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

No. 02-19-00241-CR

JOHN WAYNE JENKINS, Appellant

V.

THE STATE OF TEXAS

On Appeal from the 415th District Court
Parker County, Texas
Trial Court No. CR18-0693

Before Gabriel, Kerr, and Bassel, JJ.
Memorandum Opinion by Justice Bassel

MEMORANDUM OPINION

In two points, Appellant John Wayne Jenkins appeals his conviction for possession of a controlled substance, methamphetamine, one to four grams. In his first point, Jenkins argues that the evidence was insufficient to support his conviction because there was no evidence that he intentionally or knowingly possessed the controlled substance and that the logical force of the affirmative links establishing possession amounted to nothing more than mere suspicion that he possessed the controlled substance. We hold that the record establishes a number of links that support the reasonable inference that Jenkins intentionally or knowingly possessed a controlled substance.

In his second point, Jenkins argues that his trial counsel was ineffective for failing to object to evidence that was the subject of a motion to suppress, waiving error in the trial court's admission of the evidence and in the denial of Jenkins's motion to suppress. We conclude that Jenkins failed to overcome the presumption that his trial counsel's decisions to not object to the evidence at issue were reasonable, and we cannot say that Jenkins's counsel's failure, if any, to object to this evidence was "so outrageous that no competent attorney would have engaged in it."

Accordingly, we will affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Trial evidence

Officers from the Weatherford and Parker County Special Crimes Unit, a dual-agency unit, were conducting surveillance on Jenkins in the area of his residence due to his having an outstanding felony warrant. The arrest warrant was for the offense of possession of a controlled substance in penalty group one, more than one gram but less than four grams. The officers, who were wearing plain clothes and driving unmarked cars, viewed Jenkins close to his residence operating a blue motorcycle with a thirteen-year-old male seated behind him on the motorcycle.

Investigator David Bravo, one of the officers surveilling Jenkins, testified that it appeared to him that Jenkins was initially going to his residence when Jenkins saw them and that Jenkins then suddenly chose not to go home. It appeared to the investigator that Jenkins observed their unmarked vehicles in the area after recognizing them from past operations and kept going toward a different location to avoid the officers. Jenkins drove down different streets, including back roads, and the officers followed him the entire way. At one point, Investigator Bravo was roughly a car length behind Jenkins's motorcycle. Investigator Bravo testified that at least two or three times, he observed Jenkins reach down with his hands around his crotch area like he was trying to conceal something in that general area.

Jenkins ultimately pulled into the yard of a private residence; it was where the teenage boy riding with Jenkins lived with his mother. The officers immediately

exited their vehicles and identified themselves as police, and Investigator Bravo told Jenkins to get off the motorcycle. Jenkins was immediately arrested for the outstanding warrant.

Investigator Bravo walked Jenkins over to one of the unmarked police vehicles and had him stand in front of the car. Another officer stood with the teenage boy and his mother who had exited the house.

Investigator Bravo conducted an inventory of the motorcycle because they were going to impound it.[1] There was a cell phone attached with Velcro to the center portion of the gas tank. Investigator Bravo asked Jenkins if the cell phone belonged to him, and Jenkins admitted that the cell phone was his. Investigator Bravo also observed a closed cigarette box wedged between the front portion of the front seat where Jenkins had been sitting and the gas tank. The cigarette box was an inch or two away from the cell phone, and it was located in the same area where Investigator Bravo had seen Jenkins reaching multiple times while the officers were following Jenkins. Investigator Bravo asked Jenkins if the cigarette pack belonged to him, and Jenkins said no.

Investigator Bravo opened the cigarette box and observed two cigarettes and a baggie containing what he believed to be methamphetamine. The investigator

[1]At the scene, the officers were unable to determine who exactly owned the motorcycle, but they were able to determine that the owner was not there. Neither Jenkins nor anyone who lived at that residence was the registered owner of the motorcycle. The registered owner of the motorcycle lived in California, and the motorcycle had a California license plate.

testified that cigarette packs are commonly used to move small quantities of narcotics. Investigator Bravo further testified that methamphetamine is a penalty group one controlled substance and an illegal narcotic in Texas.

