppress evidence. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). In reviewing the trial court's decision, we do not engage in our own factual review. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990); *Best v. State*, 118 S.W.3d 857, 861 (Tex. App.—Fort Worth 2003, no pet.). The trial judge is the sole trier of fact and judge of the witnesses' credibility and the weight to be given their testimony. *Wiede v. State*, 214 S.W.3d 17, 24–25 (Tex. Crim. App. 2007). Therefore, we defer almost totally to the trial court's rulings on (1) questions of historical fact, even if the trial court determined those facts on a basis other than evaluating credibility and demeanor, and (2) application-of-law-to-fact questions that turn on evaluating credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Montanez v. State*, 195 S.W.3d 101, 108–09 (Tex. Crim. App. 2006); *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002). But when application-of-law-to-fact questions do not turn on the witnesses' credibility and demeanor, we review the trial court's rulings on those questions de novo. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson*, 68 S.W.3d at 652–53.

Stated another way, when reviewing the trial court's ruling on a suppression motion, we must view the evidence in the light most favorable to the ruling. *Wiede*, 214 S.W.3d at 24; *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). When the trial court makes explicit fact findings, we determine whether the evidence, when viewed in the light most favorable to the trial court's ruling, supports those findings. *Kelly*, 204 S.W.3d at 818–19. We then review the trial court's legal ruling de novo unless its explicit fact findings that are supported by the record are also dispositive of the legal ruling. *Id.* at 818. When the record is silent on the reasons for the trial court's ruling, or when there are no explicit fact findings and neither party timely requested findings and conclusions from the trial court, we imply the necessary fact findings that would support the trial court's ruling if the evidence, viewed in the light most favorable to the trial court's ruling, supports those findings. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008); *see Wiede*, 214 S.W.3d at 25. We then review the trial court's legal ruling de novo unless the implied fact findings supported by the record are also dispositive of the legal ruling. *Kelly*, 204 S.W.3d at 819.

Even if the trial court gave the wrong reason for its ruling, we must uphold the ruling if it is both supported by the record and correct under any applicable legal theory. *State v. Stevens*, 235 S.W.3d 736, 740 (Tex. Crim. App. 2007); *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003).

The Fourth Amendment protects against unreasonable searches and seizures by government officials. U.S. Const. amend. IV; *Wiede*, 214 S.W.3d at 24. A

defendant seeking to suppress evidence on Fourth Amendment grounds bears the initial burden to produce some evidence that the government conducted a warrantless search or seizure that he has standing to contest. *State v. Martinez*, 569 S.W.3d 621, 623–24 (Tex. Crim. App. 2019); *Handy v. State*, 189 S.W.3d 296, 289–99 (Tex. Crim. App. 2006); *see, e.g.*, *Rawlings v. Kentucky*, 448 U.S. 98, 104–05 (1980). Once the defendant does so, the burden shifts to the State to prove either that the search or seizure was conducted pursuant to a warrant or, if warrantless, that it was otherwise reasonable. *Martinez*, 569 S.W.3d at 24; *Amador*, 221 S.W.3d at 672–73.

Whether a search is reasonable is a question of law that we review de novo, measuring reasonableness by examining the totality of the circumstances. *Kothe v. State*, 152 S.W.3d 54, 62–63 (Tex. Crim. App. 2004). In the process, we must balance the public interest and the individual's right to be free from arbitrary detentions and intrusions. *Id.* at 63. A warrantless search is per se unreasonable unless it falls within one of the "specifically defined and well established" exceptions to the warrant requirement. *McGee v. State*, 105 S.W.3d 609, 615 (Tex. Crim. App. 2003); *see Best*, 118 S.W.3d at 862.

3. The Journal and Its Contents

Jake first complains of the trial court's ruling denying the suppression of Soccorro's journal and the items stuck between its pages. Officers seized the journal and its contents from his person when he was arrested at Mother's house. The trial court concluded (1) that Jake had no standing and no legitimate expectation of privacy

in the journal because it was Soccorro's, citing *Oles*, 993 S.W.2d at 105, and (2) that it was seized in an inventory, not a search, citing *Wilks*, 2000 WL 290281, at *5. Jake concedes that law enforcement could take the journal as part of an inventory search but argues that their reading it exceeded that exception's scope, that he had a legitimate expectation of privacy in the journal, and that the journal could not have been seized even with a warrant under Article 18.02 of the Texas Code of Criminal Procedure because it is a "personal writing." Tex. Code Crim. Proc. Ann. art. 18.02(a)(10); *see also id.* art. 18.01. The State responds that Jake had no standing to challenge the search and seizure of the journal despite his few writings in it because Soccorro owned it and wrote most of the entries in it, Jake had no expectation of privacy because the journal was intended to be read by someone else, Article 18.01 did not protect the journal from being seized because it was Soccorro's and did not contain Jake's personal writings, and the search of the journal was justified as an inventory search.

Despite having no search warrant, WCSO officers were justified in searching Jake pursuant to his arrest based on an outstanding parole or "blue" warrant. *See Pettigrew v. State*, 908 S.W.2d 563, 570 (Tex. App.—Fort Worth 1995, pet. ref'd); *cf. McGee*, 105 S.W.3d at 615; *see also United States v. Robinson*, 414 U.S. 218, 224 (1973) ("It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment."); *DeHarde v. State*, No. 02-19-00033-CR, 2020 WL 241985, at *6 (Tex. App.—Fort Worth Jan. 16, 2020, no pet.) (mem.

op., not designated for publication) (citing same).[6] That justification extended to the officers' review of the journal and its contents. *See United States v. Frankenberry*, 387 F.2d 337, 339 (2d Cir. 1967). In *Frankenberry*, the defendant escaped from federal custody. Two weeks later, police arrested him on an unrelated charge. The police briefly searched him when they arrested him but searched him more thoroughly when they booked him in at the police station. They found his diary, and, over his objection, the trial court admitted excerpts from it at his trial. The *Frankenberry* court held,

> The diary was properly seized in a search incident to the arrest. It is entirely proper and indeed good police practice to make a more careful and thorough search of a person who has been arrested once he is brought to the police station. There are obvious reasons why it is often advisable to conduct a more thorough search at a police station rather than on a public thoroughfare or in a public place and why such a search can be more safely and better conducted in surroundings [that] are completely under police control. . . . The evidence obtained as a result of a second search at the police station following a valid arrest is admissible.

Id.

Jake's reliance in his brief on cases involving inventory searches of automobiles rather than searches of the arrestees themselves, *see S. Dakota v. Opperman*, 428 U.S. 364, 369 (1976); *United States v. Skillern*, 947 F.2d 1268, 1275 (5th Cir. 1991); *Autran v. State*, 887 S.W.2d 31, 34 (Tex. Crim. App. 1994), is misplaced. Jake's lawful arrest alone established the officers' authority to search the journal and its contents. *See*

[6]The State raised this exception in its response to Jake's motion to suppress.

State v. Drury, 560 S.W.3d 752, 756–57 (Tex. App.—Fort Worth 2018, pet. ref'd) (citing *Robinson*, 414 U.S. at 235).

Alternatively, Jake had no standing to challenge the search or seizure of Soccorro's writings in the journal. *See Kothe*, 152 S.W.3d at 59 ("He has no standing to complain about the invasion of someone else's personal rights."). Regarding Jake's own writings in the journal before Soccorro's final entry, he had no reasonable expectation of privacy because they both wrote in the journal; it was not private. *See Love v. State*, 543 S.W.3d 835, 841 (Tex. Crim. App. 2016) ("Traditionally, individuals do not maintain a reasonable expectation of privacy in information voluntarily revealed to third parties."); *State v. Adams*, No. 05-16-01045-CR, 2017 WL 3301976, at *1 (Tex. App.—Dallas Aug. 3, 2017, pet. ref'd) (mem. op., not designated for publication) ("[T]he only information contained on the [motel] registry was information Adams revealed to a third party, the motel. Adams had no reasonable expectation of privacy in that information."). To the extent Jake's complaint implicitly encompasses the search and seizure of the sole entry he wrote in the journal after Soccorro's death—an entry he wrote on the same day as but before his arrest—that entry was redacted before the contents of the journal were admitted during the trial; error, if any, in not suppressing it pretrial was harmless beyond a reasonable doubt.[7] *See* Tex. R. App. 44.2(a); *Baker v. State*, 956 S.W.2d 19, 22 (Tex. Crim. App.

[7]Jake does not mention the entry specifically, nor does he direct us to its admission into evidence at trial. Our review of the record does not show its

1997); *Dillard v. State*, 550 S.W.2d 45, 54 (Tex. Crim. App. 1977). The trial court's refusal to suppress the journal and its contents was proper. As to the journal and its contents, we overrule Jake's complaint that the trial court erred by denying the suppression motion and by admitting select entries from the journal and items stuck between its pages into evidence.[8]

4. Items Taken from Mother's Car

Jake next complains about the trial court's refusal to suppress evidence found in and seized from Mother's car on December 26, 2015, when he was arrested at her home in Decatur. The trial court found that Jake asked the WCSO officers who arrested him "to retrieve some personal items of his from the trunk of [Mother's] car" and that she consented to them "open[ing] her trunk and . . . remov[ing his] items." The trial court concluded that there was no Fourth Amendment violation because Mother consented to the officers' entering her car and Jake consented to the removal

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admission but does show that there were repeated redactions of entries in the journal prior to the final exhibit being admitted before the jury. The prosecutor referred to the entry in the State's opening statement and closing argument, but opening statements and closing arguments are not evidence. *Coleman v. State*, No. 02-18-00471-CR, 2020 WL 241975, at *6 (Tex. App.—Fort Worth Jan. 16, 2020, no pet.) (mem. op., not designated for publication) (opening statements); *Benefield v. State*, No. 02-14-00099-CR, 2015 WL 4606273, at *5 (Tex. App.—Fort Worth July 30, 2015, pet. ref'd) (mem. op. on reh'g, not designated for publication) (closing arguments).

[8]At a later point in his brief, Jake complains of the trial court's upholding the seizure of this journal from Father's cabover camper. As we have held, the trial court properly denied suppression of the journal because the officers properly seized it from Jake at the scene of his arrest; the journal was not seized from the cabover camper. We overrule this complaint.

of his possessions from her car. Jake challenges the sufficiency of the evidence supporting the finding of consent.[9] The State contends that Jake's items were retrieved from Mother's car at his request and with her consent.

