

NO. 07-10-0378-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
JUNE 20, 2012

BILLY DON MENEFIELD,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 31ST DISTRICT COURT OF WHEELER COUNTY;
NO. 4375; HONORABLE STEVEN RAY EMMERT, PRESIDING

***Memorandum Opinion on
Remand from Court of Criminal
Appeals***

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

This appeal has been remanded to us by the Court of Criminal Appeals after reversing our decision that appellant received ineffective assistance of counsel by his counsel's failure to object to the only evidence that he was in possession of a controlled substance when it did not satisfy the confrontation clause. *Menefield v. State*, 363 S.W.3d 591 (Tex. Crim. App. 2012). The Court asks that we consider appellant's remaining issues.

Yet, those issues are also claims of ineffective assistance in that appellant asserts his counsel failed to object to inadmissible punishment enhancement evidence and introduced allegedly inadmissible propensity evidence tending to show his bad character.¹ Without explanation in the record as to the reason for counsel's actions and without the State's response to that explanation, we may not find that counsel was ineffective.² *Menefield v. State*, 363 S.W.3d at *3-4.

Accordingly, the judgment is affirmed.

Brian Quinn
Chief Justice

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¹Although given the opportunity, neither appellant nor the State has submitted any additional briefs.

²Appellant filed a motion for new trial with a supporting affidavit but did not address these issues in the motion or affidavit.