Below are cropped images of a picture admitted into evidence depicting the motorcycle, the black strip on the gas tank (Velcro) where Jenkins's cell phone was attached, and the black strip's proximity to the area between the gas tank and the seat where Jenkins had been sitting:

A senior forensic scientist with the Tarrant County Medical Examiner's Office testified that testing identified the substance in the baggie as methamphetamine, weighing 1.815 grams.

Investigator Bravo requested a fingerprint analysis on the cigarette box, but the analysis did not confirm any individual fingerprint. The investigator testified that it is rare to get a positive print off "stuff like this." No DNA analysis was performed on the cigarette box, the baggie containing the methamphetamine was not fingerprinted, and Jenkins's blood was not tested for the presence of methamphetamine.

B. Motion to suppress

Prior to voir dire on the first day of trial, Jenkins's trial counsel filed a motion to suppress evidence on Jenkins's behalf, requesting that the trial court "suppress all evidence related to this case on the ground that the evidence in this case has been illegally obtained by law enforcement in violation of the Fourth Amendment of the

U.S. Constitution." In the motion, Jenkins argued that the search of Jenkins's motorcycle was conducted without a warrant and without probable cause and that the search was not in good faith and did not comply with the Parker County Sheriff's Office Vehicle Inventory Policy.

Jenkins's trial counsel raised the motion to suppress just prior to Investigator Bravo's testimony (the State's third witness). Outside the presence of the jury, the trial court permitted both sides to conduct a voir dire examination of Investigator Bravo relating to the inventory of the motorcycle. The trial court then took the motion under advisement. During the State's case-in-chief, Jenkins's trial counsel did not object to any evidence offered by the State on grounds that the evidence was obtained in violation of the Fourth Amendment or any applicable police policy. Jenkins's trial counsel, however, cross-examined the testifying officers at length regarding Investigator Bravo's inventorying of the motorcycle and whether it constituted an illegal search. Previously during voir dire, Jenkins's trial counsel had asked the venire panel questions about their attitudes toward searches of vehicles and their contents.

After the State rested, the trial judge heard argument on the motion to suppress and denied the motion.

During closing argument, Jenkins's trial counsel again raised the issue of illegal searches, arguing that the inventory search was a pretext to a search for evidence. Jenkins's trial counsel pointed out to the jury that the jury charge included the

following instruction and that if they applied the law, then the jury would find Jenkins not guilty:

> You are instructed that if you believe any evidence presented by the State was obtained in violation of the provisions of the Constitution or laws of the State of Texas or the Constitution or laws of the United States of America, or if you have a reasonable doubt as to whether such evidence, if any, was obtained in violation of such provisions, then in such event you shall disregard the evidence so obtained.

C. Trial outcome

The jury found Jenkins guilty of possession of a controlled substance, methamphetamine, one to four grams. Jenkins pleaded true to an enhancement paragraph, and the jury found the enhancement true and assessed his punishment at fifteen years' confinement in the Institutional Division of the Texas Department of Criminal Justice and a fine of $10,000. The trial court entered judgment accordingly. This appeal followed.

II. THE EVIDENCE IS SUFFICIENT TO SUPPORT APPELLANT'S CONVICTION

In his first point, Jenkins challenges the sufficiency of the evidence to support his conviction. He argues that the State was required to affirmatively link him with the drugs he allegedly possessed but that the logical force of the affirmative links relied upon by the State amounted to nothing more than a suspicion that he possessed the controlled substance. He further argues that there was no direct evidence proving that he intentionally or knowingly possessed a controlled substance. We conclude that the evidence was sufficient to support Jenkins's conviction.

A. General standard of review

Federal due process requires that the State prove beyond a reasonable doubt every element of the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 2787 (1979); *see* U.S. Const. amend. XIV. In our evidentiary-sufficiency review, we view all the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the crime's essential elements beyond a reasonable doubt. *Jackson*, 443 U.S. at 316, 99 S. Ct. at 2787; *Queeman v. State*, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017).