On the issue of consent, the Texas Court of Criminal Appeals has held that

> [t]he validity of a consent to search is a question of fact to be determined from all the circumstances. A person's consent to search can be communicated to law enforcement in a variety of ways, including by words, action, or circumstantial evidence showing implied consent. "But the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force." The voluntariness of a person's consent is also a question of fact that is determined by analyzing all of the circumstances of a particular situation. The trial judge must conduct a careful sifting and balancing of the unique facts and circumstances of each case in deciding whether a particular consent search was voluntary or coerced.
>
> "Reasonableness" is the touchstone for the Fourth Amendment; "reasonableness" is also the touchstone for determining voluntary consent to search. The Supreme Court has explained, that "the standard for measuring the scope of consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" In other words, courts review the totality of the circumstances of a particular police-citizen interaction from the point of view of the objectively reasonable person, without regard for the subjective thoughts or intents of either the officer or the citizen. The ultimate question is whether the person's "'will ha(s) been overborne and his capacity for self-determination critically impaired,'" such that his consent to search must have been involuntary.

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[9]Jake also argues that the search violated the WCSO policy on motor vehicle searches because that policy provides that "[w]ritten consent should be obtained whenever possible" before conducting a search. He does not cite any authority supporting a conclusion that searches based on valid, unwritten consent are unlawful if against a law-enforcement agency's policy. We therefore overrule this complaint as inadequately briefed. *See* Tex. R. App. P. 38.1(i).

> Under federal law, the government must show voluntary consent by a preponderance of the evidence, but Texas has long stated that the State must "prove the voluntariness of a consent to search by clear and convincing evidence." While this burden differs somewhat from that employed in the federal system, the legal analysis is the same in both Texas and federal courts: whether consent was voluntary is a factual question and must be analyzed based on the totality of the circumstances. Trial courts may consider numerous factors in that analysis.

Meekins v. State, 340 S.W.3d 454, 458–60 (Tex. Crim. App. 2011) (citations omitted).

Some factors that the trial court may consider in determining whether consent was voluntary or involuntary are "physical mistreatment, use of violence, threats, threats of violence, promises or inducements, deception or trickery, and the physical and mental condition and capacity of the defendant." *Id.* at 460 n.26. Whether the defendant was told that he could refuse consent is also a factor, *Carmouche v. State*, 10 S.W.3d 323, 332 (Tex. Crim. App. 2000), but the absence of that information does not necessarily make a consent involuntary, *Johnson*, 68 S.W.3d at 653; *Norton v. State*, No. 02-14-00074-CR, 2015 WL 4966998, at *4 (Tex. App.—Fort Worth Aug. 20, 2015, no pet.) (mem. op., not designated for publication).

The audiotape of Jake's arrest was admitted during the suppression hearing. The following conversations of Jake, Mother, and WCSO officers Captain Wallace, Lieutenant Lanier, and Corporal Moore can be heard:

> Wallace: Sir, do you have any property here?
>
> Jake: Uh, the only stuff I have is in the back of . . . [M]other's . . . car, sir.

Wallace: Back of . . .[M]other's car?

Jake: Yeah.

Wallace: Okay. Now what might that be . . . [t]hat you have?

Jake: Just a few clothes and stuff. It's not much.

Wallace: So do you have it in a duffle bag?

Jake: I believe so.

. . . .

Lanier: That's fine. You don't have anything else, right? I know I've asked you and you['re] probably getting tired of answering, but we don't want you to get caught with nothing else. You just got a little bit in your pocket?

Jake: Yes sir.

Wallace: You want to take it with you?

Jake: Yes sir.

Wallace: Do you have your keys ma'am? Could you un—

Mother: It' s not locked.

Wallace: Oh, it's not locked. Is it in the back seat or the trunk?

Jake: Back there.

Wallace: Oh, back there. So you can show it to me when you get down here? Okay. Alright with you if we get his bag out ma'am? And then I'd like to come back in and visit with y'all. Okay? Watch your step coming out here. It's really wet.

. . . .

Wallace: All right. Where's . . . your bag at?

Jake: Right here in the back of that—

Wallace: Right here?

Jake: Yeah. It's got a little button there in the middle.

Wallace: Right here in the middle.

Jake: . . . [I]t's just that laundry basket there. Not the stuff in that blue thing, but everything on top of it.

Wallace: Okay. So what do you—

Jake: You can probably shove it all in there.

Wallace: You talking about all this? All of this?

Jake: No. Not that blue one on the bottom there. Just that—

Lanier: Just this red one?

Jake: Yeah. That and the stuff on top of it.

Lanier: Okay. I'm going to pull it out and you tell us what's yours and what's not yours. This red backpack yours?

Jake: Yeah. That . . . thing—

Lanier: This?

Jake: I want all that stuff to [inaudible].

Lanier: All right.

Jake: Whatever y'all think, it's [inaudible].

Wallace: So we can just take it?

Jake: Yeah please.

Wallace: Take it all?

Jake: There should be a hygiene bag that's down there.

Lanier: Right here?

Wallace: That's it.

Jake: (Inaudible)

Wallace: So what is this here?

Jake: That's the stuff my mom . . . had all thrown together. I have no idea. She's had it in there.

Lanier: Hygiene bag right there. Okay is that all?

Wallace: What about the cooler?

Jake: No. That's it. More of her stuff is in there.

Moore: . . . [D]id they pat you down very well?

Wallace: Nah, let's check him.

Lanier: No. You know what? I have a bunch of his stuff. Anything you find on his person—put in a bag.

Jake: Yeah. I don't know what that stuff there is. It's kind of weird.

Wallace: Sir?

Jake: I don't know what all is in that basket there.

Wallace: She has a lot of stuff in there.

Jake: It's crazy . . . .

At the suppression hearing, Lieutenant Lanier testified about the seizure of the items from Mother's car:

Q. . . . But after he was arrested you had taken some things that were on his person into custody, correct, that were later reviewed at the sheriff's department?

A. Yes, sir, I did.

Q. Did you also—did you and Captain Wallace ask him if he had other personal property?

A. Yes, sir, we did.

Q. And did he indicate where that property was located?

A. Yes, sir, he did.

Q. And where was that?

A. In the rear hatch of . . . [M]other's car.

Q. Okay. And did he indicate to you whether or not y'all could take that property with you?

A. He indicated he wanted to take it with him, yes.

Lieutenant Lanier also testified that

- the car was locked;
- the officers "got permission" to enter it;
- Mother unlocked the car when the officers went outside;
- Jake told the officers how to get into the vehicle; and
- "[t]his was all consensual."

The above evidence shows that Jake's and Mother's consents were voluntary. Jake emphasizes the absence of Mother's express consent to search her car. However, her unlocking her car before the officers removed Jake's possessions from it implicitly showed her voluntary consent, and Jake's instructing the officers how to open the car's hatch and choosing which possessions he wanted to take and not take implicitly showed his voluntary consent. *See, e.g.*, *United States v. Escamilla*, 852 F.3d 474, 485 (5th Cir. 2017) ("Escamilla silently consented to Agent Garcia's 'looking through' his phone . . . by handing his phone directly to the agent."); *Phillips v. State*, No. 14-11-

00415-CR, 2012 WL 4788388, at *11 (Tex. App.—Houston [14th Dist.] Oct. 9, 2012, no pet.) (mem. op., not designated for publication) (in case with written consent, defendant's agreeing to provide his safe's combination and attempting to open the safe for police "impliedly demonstrat[ed] his consent" to the police's search of the safe). We therefore hold that the evidence sufficiently showed Mother's and Jake's valid consents to search the car, and we overrule his complaints about the trial court's denial of the motion to suppress the items from the car.

Jake also complains of multiple inventories, contending that the property was inventoried at the scene and later at the sheriff's office. Lieutenant Golden, the lead investigator, was not present at Jake's arrest and therefore conceded in the suppression hearing that it was possible that "a first inventory" was completed at Mother's house before the inventory was completed at the sheriff's office, but he was aware of only the inventory completed at the sheriff's office. Lieutenant Lanier testified that Jake's items were placed in a bag at the scene of the arrest until they could be inventoried at the sheriff's office and until they could be "checked to see if they would go to his jail property or not." Lieutenant Lanier also testified,

> Well, what it was, was he was under arrest, and we knew he didn't live at the house. He had told me he didn't live at the house, so a lot of times if somebody is gonna go to jail, we'll ask them do you have anything—you have personal stuff you want to take with you, because if they get out, it may be gone. We deal with this all the time.
>
> So at this point he was asked if he wanted to take anything with him. At that point we w[ere] gonna take everything, and we put it all in his personal property.

Lieutenant Lanier testified that he was not looking for evidence but was just "being nice." Viewing the evidence in the light most favorable to the trial court's denial of the motion to suppress, it supports the trial court's implied finding that no improper inventory occurred. *See Garcia-Cantu*, 253 S.W.3d at 241; *Wiede*, 214 S.W.3d at 25.

Jake further complains of the later warrantless examination, photographing, and testing of some of his unspecified possessions taken from his mother's car. The State relies on *Oles* to justify the warrantless search of Jake's property in law enforcement's custody. 993 S.W.2d at 108, 111. [State's br 33]

In *Oles*, the Texas Court of Criminal Appeals upheld the legality of warrantless testing performed days after the defendant's arrest on the clothing he wore during the arrest, based on the conclusions that there was no evidence that the defendant had a subjective expectation of privacy in his clothing while he was in the police's custody and that there was no evidence that society would have recognized such a subjective expectation of privacy as objectively reasonable under the circumstances. *Id.* at 111. "No situation imaginable is as alien to the notion of privacy than an arrestee sitting in a jail cell, completely separated from his effects that are lawfully controlled and inventoried by the very police that are investigating him." *Id.* at 109.

We have already held that Mother's and Jake's consents justified the officers' seizure of Jake's property from Mother's car. No evidence demonstrates that after Jake and the property were in the sheriff's custody, Jake had a subjective expectation

of privacy in the property that society would recognize as objectively reasonable. *See id.* at 108, 111. We therefore uphold the trial court's implied findings and conclusions denying the suppression of evidence based on the warrantless examination, photographing, and testing of any of the property seized from Mother's car. *See Threadgill v. State*, 146 S.W.3d 654, 661 (Tex. Crim. App. 2004); *Rucks v. State*, No. 03-13-00056-CR, 2014 WL 6845676, at *7 (Tex. App.—Austin Nov. 25, 2014, no pet.) (mem. op., not designated for publication); *Vasquez v. State*, No. 05-06-00486-CR, 2007 WL 1054146, at *5 (Tex. App.—Dallas Apr. 10, 2007, pet. ref'd) (mem. op., not designated for publication).[10]

Accordingly, we uphold the trial court's refusal to suppress evidence seized from Mother's car.

