



IN THE
TENTH COURT OF APPEALS

No. 10-12-00247-CR

DAVID FRITZE, JR.,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 19th District Court
McLennan County, Texas
Trial Court No. 2011-2011-C1

MEMORANDUM OPINION

Appellant, David Fritze, Jr., was convicted of possession of a controlled substance and sentenced to two years in a state jail facility. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(b) (West 2010). Fritze complains in three issues that the trial court erred in ruling on an objection and motion for mistrial based upon the State's argument during the punishment phase of trial regarding Fritze's failure to testify. The State concedes both error and harm. We agree. *See Snowden v. State*, 353 S.W.3d 815, 818 (Tex. Crim. App. 2011). Accordingly we reverse the trial court's judgment regarding

punishment only and remand this proceeding to the trial court for a new trial only on punishment.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Reversed and remanded
Opinion delivered and filed February 7, 2013
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