This standard gives full play to the factfinder's responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Queeman*, 520 S.W.3d at 622. The factfinder alone judges the evidence's weight and credibility. *See* Tex. Code Crim. Proc. Ann. art. 38.04; *Queeman*, 520 S.W.3d at 622.

We may not re-evaluate the evidence's weight and credibility and substitute our judgment for the factfinder's. *Queeman*, 520 S.W.3d at 622. Instead, we determine whether the necessary inferences are reasonable based on the evidence's cumulative force when viewed in the light most favorable to the verdict. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015). We must presume that the factfinder resolved any conflicting inferences in favor of the verdict, and we must defer to that resolution. *Id.* at 448–49. The standard of review is the same for direct- and circumstantial-evidence cases; circumstantial evidence is as probative as direct

evidence in establishing guilt. *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016).

B. Standards for resolving a sufficiency challenge on the issue of whether a defendant was knowingly or intentionally in possession of a controlled substance

Jenkins was charged with and convicted of possession of a controlled substance—methamphetamine. Section 481.115 of the Texas Health and Safety Code states that "a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1" and that "[a]n offense . . . is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams." Tex. Health & Safety Code Ann. § 481.115(a), (c); *see also id.* § 481.102(6) (identifying methamphetamine as a penalty group one controlled substance).

Both the Texas Health and Safety Code and the Texas Penal Code provide the same definition for "possession": "actual care, custody, control, or management." *See id.* § 481.002(38); Tex. Penal Code Ann. § 1.07(a)(39). Thus, "[t]o prove unlawful possession of a controlled substance, the State must prove that[] (1) the accused exercised control, management, or care over the substance; and (2) the accused knew the matter possessed was contraband." *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005), *overruled in part on other grounds by Robinson v. State*, 466 S.W.3d 166, 173 & n.32 (Tex. Crim. App. 2015). Jenkins challenges the sufficiency of the evidence to prove both prongs.

While a defendant's mere presence near contraband is insufficient to establish his possession of it, a factfinder may infer that the defendant knowingly or intentionally possessed it if there are sufficient independent facts and circumstances justifying such an inference, even if the contraband was not in the defendant's exclusive possession. *Tate v. State*, 500 S.W.3d 410, 413–14 (Tex. Crim. App. 2016); *see also* Tex. Penal Code Ann. § 6.03(a) ("A person acts intentionally, or with intent, with respect to the nature of his conduct . . . when it is his conscious objective or desire to engage in the conduct . . . ."), § 6.03(b) ("A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist.").

The "affirmative links rule" is designed to protect the innocent bystander from conviction based solely upon his or her fortuitous proximity to someone else's drugs. *Evans v. State*, 202 S.W.3d 158, 161–62 (Tex. Crim. App. 2006). Mere presence at the location where drugs are found is insufficient by itself to establish actual care, custody, control, or management of those drugs. *Id.* at 162. However, presence or proximity, when combined with other evidence, either direct or circumstantial (e.g., "links"), may well be sufficient to establish that element beyond a reasonable doubt. *Id.* It is not the number of links that is dispositive but rather the logical force of all the evidence, direct and circumstantial. *Id.*

The court of criminal appeals has formulated a nonexclusive list of factors to examine in determining whether the necessary links exist:

> (1) the defendant's presence when a search is conducted; (2) whether the contraband was in plain view; (3) the defendant's proximity to and the accessibility of the narcotic; (4) whether the defendant was under the influence of narcotics when arrested; (5) whether the defendant possessed other contraband or narcotics when arrested; (6) whether the defendant made incriminating statements when arrested; (7) whether the defendant attempted to flee; (8) whether the defendant made furtive gestures; (9) whether there was an odor of contraband; (10) whether other contraband or drug paraphernalia were present; (11) whether the defendant owned or had the right to possess the place where the drugs were found; (12) whether the place where the drugs were found was enclosed; (13) whether the defendant was found with a large amount of cash; and (14) whether the conduct of the defendant indicated a consciousness of guilt.