5. Initial Search of the Camper

Jake next complains about the warrantless entry by Ranger Stoner into the cabover camper that was located in Father's backyard. Jake argues that because he and Soccorro had lived in that camper legally, the warrantless search was illegal. At the suppression hearing, a digital audio recording and transcription of Ranger Stoner's first conversation with Father were admitted only for purposes of the hearing. Ranger Stoner characterized them as accurate. In the conversation, the following dialogue

[10]Because it is unclear from Jake's brief whether he also challenges later warrantless examination, photographing, or testing of *other* property seized incident to his arrest, we likewise uphold the trial court's implicit findings and conclusions denying suppression of that evidence. *See Oles*, 993 S.W.2d at 108, 109, 111.

occurred:

STONER: Is your son [Jake]?

FATHER: Yeah.

STONER: Okay. Well, we're looking for, uh, his girlfriend. I guess her name's [Soccorro]?

FATHER: Yeah. . . . I've been asking him to have her call me for several days.

STONER: When's the last time you saw her?

FATHER: Oh, it was 3 or 4 days ago. At least.

STONER: They were here?

FATHER: Yeah. *They—he lived out back.* Went down to his mom's for Christmas. . . .

. . . .

FATHER: I got a camper . . . out back.

. . . .

FATHER: And it was—they was—*they was staying out there.* She's been gone for several days.

. . . .

STONER: *Uh, would you care if I look back there where he was staying?*

FATHER: *No. It's unlocked.* . . .

. . . .

FATHER: Yeah. I'll go back there with you.

STONER: Okay.

. . . .

FATHER: Some of . . . their stuff is still—is still there—either he did or she did. Supposedly she left.

STONER: This stuff she threw away?

FATHER: I don't know who threw it away.

STONER: *This where they were staying?*

FATHER: *Yeah.* Yeah, legally, yeah.

STONER: Yeah, her stuff's still here.

FATHER: Uh.

STONER: Purse and everything.

. . . .

STONER: Kinda leaks . . . .

FATHER: Huh, uh, yeah. *I bought a tarp that I put on the roof.* And it shot—I guess this stuff shot past it. It isn't doing too good.

STONER: Where's all the bedding?

FATHER: I have no idea.

STONER: Did it—*was there bedding on here*?

FATHER: *Uh, there was. While back.*

STONER: All right. Well I appreciate it.

[Emphases added.]

Ranger Stoner also testified at the suppression hearing that

- Ranger Pettigrew called him the night of December 26, 2015, to help with a homicide investigation.

- Ranger Pettigrew wanted Ranger Stoner to look behind Father's house for "a vehicle connected to the suspect" (Jake)—Father's red and white Ford pickup—and to talk with Father.

- Ranger Stoner arrived at Father's home about midnight on December 27.

- "They was staying out there" was in the past tense.

- "Was where they lived" was in the past tense; "I got a camper" was in the present tense.

- In the sentence, "Would you care if I look out back there where they was staying?" the phrase "was staying" was in the past tense.

- Ranger Stoner's understanding was that Jake and Soccorro were not living in the camper anymore.

- Inside the cabover camper, rain was pouring in.[11]

- Other than female clothes and a purse in the closet, nothing else Ranger Stoner saw in the cabover camper made it look like someone lived there.

- Blood spatter was immediately apparent to him.

- He did not search the cabover camper anymore after he saw the splatter.

- He was in the cabover camper only about 25 seconds.

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[11]Lieutenant Golden's affidavit supporting an arrest warrant for Jake was part of the evidence at the suppression hearing. The affidavit stated that Golden interviewed Father on December 27, 2018, and that Father brought up the tarp:

> [Father] stated [that] he had heard that [Aunt] had found a tarp with blood on it at her house in Boyd. [Father] asked [Lieutenant] Golden if that tarp was camouflaged. [Lieutenant] Golden asked him why he would ask him that. [Father] stated [that] there used to be a new camouflaged tarp on the camper that [Jake] and . . . [Soccorro] lived in and it was missing.

- Father appeared to have complete control of everything on his property, including the cabover camper.

- Nothing Ranger Stoner saw that night indicated that Jake had complete dominion or control or any right to exclude others from the cabover camper.

- The cabover camper did not look like it had a lock on it.

- Ranger Stoner knew Jake had already been arrested and was in custody when he entered the cabover camper.

- "[T]hings weren't adding up when [Father] told [Ranger Stoner] that [Jake wa]sn't living there anymore. And [Father] was hesitant whenever he[was] talking about how long it[had] been since he'[d] seen [Soccorro]."

- Ranger Stoner did not ask if Jake had ever paid rent to live in the camper.

- Father did not say the couple had moved out, but he implied it.

The trial court found that (1) Ranger Stoner took Father's statement that the couple had lived in the cabover camper to mean that they had moved out of it; (2) Ranger Stoner took Father's statements that either Jake or Soccorro had piled up the trash behind his house and that Soccorro supposedly left to mean that the couple had left their junk in the pile when they vacated the cabover camper; and (3) Father opened the unlocked door of the cabover camper for Ranger Stoner.

The trial court concluded that Jake lacked standing to challenge Ranger Stoner's warrantless entry into the cabover camper for four reasons: (1) Jake had left the cabover camper, taking his possessions and leaving the camper door unlocked; (2) Jake "did not have complete dominion or control of the camper or the right to

exclude others from it"; (3) Jake "did not take normal precautions customarily taken by those seeking privacy"; and (4) Jake "had no expectation of privacy in the camper because he did not own [it], he had moved out of [it], he left [its] door unlocked, and he allowed [Father] to have possession of" it.

The trial court also concluded that Father had actual and apparent authority to consent to the search. The trial court concluded that Father had actual authority to consent because (1) Jake had vacated the cabover camper, had taken his possessions, and had left the door unlocked and because Father owned the cabover camper and the property upon which it sat; (2) Father had common authority over the cabover camper; and (3) Jake assumed the risk that Father might consent to a search of it by abandoning the cabover camper and leaving its door unlocked.

The trial court concluded that Father had apparent authority to consent to Ranger Stoner's warrantless entry into the cabover camper because (1) Father said that he owned it and that Jake and Soccorro had moved out; (2) it was reasonable for Ranger Stoner to act on the information he knew when Father consented to his entering the cabover camper; (3) when Ranger Stoner entered the cabover camper, he saw no evidence that Jake retained a proprietary interest in it; and (4) Ranger Stoner had a right to rely on Father's apparent consent to enter the cabover camper because it was reasonable for Ranger Stoner to believe Father had the authority to consent.

Jake challenges the trial court's conclusion that he lacks standing to complain of the search. He also challenges the trial court's conclusions that Father had actual

and apparent authority to consent to the search. Finally, Jake contends generally that most of the trial court's findings of fact supporting the denial of the motion to suppress regarding the initial search of the cabover camper are not supported by the record.

The State's arguments mirror the trial court's conclusions. The State argues that Jake abandoned the cabover camper before that search and thus lost standing to challenge it; that Jake assumed the risk that Father would consent to a search; that Father had actual and apparent authority to consent to the search; and that Ranger Stoner reasonably believed that Father had authority to consent to the search. The State further contends that the trial court's findings are sufficiently supported by evidence in the record.

a. Jake's Loss of Standing

Jake lost his standing to complain of Ranger Stoner's warrantless search of the cabover camper by abandoning the camper. A person has standing to challenge a search only if he had a legitimate, reasonable expectation of privacy in the place searched. *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). A defendant has the burden to establish that standing. *Handy*, 189 S.W.3d at 299 & n.2. When a person voluntarily abandons property, he loses his standing to contest the reasonableness of a search of the property. *Swearingen v. State*, 101 S.W.3d 89, 101 (Tex. Crim. App. 2003); *McDuff v. State*, 939 S.W.2d 607, 616 (Tex. Crim. App. 1997).

A person abandons his home if he intended to do so and if police misconduct did not compel him to do so. *Swearingen*, 101 S.W.3d at 101; *McDuff*, 939 S.W.2d at 616. Abandonment is mainly an issue of intent, and courts may infer intent from the defendant's words and conduct as well as objective facts and relevant circumstances. *Martinez*, 570 S.W.3d at 286; *McDuff*, 939 S.W.2d at 616.

The facts in *Swearingen* are similar to the facts before us. In *Swearingen*, the defendant's wife notified the landlord that they were moving and returned both keys to the landlord several days before an officer went to the trailer that they had lived in. The officer saw that the landlord had cleaned out the trailer, and the landlord showed the officer where he had thrown out the trash. In the trash, the officer discovered a pair of pantyhose with one leg missing, incriminating the defendant in a capital murder. The *Swearingen* court held that the incriminating evidence was admissible at trial because the defendant abandoned the trailer before the police searched it; he therefore lacked standing to complain about the search of the trailer or the seizure of the evidence. 101 S.W.3d at 101.

Like the evidence in *Swearingen*, the evidence Ranger Stoner observed before he entered the cabover camper showed that no one was living there. Father indicated to Ranger Stoner that Jake and Soccorro were no longer living in the cabover camper, pointed to a pile of the couple's trash that had been left behind in the yard, and stated that Soccorro had been gone for several days. Additionally, Ranger Stoner saw rain coming into the cabover camper through a hole in the roof and did not see enough of

the possessions one would expect to see in a home that was lived in—bed covers, clothing, and other items.

The unlocked door to the camper also evidenced Jake's abandonment. Jake attached to his motion to suppress an investigator's affidavit reciting that Jake changed the lock on the door when he began renting the cabover camper and that only Jake and Soccorro had keys; Father did not retain a right of access. However, Father told Ranger Stoner that the cabover camper was unlocked, and Ranger Stoner saw no evidence of a lock on the camper.

Despite this evidence of abandonment, Jake argues that he did not abandon the cabover camper. He contends that he retained a legitimate, reasonable expectation of privacy in the cabover camper and therefore retained standing because (1) the affidavit in support of the warrant for the second search of the cabover camper showed that officers knew that he rented it and (2) an officer who later searched the cabover camper pursuant to the warrant testified that it did not look abandoned. We disagree. "[R]easonableness is not assessed through the lens of hindsight." *Biera v. State*, 391 S.W.3d 204, 210 (Tex. App.—Amarillo 2012, pet. ref'd) (relying on *Rodriguez*, 497 U.S. at 188). When Ranger Stoner searched the cabover camper, Father had not told him that Jake had paid rent. Furthermore, although Detective Pate, the officer who signed the affidavit for the warrant for the second search of the camper, testified that he wrote that Jake had "rent[ed]" the cabover camper in the affidavit and

that he had "apparently" had that "understanding" when he wrote the affidavit, he also testified that what Father had said was that Jake "lived in" the cabover camper.

Accordingly, based on the evidence in this case, we hold that the trial court properly concluded that Jake had abandoned the cabover camper and that he therefore lacked standing to challenge its search. *See Swearingen*, 101 S.W.3d at 101; *Sanchez v. State*, No. 07-08-00356-CR, 2010 WL 4237307, at *6 (Tex. App.—Amarillo Oct. 27, 2010, pet. ref'd) (mem. op., not designated for publication).

b. Actual Authority

Even if Jake had standing to challenge the warrantless search of the cabover camper, Father had actual authority to consent to Ranger Stoner's entry. "A third party can consent to a search to the detriment of another's privacy interest if the third party has actual authority over the place or thing to be searched." *State v. Rodriguez*, 521 S.W.3d 1, 19 (Tex. Crim. App. 2017); *Hubert*, 312 S.W.3d at 560; *see also United States v. Matlock*, 415 U.S. 164, 170 (1974). A third party has actual authority to consent "when he and the absent, non[]consenting person share 'common authority' over the premises or property, or if the third party has some 'other sufficient relationship' to the premises or property." *Rodriguez*, 521 S.W.3d at 19; *see also Matlock*, 415 U.S. at 171; *see Hubert*, 312 S.W.3d at 563.

"Common authority is shown by mutual use of the property by persons generally having joint access or control for most purposes." *Rodriguez*, 521 at S.W.3d at 19; *see also Matlock*, 415 U.S. at 171 n.7; *Hubert*, 312 S.W.3d at 561. However, even

third parties who lack "obvious common authority"[12] but who have a "special" or "practical relationship" with the defendant that is "not simply that of landlord/tenant" may be held to have actual authority to consent to a search. *Rodriguez*, 521 S.W.3d at 20–21 (using the quoted terms and distinguishing its facts—which did not involve a special relationship—from those in the following listed cases). *See, e.g.*, *Hubert*, 312 S.W.3d at 564 (holding the homeowner–grandfather had actual authority to consent to search of grandson's room); *Balentine v. State*, 71 S.W.3d 763, 772–73 (Tex. Crim. App. 2002) (holding the owner of a guesthouse had actual authority to consent to its search because he paid the utilities and allowed the defendant to live there in exchange for labor); *Patrick v. State*, 906 S.W.2d 481, 490 (Tex. Crim. App. 1995) (holding the defendant's former girlfriend had authority to consent to a search of the home she had shared with the defendant even though she had moved out because she was on the lease, was responsible for one-half the utility bills, and had returned several times to retrieve her possessions); *Garcia v. State*, 887 S.W.2d 846, 850–52 (Tex. Crim. App. 1994) (holding landlord of defendant's garage apartment had actual authority to consent to its search because some of the landlord's possessions were in the garage apartment and he and the defendant had agreed that the landlord could enter whenever he wished).

[12]There is no evidence that Father lived in the cabover camper with Jake and Soccorro.

The State has the burden to show that a third party had actual authority to consent. *Hubert*, 312 S.W.3d at 561. Whether a third party had actual authority to consent to a search of another's home is a mixed question of law and fact that we review de novo. *Id.* at 559–60.

Even if the trial court believed that Jake had rented the cabover camper from Father, the two men shared a special relationship like the defendants and persons held to have actual authority to consent in the cases listed above; their "practical relationship" was not simply that of landlord and tenant. Father had raised Jake. Father was not a mere landlord (or former landlord); he was the only father Jake had ever known. Additionally, the evidence showed that Father owned the cabover camper and the property on which it sat. Although Jake offered evidence that he had changed the lock on the cabover camper when he moved in and that only he and Soccorro had keys and access, the cabover camper was not locked when Father and Ranger Stoner entered it, and Ranger Stoner saw no evidence of a lock. The trial court was therefore entitled to reject the evidence that Father had no right to access the cabover camper. *See Hubert*, 312 S.W.3d at 563 (holding the trial court was entitled to reject the defendant's girlfriend's testimony that the grandfather could not enter the defendant's bedroom absent permission).

Even if the trial court believed that the cabover camper had previously been locked, its unlocked status coupled with the other evidence of abandonment Ranger Stoner saw before entering it—the garbage piled up in Father' yard, the absence of

possessions like bed coverings, and the rain pouring into the cabover camper from the hole in its roof—could have convinced the trial court that Jake assumed the risk that Father would consent to the search of the cabover camper. *See id.* at 561. Jake refers to other evidence—the cabover camper's shut door, the metal shutters on its windows, the tarps on Father's fence, and the dogs in Father's backyard—to assert that he "took many of the normal precautions customarily taken by those seeking privacy." The suppression record does show that Jake had at least two dogs, but it does not show that all the dogs in the backyard were his, nor does it show that any of the dogs were guard dogs. The suppression record also does not show that Jake is the person who put shutters on the cabover camper's windows or tarps on Father's fence. Finally, the suppression record does not show that any of the measures Jake lists prevented Father from controlling or having authority to use the cabover camper and the property on which it sat (both of which he owned).

Accordingly, we hold that at the time Ranger Stoner entered the cabover camper, Father had actual authority—whether based on his relationship with Jake or his relationship to the unlocked cabover camper with rain pouring in it—to consent to the search. *See id.* at 563–64.

c. Apparent Authority

Alternatively, even if Jake did not abandon the cabover camper and even if Father did not have actual authority to consent to its search, Father had apparent authority to consent to the search. A third party's consent is valid under the doctrine

of apparent authority if the officer reasonably believes at the inception of the search that the third party possesses actual authority over the premises, even if that third party, in fact, does not have actual authority. *Rodriguez*, 497 U.S. at 186–89; *Limon v. State*, 340 S.W.3d 753, 756 (Tex. Crim. App. 2011); *New v. State*, No. 02-12-00185-CR, 2013 WL 3968135, at *4 (Tex. App.—Fort Worth Aug. 1, 2013, no pet.) (mem. op., not designated for publication). It is the State's burden to establish apparent authority. *Rodriguez*, 497 U.S. at 181; *Welch v. State*, 93 S.W.3d 50, 53 (Tex. Crim. App. 2002); *see also Limon*, 340 S.W.3d at 757 & n.15; *New*, 2013 WL 3968135, at *4. Whether a third party had apparent authority to consent to a search of another's home is a mixed question of law and fact that we review de novo. *Hubert*, 312 S.W.3d at 560.

When Father consented to Ranger Stoner's entry into the cabover camper, Ranger Stoner believed that the couple had vacated it and that Father, as the owner of the property, had authority to grant him entry into his unlocked camper. The totality of the circumstances supports the trial court's findings and conclusions that Father had the apparent authority to do so. *See New*, 2013 WL 3968135, at *4.

Jake argues that when Ranger Stoner realized that Jake, not Father, had been living in the cabover camper, then Ranger Stoner "was on notice that he should inquire further before beginning his search" and that if he had done so, he would have found out that Jake was paying rent. To support his argument Jake relies on *Brimage v. State*, 918 S.W.2d 466, 480–82 (Tex. Crim. App. 1994), *modified on reh'g*,

918 S.W.2d 495, 503 n.7 (Tex. Crim. App. 1996) (op. on reh'g), and *McNairy v. State*, 835 S.W.2d 101, 105–06 (Tex. Crim. App. 1991), *abrogated in part on other grounds by Turrubiate v. State*, 399 S.W.3d 147 (Tex. Crim. App. 2013).

In *Brimage*, the defendant's two relatives—a judge and a lawyer—broke into his home after learning that he was a murder suspect.[13] After finding evidence of violence, they reported the break-in and the evidence to the police. The police then asked for permission to search the home, and the judge said, "Yes, you need to get in there." *Brimage*, 918 S.W.2d at 471. The relative who was a lawyer had told the police earlier in the investigation that he had no authority to let them into the defendant's home. The Texas Court of Criminal Appeals held that no one could reasonably believe the uncle who purported to give consent had authority to do so and that the facts that the police did know—the two relatives did not live with the defendant and broke into his house—sufficiently raised "ambiguous circumstances" necessitating further inquiry. *Id.* at 481–82. The Texas Court of Criminal Appeals therefore rejected apparent authority as a warrantless exception justifying the search. *Id.* at 482.

However, on rehearing in *Brimage*, the Texas Court of Criminal Appeals upheld the search at issue under the emergency doctrine and expressly did not reach the apparent-authority issue. *Id.* at 502–03 & n.7 ("As we have upheld the validity of the search of appellant's residence under the Emergency Doctrine, we need not address

[13]The defendant's father owned the home and lived in it with his wife and the defendant.

whether the police reasonably relied on apparent authority when they conducted said search."). The replaced holding Appellant relies on therefore has no binding effect. *Cf. Morath v. Lewis*, 601 S.W.3d 785, 791 (Tex. 2020) (per curiam) ("Vacatur removes the opinion's binding precedential nature but does not strike it from case reporters or foreclose litigants and courts in future cases from relying on it as persuasive authority.").

In *McNairy*, the property owner had consented to the police search of her multi-acre property. They searched a mobile home on the property. Only later did the police find out that the mobile home was rented to tenants and had its own address. The Texas Court of Criminal Appeals concluded in dicta that the landlord did not have apparent authority to consent to the search of the defendant tenant's home. 835 S.W.2d at 105. Neither *Brimage* nor *McNairy* involved evidence that the defendant had vacated his home. We therefore hold both cases inapplicable.

Jake also argues that Ranger Stoner knew that Father had no apparent authority to consent to the cabover camper's search when Father told him that Jake and Soccorro were staying there "legally." Jake relies on *Rodriguez*, 521 S.W.3d at 13, and *Chapman v. United States*, 365 U.S. 610, 617 (1961). In *Chapman*, a landlord smelled "a strong 'odor of mash'" coming from the home of his new tenant, so he notified the police, went with the police to the rent house (where they all smelled the odor), and told the police to enter through an unlocked window to search the house; one of the policeman entered through that window and found a still. 365 U.S. at 611. The

Supreme Court reversed the defendant tenant's conviction, holding that the landlord had no authority to enter the home without the tenant's consent. *Id.* at 618. Here, Ranger Stoner reasonably concluded from his conversation with Father and the evidence he observed before he entered the cabover camper that Jake was a former resident, not a current tenant like the defendant in *Chapman*. *Chapman* is therefore inapposite.

In *Rodriguez*, the Texas Court of Criminal Appeals held that the resident director had no actual or apparent authority to consent to police entering the defendant's dorm room after the resident advisor found drugs there. 521 S.W.3d at 20–22. However, Father's words led Ranger Stoner to believe that Jake was a former resident. *Rodriguez*, which involved the search of a current resident's room, is therefore inapposite.