Tate, 500 S.W.3d at 414 (quoting *Evans*, 202 S.W.3d at 162 n.12). "Although these factors can help guide a court's analysis, ultimately the inquiry remains that set forth in *Jackson*: Based on the combined and cumulative force of the evidence and any reasonable inferences therefrom, was a jury justified in finding guilt beyond a reasonable doubt?" *Id.* (citing *Jackson*, 443 U.S. at 318–19, 99 S. Ct. at 2788–89). In deciding whether the evidence is sufficient to link the defendant to contraband, the factfinder is the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony. *Poindexter*, 153 S.W.3d at 406.

C. The evidence is sufficient to support the jury's determination beyond a reasonable doubt that Jenkins intentionally or knowingly possessed a controlled substance.

The record contains evidence sufficient to support the jury's determination that Jenkins possessed methamphetamine and that he knew the methamphetamine was contraband.

Although Jenkins was not the sole occupant of the motorcycle, he was driving the motorcycle; his thirteen-year-old passenger was sitting behind him on the rear seat. The investigator found the baggie containing methamphetamine inside a cigarette box; cigarette boxes are often used to transport controlled substances. The cigarette box had been wedged between the gas tank and the underside of the front seat on which Jenkins had been sitting. Jenkins admitted to ownership of the cell phone but denied ownership of the cigarette box. The cigarette box was a mere inch or two away from Jenkins's cell phone and found in the same area where Investigator Bravo had seen Jenkins repeatedly reaching, looking like Jenkins was trying to conceal something. Investigator Bravo testified that Jenkins made those furtive gestures after, Investigator Bravo believed, Jenkins had spotted the undercover officers near his residence and altered his intended destination from his home to the boy's home; Jenkins then took a circuitous route to get there.

Jenkins argues that the methamphetamine was not in plain view and was accessible to his passenger. But there was no testimony at trial that Jenkins's thirteen-year-old passenger had access to or could reach the location where the cigarette box

was found. Further, as the below cropped images of photographs admitted into evidence show, the methamphetamine was plainly visible inside the clear baggie and was found inside the unsealed, light-colored cigarette box:

The cigarette box remained partially visible after it was wedged between the gas tank and Jenkins's seat. The cigarette box had only two cigarettes in it (along with the methamphetamine) when it was found.[2]

[2]Also relevant to Jenkins's knowledge that the matter possessed was contraband was the fact that the officers were looking for Jenkins that day to execute an arrest warrant for the offense of possession of a controlled substance in penalty group one, more than one gram but less than four grams. The date of the prior offense was just over one month prior to the offense for which he was on trial.

Jenkins next attacks the number of affirmative links establishing possession, arguing that there was no evidence that he was under the influence of narcotics when he was arrested, no evidence that he possessed any other contraband, no evidence that he made any incriminating statements, no evidence that there was an odor of contraband, and no evidence that he attempted to flee.[3] He further argues that he denied possession of the cigarette box and that he did not own the motorcycle. But as explained above, it is not the number of links that is dispositive but rather the logical force of all the evidence, direct and circumstantial. *See Evans*, 202 S.W.3d at 162.

Based on the combined and cumulative force of all of the above-described evidence and any reasonable inferences therefrom, the jury was rationally justified in finding Jenkins guilty beyond a reasonable doubt of possession of a controlled substance (methamphetamine) of one gram or more but less than four grams. We overrule Jenkins's first issue.

III. APPELLANT FAILED TO MEET HIS BURDEN TO DEMONSTRATE INEFFECTIVE ASSISTANCE OF COUNSEL

In his second issue, Jenkins contends that he received ineffective assistance of counsel. We resolve this issue against Jenkins.

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[3]In arguing that there was no evidence that he attempted to flee, Jenkins focuses on the trial testimony reflecting that he voluntarily stopped the motorcycle in the yard of a private residence and ignores the trial testimony evidencing that Jenkins redirected his route from his home to the boy's residence, taking a circuitous route to get there, after Jenkins appeared to have recognized the officers' vehicles near his residence.