Accordingly, we hold that the State established that Father had apparent authority to consent to the warrantless search of the cabover camper.

d. The First Search of the Camper

We hold that Jake abandoned the cabover camper. Alternatively, Father had actual or apparent authority to consent to Ranger Stoner's warrantless search of the camper. We therefore uphold the trial court's ruling denying Jake's motion to suppress evidence flowing from the warrantless search of the cabover camper.

6. The Second Search of the Camper

Jake next complains of the search of the cabover camper pursuant to a warrant, arguing that the supporting affidavit was defective in that it relied on Ranger Stoner's illegal observations from the warrantless search and failed to establish probable cause.[14]

First, because we have upheld the legality of Ranger Stoner's warrantless search of the cabover camper, we reject Jake's argument that Ranger Stoner's observations must be purged from the affidavit.

Second, the affidavit provided probable cause. "Probable cause exists when reasonably trustworthy facts and circumstances within the knowledge of the officer on the scene would lead a [person] of reasonable prudence to believe that the instrumentality of a crime or evidence pertaining to a crime will be found." *Hyland v. State*, 574 S.W.3d 904, 910 (Tex. Crim. App. 2019) (citation and internal quotation marks omitted). In assessing the sufficiency of an affidavit for a search warrant, the reviewing court is limited to the affidavit's four corners. *Jones v. State*, 833 S.W.2d 118, 123 (Tex. Crim. App. 1992). The reviewing court should interpret the affidavit in a commonsense and realistic manner, recognizing that the magistrate could draw reasonable inferences. *Davis v. State*, 202 S.W.3d 149, 154 (Tex. Crim. App. 2006).

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[14]Jake also alleges that the search "far exceeded" the warrant's scope, but he does not develop that argument within his complaint about the search. We therefore overrule it as inadequately briefed. *See Stevenson v. State*, 499 S.W.3d 842, 852 (Tex. Crim. App. 2016); *Cardenas v. State*, 30 S.W.3d 384, 393 (Tex. Crim. App. 2000).

We uphold a magistrate's probable-cause determination in issuing a warrant when "the magistrate had a substantial basis for" determining "that a search would uncover evidence of wrongdoing." *Illinois v. Gates*, 462 U.S. 213, 236 (1983) (citation and internal quotation marks omitted); *see Swearingen v. State*, 143 S.W.3d 808, 810–11 (Tex. Crim. App. 2004); *see also State v. McLain*, 337 S.W.3d 268, 271–72 (Tex. Crim. App. 2011); *Flores v. State*, 319 S.W.3d 697, 702 (Tex. Crim. App. 2010).

The affidavit supporting the warrant stated that:

- The cabover camper was in Father's backyard.
- Jake "was renting" the cabover camper.
- Father controlled the "place and premises."
- FWPD Detective Pate believed that a murder had been committed, based on alleged facts including:
  - On December 26, 2015, Aunt and Bubba were cleaning up outside when they "located a camouflage tarp with stains of possible blood and clothes stained with possible blood under one of their trailers."
  - They "also observed apparent drag marks leading to [an] area of disturbed ground" that "appeared to be a shallow grave," prompting them to call the WCSO.
  - Ranger Pettigrew and Lieutenant Golden responded to the call.
  - The officers "d[u]g down enough [in the disturbed ground] to observe a human body[,] which was wrapped in bedding."
  - Aunt and Bubba told the officers that Jake had arrived at their property on either December 21 or December 22, 2015, driving a red and white Ford pickup and "acting very strange."

- Jake disappeared after a "short period of time."
- Aunt and Bubba next saw Jake walking from the back of their property.
- When they asked Jake what he was doing, he told them "that he was just out in the pasture digging around and that he had broken their shovel."
- When Ranger Pettigrew interviewed Jake after his arrest, he denied ever going to Aunt's property, and he stated that he and Soccorro had broken up and that he did not know where she was.
- Ranger Stoner saw a red and white pickup in the driveway at Father's house.
- Father told law enforcement that he had not seen Soccorro for almost a week and that her family had also been calling him to locate her.
- Father also told law enforcement that Jake had used Father's red and white pickup to haul off trash in the previous few days.
- When Ranger Stoner went in the cabover camper in Father's backyard, Ranger Stoner saw possible bloodstains and observed that the bedding was missing from the mattress; and

- Evidence of the murder and that Jake had committed it was inside Father's red and white pickup and Father's actual residence and was "particularly [in] the [cabover] camper."

According to the affidavit, possible bloodstains were found on items left at Aunt's Wise County property and in the cabover camper located in Father's backyard. Jake had recently borrowed Father's pickup to haul trash from Father's property to Aunt's property. Jake went to Aunt's house and disappeared for a time. He admitted to Aunt that he had broken her shovel while digging on her property, but he later told police that he had never been there recently. Aunt found what appeared to be a

shallow grave dug on her property, and the police dug enough to find a body wrapped in bedding. The bedding from the cabover camper's bed was missing, as was Jake's girlfriend Soccorro.

We hold that the affidavit provided sufficient probable cause to lead a person of reasonable prudence to conclude that the police would find evidence of murder in the cabover camper. *See Cervantez v. State*, No. 02-16-00224-CR, 2018 WL 5289458, at *8 (Tex. App.—Fort Worth Oct. 25, 2018, pet. ref'd) (mem. op., not designated for publication); *Black v. State*, No. 08-12-00338-CR, 2015 WL 5604388, at *5–9 (Tex. App.—El Paso Sept. 23, 2015, pet. ref'd) (not designated for publication).

Jake next contends that the affidavit did "not state facts to establish probable cause to believe that individually identified items would be found on the property," relying on Article 18.01(c)(3). Article 18.01(c) provides,

> A search warrant may not be issued under Article 18.02(a)(10) unless the sworn affidavit required by Subsection (b) sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched.

Tex. Code Crim. Proc. Ann. art. 18.01(c). Property that is subject to seizure under Article 18.02(a)(10) is often called "mere evidence." *Jennings v. State*, 531 S.W.3d 889, 893 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd). Mere evidence is evidence that is connected with a crime but does not consist of fruits, instrumentalities, or

contraband. *Id.* at 893 n.1. Sworn affidavits supporting pure mere-evidence warrants must generally comply with Article 18.01(c). *See id.* at 892. However, affidavits supporting warrants that seek mere evidence plus items listed under another statutory ground for search and seizure, such as the weapon used, do not have to comply with Article 18.01(c). *Id.* at 893. The affidavit at issue here listed the following items:

> Weapons that could be used to commit homicide [whether] by their intentional design or not.
>
> Ballistic evidence as in projectiles or shell casings in part or in whole.
>
> Any serological evidence or clothing/other items containing stains of possible blood.
>
> Narcotics and or contraband and any items related to the manufacturing or distribution of narcotics.
>
> U.S. Currency
>
> Cell Phones
>
> Latent prints
>
> Trace Evidence
>
> Items of identification

Many of these items could be searched for and seized under provisions other than Article 18.02(a)(10). *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 18.02(a)(7) ("a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state"), (a)(9) ("implements or

instruments used in the commission of a crime"). Consequently, Article 18.01(c) did not govern the affidavit supporting the warrant for the cabover camper. *See Jennings*, 531 S.W.3d at 893.

To the extent Jake relies on *State v. Elrod* in this argument, his reliance is misplaced. In that case, the court held that the affidavit provided no probable cause for the search of the home. 395 S.W.3d 869, 882 (Tex. App.—Austin 2013, no pet.). We have already held that the affidavit supporting the warrant to search the cabover camper provided probable cause that evidence of murder would be found therein.

Because the warrant to search the cabover camper did not seek *only* mere evidence, its supporting affidavit was not required to satisfy Article 18.01(c).

Accordingly, we uphold the trial court's ruling denying suppression of evidence flowing from the second search of the cabover camper.

7. The Seizure of the Cabover Camper and Its Contents

Jake next complains of the seizure of the cabover camper and its contents, arguing that the seizure exceeded the warrant's scope. We held above that Jake abandoned the camper and therefore lacked standing to challenge its search. Consequently, Jake also lacked standing to challenge the seizure. *See Swearingen*, 101 S.W.3d at 101 ("Because Swearingen voluntarily abandoned his trailer . . . he lacks standing to complain about any search conducted of the trailer or trash removed from the trailer . . . .").

Jake abandoned the cabover camper before the police became involved and before his arrest. There has been no argument by Jake that he abandoned the cabover camper due to police misconduct. Since there is no expectation of privacy when property is abandoned, there is no prohibition against seizure of the property by the police. Under these circumstances, the police properly took possession of abandoned property and "there [was] no seizure under the Fourth Amendment." *McDuff*, 939 S.W.2d at 616; *see also Hawkins v. State*, 758 S.W.2d 255, 257 (Tex. Crim. App. 1988).

We uphold the trial court's refusal to suppress evidence gleaned from the seizure of the cabover camper and its contents.

8. The Seizure of Jake's Cell Phone and SD Cards

Jake next complains of the seizure of data pursuant to a warrant from his cell phone and SD cards seized at his arrest. He contends that the affidavit supporting the warrant did not provide probable cause and did not meet statutory requirements. The State responds that the affidavit established probable cause and substantially complied with statutory law.

A magistrate has probable cause to issue a warrant when a substantial basis supports the determination that a search will reveal evidence of a crime. *Gates*, 462 U.S. at 236; *Swearingen*, 143 S.W.3d at 810–11; *McLain*, 337 S.W.3d at 271–72; *Flores*, 319 S.W.3d at 702.

WCSO Investigator Luke Campbell executed the affidavit supporting the cell-phone warrant. In the affidavit, he discussed the finding of the body, Jake's presence at the location where the body was discovered just days later; the identification of the body as Soccorro; Jake and Soccorro's abusive, volatile relationship; and Jake's arrest. Investigator Campbell also indicated in the affidavit that the cell phone and SD cards were included in Jake's property that was seized upon his arrest. Investigator Campbell further stated that the items were held as evidence in the WCSO and that he believed that they contained evidence of Soccorro's murder. He then stated that

> based on [his] training and experience and the training and experience of the other [i]nvestigators involved in this investigation[, he] obtained information that the victim used the cell phone to make calls and [to] post to her Facebook page. It is known that suspects use cell phones to send and receive text messages. Suspects also use cellular phones to gather data, obtain directions, store contact information, and use web browsers to search for information about the offense and make calls about when and where their crimes are committed. Investigator Campbell knows with his training and experience that micro SD cards can be placed into a cellular device and that information from the phone can be stored on the micro SD card. Investigator Campbell reviewed the information on the ZTE Model Z820 and found that it is equipped to have a micro SD card. Investigator Campbell also knows that a SD card can contain digital documents and images. Based on that knowledge affiant believes similar information will be located on the suspected place.

Jake relies on *Jones*, 833 S.W.2d at 124, to contend that the affidavit is conclusory. In *Jones*, the affidavit recited that a man's body had been found in his own home after neighbors reported seeing blood at his front door and smoke coming from inside; that an autopsy determined that he had died of multiple stab wounds; that the affiant

detective had determined that items had been removed from the home; that Jones's fingerprints were found at the crime scene; and that the affiant believed that Jones had committed the murder and had taken the decedent's property. *Id.* at 124. The Texas Court of Criminal Appeals held that the affidavit was insufficient because it (1) "ma[d]e conclusory statements as to who may have been involved in the crime and what [Jones] may have done" and (2) did "not set forth the underlying facts that led . . . to . . . these conclusions. Hence, there were no facts that would lead a neutral and detached magistrate to conclude that" Jones had committed the crime. *Id.*

The State, on the other hand, relies on *Sims v. State* to support its contention that the affidavit provided probable cause to support the warrant. 526 S.W.3d 638 (Tex. App.—Texarkana 2017), *aff'd*, 569 S.W.3d 634 (Tex. Crim. App.), *cert. denied*, 139 S. Ct. 2749 (2019). In *Sims*, the affidavit provided that

> cell phones are commonly used in the commission of crimes[;] that the cell phone in question [was] controlled by Sims[;] and that the affiant believe[d] that Sims'[s] cell phone contain[ed] evidence of criminal activity, such as subscriber information, text messages, voice calls, and cell-tower and GPS site coordinates. The affidavit describe[d] [Sims's grandmother's] death by gunshot at her residence[; her] missing vehicle[;] the suspicion[s] of the neighbor and relative that Sims [could] be responsible for [the grandmother's] death[;] specific facts from the relative leading to her suspecting Sims'[s] involvement[;] a specific search of the [grandmother's] residence uncovering the absence of [her] vehicle, purse, and purse contents, including credit cards and guns[;] the use of at least one stolen credit card by Sims and [his girlfriend] in Oklahoma within hours after the murder[; and] the tracking of Sims'[s] cell phone location leading to authorities' location of [the grandmother's] vehicle and, ultimately, to Sims and [his girlfriend], themselves. The affidavit also note[d] Sims'[s] arrest . . . and concluded that there is "reason to

> believe that information gained from" [his] cell phone "[would] be useful in the investigation."

Id. at 645. The Texarkana court upheld the affidavit because it included "evidence suggesting a link between Sims and [his grandmother's] murder, set[] out the relationship between [Sims and his grandmother], and [included] information suggesting that Sims may have shot [her]." *Id.*

We hold that the cell-phone affidavit in the case before us is more like the *Sims* affidavit than the *Jones* affidavit. The affidavit

- alleged that the cell phone and SD cards are evidence that Jake committed murder;
- connected Jake to the burying of the body, which the magistrate could have inferred was Soccorro, *see Davis*, 202 S.W.3d at 154;
- discussed Jake and Soccorro's abusive and volatile relationship;
- stated that law enforcement had information that Soccorro had used Jake's phone;
- stated that suspects use cell phones in various ways regarding their crimes; and
- stated that SD cards can store digital information.

This information provided a substantial basis for the trial court's determination that a search of the cell phone and SD cards would yield evidence of Soccorro's murder; the affidavit therefore provided sufficient probable cause to support the warrant. The affidavit sufficiently linked Jake to Soccorro's murder and sufficiently alleged that the cell phone and SD cards found with him upon his arrest would contain evidence of

the murder. *See* Tex. Code Crim. Proc. Ann art. 18.0215(c)(5); *Sims*, 526 S.W.3d at 645.

Jake also complains that the warrant did not comply with two provisions of Code of Criminal Procedure Article 18.0215. That article provides in relevant part,

> (a) A peace officer may not search a person's cellular telephone or other wireless communications device, pursuant to a lawful arrest of the person without obtaining a warrant under this article.
>
> (b) A warrant under this article may be issued only by a judge in the same judicial district as the site of:
>
> (1) the law enforcement agency that employs the peace officer, if the cellular telephone or other wireless communications device is in the officer's possession; or
>
> (2) the likely location of the telephone or device.
>
> (c) *A judge may issue a warrant under this article only on the application of a peace officer. An application must be written and signed and sworn to or affirmed before the judge. The application must:*
>
> (1) *state the* name, department, agency, and *address of the applicant*;
>
> (2) identify the cellular telephone or other wireless communications device to be searched;
>
> (3) state the name of the owner or possessor of the telephone or device to be searched;
>
> (4) *state the judicial district in which:*
>
> (A) *the law enforcement agency that employs the peace officer is located, if the telephone or device is in the officer's possession*; or
>
> (B) the telephone or device is likely to be located; and
>
> (5) state the facts and circumstances that provide the applicant with probable cause to believe that:

(A) criminal activity has been, is, or will be committed; and

(B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A).

Tex. Code Crim. Proc. Ann. art. 18.0215 (emphases added). We have already held that the affidavit demonstrated probable cause that a crime had been committed and that Jake's phone and SD cards likely contained evidence bearing upon that crime. *See id.* art. 18.0215(c)(5). Jake complains that the affidavit did not state Investigator Campbell's address or the judicial district of the WCSO. *See id.* art. 18.0215(c)(1), (4).

Our review of the affidavit shows that it provided that Investigator Campbell was a criminal investigator employed by the WCSO. We note that the Honorable Judge Melton D. Cude signed the warrant. We conclude that on the facts of this case, the affidavit substantially complied with Article 18.0215 for the following reasons:

- Wise County has only one judicial district. Tex. Gov't Code Ann. § 24.448 ("The 271st Judicial District is composed of Jack and Wise counties.").

- We take judicial notice that Judge Cude is now and was when he signed the warrant the presiding judge of County Court at Law Number 1 of Wise County, Texas. *See* Tex. R. Evid. 201;[15] Wise County, Texas, https://www.co.wise.tx.us/177/County-Court-at-Law-Number-1-Judge-Melto (last visited Aug. 20, 2020); Melton D. Cude, https://ballotpedia.org/Melton D. Cude (last visited Aug. 20, 2020).

[15]This court may, on its own motion, "judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Tex. R. Evid. 201(b)(2), (c)(1); *see also Estrada v. State*, 313 S.W.3d 274, 287 (Tex. Crim. App. 2010).

- We also take judicial notice that there is only one sheriff's office located in Wise County. *See* Tex. R. Evid. 201; Wise County, Texas, https://www.co.wise.tx.us/270/Sheriff (last visited Aug. 20, 2020).

Thus, we know from the affidavit, warrant, and public knowledge that there is only one sheriff's office and only one judicial district within Wise County, that a peace officer employed by the WCSO executed the affidavit, that a Wise County judge signed the warrant, and that that judge was in the same judicial district as the WCSO. *See* Tex. Code Crim. Proc. Ann. art. 18.0215(b)(1), (c)(1), (4)(A). We therefore hold that the affidavit substantially complied with the statute. *See Harmel v. State*, 597 S.W.3d 943, 963 (Tex. App.—Austin 2020, no pet.) (upholding the warrant despite errors in the serial numbers of the cellphones searched). *See generally Johnson v. State*, 84 S.W.3d 658, 662 (Tex. Crim. App. 2002) (Cochran, J., dissenting) (indicating that jurisdictional provisions require strict compliance but that substantial compliance may suffice for procedural provisions).

We therefore uphold the trial court's denial of Jake's motion to suppress evidence retrieved from his cell phone and SD cards.

9. Jake's Interviews with Law Enforcement

After his arrest, Jake was interrogated five times—the first three times by Ranger Pettigrew and then twice by Lieutenant Golden. On appeal, Jake complains of the trial court's failure to suppress the interviews. The third, fourth, and fifth interviews, as well as the portion of the second interview beginning with Jake asking whether it would be better to talk to Ranger Pettigrew or to talk to a lawyer first, were

not admitted into evidence at trial. Consequently, to the extent Jake complains of the trial court's failure to suppress the interviews (or portions thereof) that were not admitted at trial, no error was presented for review. *See Baker*, 956 S.W.2d at 22; *Dillard*, 550 S.W.2d at 54. We therefore limit our discussion to the first interview and that portion of the second interview that were admitted during trial.

Jake argues that

- his statements were inadmissible because they were not properly recorded;
- he was not properly warned of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and Article 38.22;
- he did not knowingly, intelligently, and voluntarily waive those rights;
- Ranger Pettigrew coerced and improperly induced him to discuss the case; and
- Ranger Pettigrew violated his right to counsel by interrogating him in the second interview after Jake completed a Right to Counsel Advisory Form on the morning of December 28, 2015.

The trial court did not issue findings and conclusions of law to support its denial of Jake's motion to suppress as to the interviews. We therefore imply the necessary fact findings that would support the trial court's ruling if the evidence, viewed in the light most favorable to the trial court's ruling, supports those findings. *Garcia-Cantu*, 253 S.W.3d at 241; *see Wiede*, 214 S.W.3d at 25. We then review the trial court's legal ruling de novo unless the implied fact findings supported by the record are also dispositive of the legal ruling. *Kelly*, 204 S.W.3d at 819.

a. Forfeited Complaints

Jake did not complain in his motion to suppress that his statements were not "visually recorded" and that the *Miranda* warnings in the second interrogation were not on the recording. He has therefore forfeited these complaints raised on appeal. *See* Tex. R. App. P. 33.1(a)(1); *Swain v. State*, 181 S.W.3d 359, 365 (Tex. Crim. App. 2005); *McGee v. State*, No. 02-17-00347-CR, 2019 WL 165990, at *4 (Tex. App.—Fort Worth Jan. 10, 2019, no pet.) (mem. op., not designated for publication).

b. *Miranda* and Article 38.22 Warnings and Waivers

Jake complains that he was not properly warned under *Miranda* and Article 38.22 and that the State did not prove that he knowingly, intelligently, and voluntarily waived his rights under *Miranda* and Article 38.22. Article 38.21 of the Code of Criminal Procedure provides that "[a] statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion, under the rules hereafter prescribed." Tex. Code Crim. Proc. Ann. art. 38.21. Substantial compliance with the required statutory warnings is sufficient. *Id.* art. 38.22, § 3(e)(2); *Bible v. State*, 162 S.W.3d 234, 240 (Tex. Crim. App. 2005).