A. Applicable law

The Sixth Amendment guarantees a criminal defendant the effective assistance of counsel. *Ex parte Scott*, 541 S.W.3d 104, 114 (Tex. Crim. App. 2017); *see* U.S. Const. amend. VI. To establish ineffective assistance, an appellant must prove by a preponderance of the evidence that his counsel's representation was deficient and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *Nava v. State*, 415 S.W.3d 289, 307 (Tex. Crim. App. 2013). The record must affirmatively demonstrate that the claim has merit. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). An appellant's failure to satisfy one prong of the *Strickland* test negates a court's need to consider the other prong. *Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009).

In evaluating counsel's effectiveness under the deficient-performance prong, we review the totality of the representation and the particular circumstances of the case to determine whether counsel provided reasonable assistance under all the circumstances and prevailing professional norms at the time of the alleged error. *See Strickland*, 466 U.S. at 688–89, 104 S. Ct. at 2065; *Nava*, 415 S.W.3d at 307; *Thompson*, 9 S.W.3d at 813–14. Our review of counsel's representation is highly deferential, and we indulge a strong presumption that counsel's conduct was not deficient. *Nava*, 415 S.W.3d at 307–08. To defeat the presumption of reasonable professional assistance, an allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *Thompson*, 9 S.W.3d at 814.

An appellate court may not infer ineffective assistance simply from an unclear record or a record that does not show why counsel failed to do something. *Menefield v. State*, 363 S.W.3d 591, 593 (Tex. Crim. App. 2012); *Mata v. State*, 226 S.W.3d 425, 432 (Tex. Crim. App. 2007). Trial counsel "should ordinarily be afforded an opportunity to explain his actions before being denounced as ineffective." *Menefield*, 363 S.W.3d at 593. If trial counsel did not have that opportunity, then we should not conclude that counsel performed deficiently unless the challenged conduct was "so outrageous that no competent attorney would have engaged in it." *Nava*, 415 S.W.3d at 308.

Although an ineffective-assistance-of-counsel claim may be raised on direct appeal, "[a] petition for writ of habeas corpus usually is the appropriate vehicle to investigate ineffective-assistance claims." *Mitchell v. State*, 68 S.W.3d 640, 642 (Tex. Crim. App. 2002). The court of criminal appeals has affirmed that direct appeal is "usually an inadequate vehicle for raising such a claim" because the record is generally undeveloped, *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005), and because "trial counsel has not had an opportunity to respond to these areas of concern," *Rylander v. State*, 101 S.W.3d 107, 110 (Tex. Crim. App. 2003). *See also Menefield*, 363 S.W.3d at 592–93; *Thompson*, 9 S.W.3d at 813–14. Indeed, the record on appeal will generally "not be sufficient to show that counsel's representation was so deficient as to meet the first part of the *Strickland* standard" as "[t]he reasonableness of counsel's choices often involves facts that do not appear in the appellate record." *Mitchell*, 68 S.W.3d at 642.

B. Jenkins failed to rebut the presumption that it was reasonable for his trial counsel to decide not to object to evidence that was the subject of the motion to suppress.

Jenkins argues that his trial counsel was ineffective because he waived any error in the admission of the following evidence by not objecting to it during trial: (1) Investigator Bravo's testimony that he "opened the cigarette box and observed a baggie of methamphetamine in it" and (2) the cigarette box and baggie of methamphetamine. Jenkins further contends that by not objecting to this evidence, his trial counsel also waived the right to contest the trial court's ruling on the motion to suppress. According to Jenkins, his trial counsel's strategy was to suppress the evidence of the search, but his counsel's failure to object to the above-described evidence and his counsel's failure to obtain a pretrial ruling on the motion to suppress undermined his trial counsel's own trial strategy.

The record is silent as to why Jenkins's trial counsel did not object to Investigator Bravo's testimony or to the admission of the cigarette box and baggie of methamphetamine. The record could have been supplemented through a hearing on a motion for new trial. *See Lopez v. State*, 343 S.W.3d 137, 144 (Tex. Crim. App. 2011). Although Jenkins raised ineffective assistance of counsel in an amended motion for new trial, the basis for the complaint was his trial counsel's failure to call any witnesses on Jenkins's behalf during the punishment phase of trial. And the record does not reflect that any hearing was held on the motion for new trial.