To show that a statement is not barred under *Miranda* or Article 38.22, the State must prove by a preponderance of the evidence that a defendant validly waived his rights. *Joseph v. State*, 309 S.W.3d 20, 24 (Tex. Crim. App. 2010). Although a defendant's waiver of his rights cannot be presumed from his silence or from the fact

that he ultimately confessed, it may be inferred from his words and actions. *Leza v. State*, 351 S.W.3d 344, 353 (Tex. Crim. App. 2011); *Joseph*, 309 S.W.3d at 24. We address two prongs to determine the validity of a defendant's waiver. *Joseph*, 309 S.W.3d at 25. First, the waiver must have been "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Id.* (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)) (internal quotation marks omitted). Second, the defendant must have waived his rights "with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* (internal quotation marks omitted). To determine whether the waiver was valid, we consider the totality of the circumstances surrounding the interrogation. *Id.* Those circumstances include the defendant's experience, background, and conduct. *Id.* Only if the totality of the circumstances demonstrates both an unforced choice and the required level of knowledge about the right given up and the consequences of doing so may a court conclude that a waiver of rights is valid. *Id.*

Jake contends that Ranger Pettigrew did not advise him of his right to terminate the first interview at any time. Near the beginning of the first interview, after the pleasantries had been exchanged, Ranger Pettigrew stated,

> Now Jake, the main reason I got brought in is some family out there, down around Boyd, brought something to our attention that kind of got their dander up. Said you was out there a little . . . time ago. I guess before I ask you that, uh, I'll go ahead and read you your rights real quick. You have the right to remain silent. Anything you say can and

> will be used against you in a court of law. You have a right to have a—talk to a lawyer—have him present with you while you are being questioned. If you cannot afford to hire a lawyer, you have one appointed to you to represent you before answering any questions and *you can decide at any time to exercise these rights and not answer any questions or make any statements.* Since you are already under arrest, we need to get this out of the way. You understand each of these rights as I have explained them to you? [Emphasis added.]

Jake answered, "Yes sir," after which Ranger Pettigrew asked, "Do you wish to continue the conversation?" Jake's response was, "We can if you want." The emphasized language followed by Ranger Pettigrew's question to Jake indicated that Jake could stop talking at any time. Thus, the warning Ranger Pettigrew gave Jake substantially complied with the statutory "right to terminate" warning. *See Bible*, 162 S.W.3d at 240; *White v. State*, 779 S.W.2d 809, 826–27 (Tex. Crim. App. 1989); *Hernandez v. State*, No. 05-17-00560-CR, 2018 WL 2316026, at *10 (Tex. App.—Dallas May 22, 2018, pet. ref'd) (mem. op., not designated for publication); *Garner v. State*, No. 02-12-00052-CR, 2014 WL 2538804, at *4 (Tex. App.—Fort Worth June 5, 2014, no pet.) (mem. op., not designated for publication). The trial court did not err by denying suppression of the first interview on this ground.

Jake next contends that he did not expressly waive his rights under *Miranda* and Article 38.22. He points out that he did not sign any waivers, nor was the word "waiver" ever mentioned. However, as Jake acknowledged earlier in his brief, express waivers are not required. *Joseph*, 309 S.W.3d at 24. "The question is not whether

[Jake] 'explicitly' waived his *Miranda* rights, but whether he did so knowingly, intelligently, and voluntarily." *Id.* at 25.

Jake further contends that he did not knowingly, intelligently, and voluntarily waive his rights, and he specifically contends that his agreement to talk to officers was not a waiver of his right to counsel.[16] We have reviewed the recordings and transcripts of the first interview and the portion of the second interview admitted at trial, and the totality of the circumstances shows that Jake was fully cognizant of the rights he was giving up and the consequences of doing so. *See id.* Ranger Pettigrew warned Jake in both interviews. In both interviews, Jake answered "Yes, sir" when asked if he understood the rights Ranger Pettigrew had just warned him about. In the first interview, when Ranger Pettigrew asked Jake if he "wish[ed] to continue the conversation," Jake answered, "We can if you want," and in the second interview, he answered "Yes" when asked whether he wanted to "continue talking." After the warnings, Jake willingly participated in the interviews. He never requested an attorney in the portions of the interviews admitted at trial (the first interview and the first part of the second interview), and he never asked that the interviews be stopped. His stated understanding of the warnings, his stated willingness to keep talking, his denials

[16]Jake argues that even if he waived the right to counsel and the right to remain silent, "that waiver was withdrawn numerous times with regard to particular subjects." He does not cite any law to support the withdrawal of a waiver. *See* Tex. R. App. 38.1(i). Regardless, we do not see any instance in the first interview or in the portion of the second interview admitted at trial where he withdrew his waiver. We therefore reject this argument.

of responsibility for Soccorro's murder, and his reticence to talk about the events culminating in the murder show the required level of awareness of the rights he had waived and the consequences of waiver. *See id.*

The totality of the circumstances surrounding the two interviews also shows Jake's waiver was voluntary—it "resulted from a free and deliberate choice without intimidation, coercion, or deception." *Id.* at 26. After the warnings in both interviews, Jake willingly participated. He did not ask for counsel and did not ask to terminate the interviews. In fact, Ranger Pettigrew terminated the first interview and suggested ending the second interview.

Jake also argues that he invoked his right to counsel before the second interview. Under *Edwards v. Arizona*, 451 U.S. 477 (1981), after a person invokes his right to have counsel present during a custodial interrogation, the State cannot show that he validly waived that right by showing only that he responded to police-initiated interrogation after being *Mirandized* again. *Pecina v. State*, 361 S.W.3d 68, 75 (Tex. Crim. App. 2012). The record shows that on the morning of December 28, 2015, Jake completed a form indicating that he requested appointed counsel in the case for which he had been arrested—the parole violation. Jake contends that his affirmative request for counsel clearly and unequivocally invoked his right to interrogation counsel for Soccorro's murder under the Fifth Amendment.[17] However, there is no

[17]The record reflects that Jake was not arrested on the murder charge until December 30, 2015 and that he was advised of his right to counsel on the murder

evidence that Jake or anyone else brought this request to Ranger Pettigrew's attention before he interviewed Jake on December 28 about the murder. As the Texas Court of Criminal Appeals made clear in *Pecina*,

> What matters for *Miranda* and *Edwards* is what happens when the defendant is approached for interrogation, and (if he consents) what happened during the interrogation . . . .
>
> An uncharged suspect may invoke his Fifth Amendment right to counsel (and a defendant who has been arraigned may invoke his Sixth Amendment right to counsel) for purposes of custodial interrogation when the police or other law-enforcement agents approach him and give him his *Miranda* warnings. That is the time and place to either invoke or waive the right to counsel for purposes of police questioning.

361 S.W.3d at 78. Jake did not invoke his right to counsel when Ranger Pettigrew warned him in the second interview. Thus, we reject this complaint.

Based on the totality of the circumstances, we therefore hold that Jake's waiver of his rights was valid.

c. Inadequate Briefing

Jake argues that Ranger Pettigrew employed coercive techniques and offered improper inducement to compel Jake to discuss the case, rendering any incriminating statements involuntary, but Jake cites no law to support his contentions. Jake also argues globally that interrogation evidence admitted at trial was either "related to the illegal interrogations" or based on "illegally seized evidence," such as the journal and

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charge the next day. The record further reflects that the second interview took place on December 28, 2015.

the information from his cellphone. Again, Jake cites no authority for these arguments, nor does he direct us to the location in the record where such evidence was admitted. Further, we have already upheld the trial court's denial of his suppression motion as to all the other evidence that he challenges. We therefore overrule these complaints as inadequately briefed. *See* Tex. R. App. P. 38.1(i); *McCarthy v. State*, 65 S.W.3d 47, 49 n.2 (Tex. Crim. App. 2001).

We hold that the trial court did not err by denying Appellant's suppression motion as to his statements admitted at trial.

10. Summary of Suppression Holdings

Having rejected all of Jake's suppression complaints, we overrule his first issue.

B. Hearsay

In his second issue, Jake contends that the redacted journal entries admitted at trial contained hearsay. Jake has forfeited this complaint.

To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion stating the specific grounds, if not apparent from the context, for the desired ruling. Tex. R. App. P. 33.1(a)(1); *Thomas v. State*, 505 S.W.3d 916, 924 (Tex. Crim. App. 2016). Further, the party must have obtained an express or implicit adverse trial-court ruling or objected to the trial court's refusal to rule. Tex. R. App. P. 33.1(a)(2); *Everitt v. State*, 407 S.W.3d 259, 262–63 (Tex. Crim. App. 2013). Moreover, the objection or request at trial must comport

with the complaint presented on appeal. *Clark v. State*, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012).

The two statements from Soccorro's journal that Jake specifically complains of are, "Jake is watching the Mexican channel [and] getting off on it," and "I knew and had faith in him, and it was just killing me that he was treating me like a whore." At trial, however, Jake conceded that the journal's statements were not excludable on hearsay grounds:

> First of all, I would object under both the Texas and the United States Constitution that placing in evidence hearsay statements by the deceased is a—is a violation of our right to confrontation. I do, however, understand the case law, your Honor, that make[s] statements that are expressions of [a] then[-]existing mental, physical, or emotional state or the other—the other exception to hearsay. I understand that the law as it exists right now would make those statements admissible, but—but I do want to make clear my objections under the Texas and United States Constitution to the right of confrontation.

He also specifically conceded that the first statement was a present-sense impression. He globally objected to the admission of the journal entries under Rule 403 of the Rules of Evidence and specifically objected to the admission of the first statement on that ground and on the ground that it was not relevant. He did not specifically object to the second statement.

Because Jake's complaint on appeal does not comport with his trial objections, he has forfeited his hearsay complaints raised on appeal. *See id.*

To the extent Jake implicitly attempts to raise sub-issues under Rules of Evidence 401 and 403 by summarily concluding that the challenged statements had

"no probative value" and "serve[d] to unduly mislead the jury and confuse the issues in the case," we overrule them as inadequately briefed. *See* Tex. R. App. P. 38.1(i).

We overrule Jake's second issue.

C. The State's Closing Argument at Guilt

In his third issue, Jake complains that the trial court abused its discretion by failing to grant a mistrial after an improper argument by the State in the guilt phase. We hold that the trial court did not abuse its discretion by denying a mistrial.

To be permissible, the State's jury argument must fall within one of the following four general areas: (1) summation of the evidence; (2) reasonable deduction from the evidence; (3) answer to opposing counsel's argument; or (4) plea for law enforcement. *Freeman v. State*, 340 S.W.3d 717, 727 (Tex. Crim. App. 2011); *Felder v. State*, 848 S.W.2d 85, 94–95 (Tex. Crim. App. 1992).

In the defense's closing argument, defense counsel focused on alleged mistakes made by law enforcement in the investigation, evidence not tested or collected, and credibility issues regarding some of the State's witnesses to support the defense's theory of reasonable doubt. In the State's final closing argument at guilt, the prosecutor said,

> You know, in a jury trial on a criminal case in the State of Texas everybody takes an oath, right? The . . . Court takes an oath to preserve and protect and defend the Constitution of the United States and the State of Texas. The Defense attorney has an obligation under the Rules of Professional Conduct to zealously—
>
> . . . .

> . . . serve her client's position under the rules of the adversary system and to zealously pursue her client's interest within the bounds of the law. Has that been done?
>
> You know, we heard about Hee Haw in this trial, right? I mean, that was kind of a chuckle when it happened. I kind of chuckled when I thought about something. I thought about Flintstones. I don't know how many of you watched the Flintstones when you were growing up, but I . . . remember this episode where Barney is on the witness stand and he is being cross-examined by Perry Mason, right? And after about two minutes on the stand, he's up there, you know, dancing around like a trained monkey.
>
> And . . . this Defense attorney, Christy Jack, is an excellent attorney and she can make a witness and lead them wherever she wants them to go. And I just don't want her to be able to lead you wherever she wants you to go.

Defense counsel objected that that was "improper argument," and the trial court sustained the objection. Defense counsel next asked for an instruction to disregard, and the trial court stated, "I'll just continue to remind the jury that what the lawyers say is not evidence in the case and [that the jury] receive[s] the evidence from the witness stand." Defense counsel then requested a mistrial, which the trial court denied. As this court has said before,

> When a prosecutor makes uninvited and unsubstantiated accusations of improper conduct directed toward a defendant's attorney, in an attempt to prejudice the jury against the defendant, courts refer to this as striking a defendant over the shoulders of his counsel. *Phillips v. State*, 130 S.W.3d 343, 355 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd) (op. on reh'g), *aff'd*[,] 193 S.W.3d 904 (Tex. Crim. App. 2006).
>
> Argument that strikes at a defendant over the shoulders of defense counsel is improper. *Davis* [*v. State*], 329 S.W.3d [798,] 821[(Tex. Crim. App. 2010)]; *Wilson v. State*, 7 S.W.3d 136, 147 (Tex. Crim. App. 1999); *Dinkins v. State*, 894 S.W.2d 330, 357 (Tex. Crim.

> App. . . . 1995). This prohibition protects the defendant from improper prosecutorial character attacks on defense counsel. *Davis v. State*, 268 S.W.3d 683, 713 (Tex. App.—Fort Worth 2008, pet. ref'd).

Whitney v. State, 396 S.W.3d 696, 704 (Tex. App.—Fort Worth 2013, pet. ref'd).

In warning the jury of defense counsel's ability to sway witnesses and the jury, albeit in complimentary terms, the prosecutor struck at Jake over defense counsel's shoulders, but not in an egregious way. *See Mosley v. State*, 983 S.W.2d 249, 258–60 (Tex. Crim. App. 1998) (op. on reh'g) (concluding that comments that the defense was trying "to divert" the jury on to "rabbit trails" "were mildly inappropriate" in that they did "not directly accuse the defense attorneys of lying" nor "suggest that any evidence was manufactured"; "[a]t most, the comments indicate[d] that the defense [could] be attempting to distort the jury's view of the evidence through clever argument"). Jake's reliance on cases involving egregious conduct—*Fuentes v. State*, 664 S.W.2d 333, 335 (Tex. Crim. App. 1984), and *Bell v. State*, 614 S.W.2d 122, 123 (Tex. Crim. App. 1981)—is therefore misplaced.

Jake states his issue on appeal to be, "Did the trial court err in failing to grant a retrial for manifestly improper argument by the State?" Once the trial court sustained counsel's objection to the prosecutor's argument, Jake's counsel requested an "instruction to disregard." The trial court's instruction was, "I'll just continue to remind the jury that what the lawyers say is not evidence in the case and [that the jury] receive[s] the evidence from the witness stand." Jake's counsel did not object to the court's instruction and simply requested a mistrial.

On appeal, Jake incorporates in this issue a complaint that the trial court did not instruct the jury to disregard. Counsel for Jake did not make that complaint at trial. To preserve this complaint for our review, trial counsel must timely object to allow the trial court an opportunity to cure any error. *See* Tex. R. App. P. 33.1(a); *Hernandez v. State*, 538 S.W.3d 619, 622 (Tex. Crim. App. 2018) ("In order to claim on appeal that an instruction to disregard was inadequate to cure erroneous jury argument, the defendant must object and pursue his objection to an adverse ruling.") That did not occur, and we will not address any complaint about the court's instruction. The trial court instructed the jury that the only evidence they could consider came from the witnesses and not the attorneys.

Nevertheless, we will address the issue of whether the trial court abused its discretion by denying the mistrial. *Hawkins v. State*, 135 S.W.3d 72, 76–77 (Tex. Crim. App. 2004). A mistrial is required only in extreme circumstances: when the improper argument causes incurable prejudice—that is, the argument is "so prejudicial that expenditure of further time and expense would be wasteful and futile." *Id.* at 77; *see also Simpson v. State*, 119 S.W.3d 262, 272 (Tex. Crim. App. 2003). In determining whether a trial court abused its discretion by denying a mistrial, we balance three factors: (1) the severity of the misconduct (prejudicial effect); (2) curative measures; and (3) the certainty of conviction absent the misconduct. *Hawkins*, 135 S.W.3d at 77; *Mosley*, 983 S.W.2d at 259. The prejudice caused by the improper remarks is "clearly the touchstone" of the "severity of the misconduct" factor. *Hawkins*, 135 S.W.3d at

77. Where arguments that strike the defendant over the shoulders of defense counsel are not particularly egregious, an instruction to disregard will generally cure the prejudice. *Wilson*, 7 S.W.3d at 148; *Dinkins*, 894 S.W.2d at 357.

In looking at the first factor, we do not see that the prosecutor's argument was severe or prejudicial. The prosecutor did not appear to be impugning defense counsel's character or criticizing her defense of Jake but instead appeared to be doing the reverse—noting defense counsel's zealous representation of her client and her persuasive skill in questioning witnesses. The first factor therefore weighs in favor of the trial court's ruling. *See Mosley*, 983 S.W.2d at 259–60.

Under the second factor, we review the measures adopted to cure the improper remarks. *See Hawkins*, 135 S.W.3d at 77. The trial court's instruction was not uniform; that is, the trial judge did not explicitly tell the jurors to disregard the comment, but he implicitly told them to ignore the argument because it was not evidence. The law generally presumes that juries will obey not only instructions to disregard but also other cautionary instructions. *Archie v. State*, 340 S.W.3d 734, 741 (Tex. Crim. App. 2011); *Gardner v. State*, 730 S.W.2d 675, 696 (Tex. Crim. App. 1987); *Whitney*, 396 S.W.3d at 706. After the trial court instructed the jury to focus on the evidence, the prosecutor did not again mention defense counsel or her tactics. The second factor therefore weighs in favor of the trial court's ruling. *See Whitney*, 396 S.W.3d at 706.

Under the third factor, we look at the certainty of Jake's conviction absent the improper argument. The evidence supporting Jake's conviction, as detailed in the statement of facts, is compelling. It seems unlikely that the prosecutor's warning the jury not to let the "excellent" defense attorney "lead [them] wherever she want[ed them] to go" is what led the jury to convict Jake instead of the mountain of evidence against him. We therefore hold that the third factor also favors the trial court's ruling. *See id.* Consequently, we hold that the trial court did not abuse its discretion by denying defense counsel's request for a mistrial. *See Dinkins*, 894 S.W.2d at 357. We overrule Jake's third issue.

D. Denial of Mistrial and Cumulative Error

In his fourth and fifth issues, argued together, Jake complains of (1) the denial of a mistrial after "repeated misconduct" by the State and (2) cumulative error. Jake appears to be complaining of the ruling denying a mistrial that we upheld above. Jake did not state "repeated misconduct" as a ground for requesting that mistrial in the trial court; we therefore hold that Jake forfeited that complaint and overrule his fourth issue. *See Clark*, 365 S.W.3d at 339.

In Jake's fifth issue, he argues that the cumulative effect of admitting hearsay and other improper evidence denied him a fundamentally fair trial. The doctrine of cumulative error provides that the cumulative effect of multiple errors can, in the aggregate, constitute reversible error, even though no single instance of error would. *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999); *Priddy v. State*,

No. 02-13-00586-CR, 2014 WL 5307180, at *1 (Tex. App.—Fort Worth Oct. 16, 2014, no pet.) (mem. op., not designated for publication). However, for the doctrine to apply, the alleged errors complained of must actually constitute error. *Gamboa v. State*, 296 S.W.3d 574, 585 (Tex. Crim. App. 2009); *Priddy*, 2014 WL 5307180, at *1. "The doctrine of cumulative error . . . rarely results in reversal[] and is predicated upon meeting the standard of reversible error." *Vasquez v. State*, No. 2-04-214-CR, 2006 WL 133462, at *5 (Tex. App.—Fort Worth Jan. 19, 2006, no pet.) (per curiam) (mem. op., not designated for publication).

Here, we have already determined that the trial court did not reversibly err by denying the motion to suppress, by admitting the challenged evidence from the journal, or by denying the request for mistrial during the State's closing argument in the guilt stage of trial. The remaining complaint Jake lists—that the State failed to disclose mitigating evidence—is inadequately briefed and thus forfeited. *See* Tex. R. App. P. 38.1(i). Therefore, Jake's cumulative-error complaint lacks merit because there is no error to cumulate. *See Chamberlain*, 998 S.W.2d at 238 ("[W]e are aware of no authority holding that non-errors may in their cumulative effect cause error."); *Bell v. State*, No. 02-18-00244-CR, 2019 WL 1967538, at *9 (Tex. App.—Fort Worth May 2, 2019, pet. ref'd) (mem. op., not designated for publication) ("Bell argues that even if each of his previous points do not constitute harm sufficient for reversal, their cumulative effect does, undermining the fundamental fairness of the proceedings. But his individual points either do not demonstrate reversible error or do not show

that he was harmed. Therefore, there is no error to cumulate."); *Baker v. State*, No. 03-18-00240-CR, 2019 WL 1646260, at *7 (Tex. App.—Austin Apr. 17, 2019, no pet.) (mem. op., not designated for publication) ("Here, Baker's cumulative-error contention lacks merit because we have concluded, as to his preserved appellate issues, that one complained-of error was harmless and that there was no error as to the remaining complaints."). We overrule Jake's fifth issue.

III. CONCLUSION

Having overruled Jake's five issues, we affirm the trial court's judgment.

Per Curiam

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Delivered: August 27, 2020