The record that Jenkins has brought forward does not affirmatively establish that his counsel was ineffective. Jenkins's trial counsel informed the trial court about the motion to suppress before Investigator Bravo testified and before admission of the cigarette box and baggie of methamphetamine. After allowing the parties to conduct a voir dire examination of the investigator, the trial court stated that he would take the motion under advisement and that the parties could "argue it later." After the State rested, the trial court instructed the parties to "approach and argue your Motion to Suppress." Neither the State nor the trial court indicated during the parties' arguments that Jenkins had waived his claim. Instead, the trial court denied the motion and included an instruction in the jury charge requiring the jury to disregard evidence that they believe was obtained illegally.[4] *See* Tex. Code Crim. Proc. Ann. art. 38.23(a); *see also Oursbourn v. State*, 259 S.W.3d 159, 177 (Tex. Crim. App. 2008) (holding that to obtain an Article 38.23 instruction, a defendant must establish three foundation requirements: (1) the evidence heard by the jury raises an issue of fact; (2) the evidence on that fact is affirmatively contested; and (3) the contested factual issue is material to the lawfulness of the charged conduct); *Collins v. State*, 462 S.W.3d 617, 623 (Tex. App.—Fort Worth 2015, no pet.) (same).

[4]The State did not object to the inclusion of the instruction in the jury charge. Although the trial court refused Jenkins's request for some additional language in the instruction, on appeal Jenkins raises no challenge to the trial court's refusal to give that additional language.

On appeal, the State argues that Jenkins's trial counsel arguably preserved the ruling on the motion to suppress for appellate review because the record as a whole demonstrated that Jenkins did not intend, nor did the trial court construe, Jenkins's trial counsel's "no objection" statement to constitute an abandonment of his motion to suppress. *See Thomas v. State*, 408 S.W.3d 877, 885 (Tex. Crim. App. 2013). Because Jenkins's trial counsel has not had an opportunity to respond to Jenkins's argument, the record is silent on whether he believed, like the State, that he had properly preserved error, if any, regarding Jenkins's motion to suppress or how preservation of that error, if any, had played into his overall defense strategy.

Additionally, the record reflects that Jenkins's trial counsel questioned the venire panel about their attitudes regarding searches, that Jenkins's trial counsel cross-examined the officers about Investigator Bravo's inventorying of the motorcycle and whether it constituted an illegal search, that Jenkins's trial counsel's argued in closing that the jury should disregard evidence they believed was obtained illegally, and that the trial court similarly instructed the jury in the charge to disregard evidence that they believed was obtained illegally. Given these events and Jenkins's trial counsel's assessment (if any) that he needed to object to evidence to preserve error regarding a ruling on the motion to suppress, it is possible that Jenkins's trial counsel reasonably decided (1) to preserve an argument that it was for the jury to decide whether the evidence was obtained illegally based on contested factual issues, and (2) to not risk obtaining a ruling from the trial judge in front of the jury that could have effectively

conveyed to the jury that the trial judge considered the State's evidence properly obtained and admissible.

Thus, Jenkins failed to rebut the presumption that his trial counsel's decisions to not object to Investigator Bravo's testimony or to the admission of the baggie of methamphetamine and the cigarette box were reasonable decisions, and we cannot say based on this record that Jenkins's counsel failure, if any, to object to this evidence was "so outrageous that no competent attorney would have engaged in it." *See Nava*, 415 S.W.3d at 308. Jenkins has not met his burden to satisfy the first prong of the *Strickland* test—to establish that his counsel's representation was deficient. *See* 466 U.S. at 687, 104 S. Ct. at 2064; *Nava*, 415 S.W.3d at 307.

Because Jenkins failed to satisfy the first prong of the *Strickland* test, we need not address the second prong. Tex. R. App. P. 47.1; *see Williams*, 301 S.W.3d at 687. We overrule Jenkins's second issue.

IV. CONCLUSION

Having overruled both of Jenkins's issues, we affirm the trial court's judgment.

/s/ Dabney Bassel

Dabney Bassel
Justice

Do Not Publish
Tex. R. App. P. 47.2(b)

Delivered: June 11, 2020