TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00137-CR

Christopher Grisham, Appellant

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW NO. 3 OF BELL COUNTY,
NO. 2C130-2656, THE HONORABLE NEEL RICHARDSON, JUDGE PRESIDING**

M E M O R A N D U M O P I N I O N

A jury convicted appellant Christopher Grisham of the misdemeanor offense of interference with public duties and assessed a $2,000 fine as his punishment. *See* Tex. Penal Code §§ 38.15(a)(1) (providing that "[a] person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with . . . a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law"), 12.22 (setting forth punishment range for Class B misdemeanor). On appeal, appellant challenges the denial of his motion to suppress evidence and asserts that the trial court erred by denying his requested defensive jury-charge instructions. We affirm the trial court's judgment of conviction.

BACKGROUND[1]

Steve Ermis, a police officer with the Temple Police Department, was dispatched in response to a 911 call reporting an armed man walking down the roadway. Officer Ermis responded to the location reported and found appellant and his son walking nearby. They were walking in the roadway on the wrong side of the road—that is, on the right-hand side, traveling in the direction of traffic with their backs to oncoming cars. The officer observed that appellant was carrying a rifle in an "offensive-combat ready position"—across his chest, immediately accessible, and ready to be fired—as opposed to slung across his back. Officer Ermis pulled up behind appellant and his son to initiate contact. As he exited his patrol car and approached, he instructed appellant not to touch the weapon. The officer began questioning appellant about his activities and his reason for having the weapon. Officer Ermis examined the gun and determined that it was a real weapon and that it was loaded. He moved to disarm appellant by releasing the clasp holding the firearm to the shoulder strap of appellant's backpack. As he did so, appellant grabbed the weapon and told the officer not to disarm him. Unsure of appellant's intentions and fearful for his safety, Officer Ermis drew his service weapon and ordered appellant not to touch the weapon. He placed appellant against the hood of his patrol car and attempted to place appellant's hands behind his back to handcuff him.

[1] Because the parties are familiar with the facts of the case, its procedural history, and the evidence adduced at trial, we provide only a general overview of the facts of the case here. We provide additional facts in the opinion as necessary to advise the parties of the Court's decision and the basic reasons for it. *See* Tex. R. App. P. 47.1, 47.4. The facts recited are taken from the testimony and other evidence presented at trial.

Appellant repeatedly refused to comply with the officer's instructions and "forcibly" resisted the officer's efforts to handcuff him. Eventually, appellant was handcuffed and arrested for resisting arrest.

Appellant was subsequently charged by information with the misdemeanor offense of interference with public duties. Prior to trial, appellant moved to suppress "the arrest" and any statements he made during the encounter. After conducting a hearing, the trial court denied the motion to suppress, and the case proceeded to a jury trial. The jury found appellant guilty of interference with public duties as charged and assessed a $2,000 fine as punishment. This appeal followed.

DISCUSSION

Denial of Motion to Suppress

Prior to trial, appellant filed a motion to suppress. In his written motion to suppress, appellant asserted that he was unlawfully arrested without probable cause. He referenced the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, Sections 9, 10, and 19 of the Texas Constitution, and articles 38.22 and 38.23 of the Texas Code of Criminal Procedure. No arguments were presented in the written motion regarding a violation of his constitutional or statutory rights based on the absence of reasonable suspicion for his detention.

A hearing was held on the motion. Officer Ermis testified, and the exhibits included the patrol car dash-cam video recording depicting the encounter. Appellant's questioning of the officer focused primarily on whether the officer had probable cause to arrest him without a warrant, not whether the officer had reasonable suspicion to detain him. At the conclusion of the hearing,

appellant maintained that the officer lacked probable cause to arrest him. However, in response to the State's questioning of the officer, appellant also referenced the absence of reasonable suspicion to detain him. The trial court took the case under advisement. Subsequently, the trial court denied the motion to suppress without making any findings of fact or conclusions of law.

In his first point of error, appellant contends that the trial court erred in denying his motion to suppress because the arresting officer lacked probable cause to arrest him or reasonable suspicion to detain him.[2]

We review a trial court's ruling on a motion to suppress evidence for an abuse of discretion, *Arguellez v. State*, 409 S.W.3d 657, 662 (Tex. Crim. App. 2013); *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006), and overturn the ruling only if it is outside the zone of reasonable disagreement, *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014); *Dixon*, 206 S.W.3d at 590. We apply a bifurcated standard of review, giving almost total deference to a trial court's findings of historical fact and credibility determinations that are supported by the record, but

---

[2] To preserve a complaint for appellate review, a party must present a timely request, objection, or motion to the trial court stating specific grounds for the desired ruling. *See* Tex. R. App. P. 33.1(a)(1)(A). In addition, the issue raised on appeal must comport with the objection made at trial, i.e., an objection stating one legal basis may not be used to support a different legal theory on appeal. *Bekendam v. State*, 441 S.W.3d 295, 300 (Tex. Crim. App. 2014). A motion to suppress evidence is a specialized objection to the admissibility of evidence. *Black v. State*, 362 S.W.3d 626, 633 (Tex. Crim. App. 2012). Thus, appellate contentions regarding suppression must comport with the specific assertions made in a motion to suppress, and an appellant fails to preserve error when he files a motion to suppress arguing one legal theory at trial and then asserts a different legal theory on appeal. *Rothstein v. State*, 267 S.W.3d 366, 373 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd); *see also* Tex. R. App. P. 33.1. Arguably, because the basis for suppression urged in appellant's motion to suppress was an unlawful arrest without probable cause, his complaint about the illegality of his detention was not properly preserved for appellate review. However, in the interest of justice, we address the merits of appellant's contention that Officer Ermis lacked reasonable suspicion to detain him.

review questions of law de novo. *Delafuente v. State*, 414 S.W.3d 173, 177 (Tex. Crim. App. 2013); *Crain v. State*, 315 S.W.3d 43, 48 (Tex. Crim. App. 2010). We view the evidence in the light most favorable to the trial court's ruling, *State v. Robinson*, 334 S.W.3d 776, 778 (Tex. Crim. App. 2011), and uphold the ruling if it is correct on any theory of law applicable to the case, *Absalon v. State*, 460 S.W.3d 158, 162 (Tex. Crim. App. 2015); *Young v. State*, 283 S.W.3d 854, 873 (Tex. Crim. App. 2009), even if the trial judge made the ruling for a wrong reason, *Story*, 445 S.W.3d at 732. In our review, "[t]he prevailing party is afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it." *Matthews v. State*, 431 S.W.3d 596, 601 n.5 (Tex. Crim. App. 2014) (citing *Wade v. State*, 422 S.W.3d 661, 666–67 (Tex. Crim. App. 2013)).

Reasonable suspicion that a person may be involved in criminal activity permits an officer to stop and briefly detain the person to take additional steps to investigate further. *Guerra v. State*, 432 S.W.3d 905, 911 (Tex. Crim. App. 2014) (citing *State v. Kerwick*, 393 S.W.3d 270, 273 (Tex. Crim. App. 2013)). A police officer has reasonable suspicion for a detention if he has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that the person detained is, has been, or soon will be engaged in criminal activity. *Matthews*, 431 S.W.3d at 603; *Wade*, 422 S.W.3d at 668 (citing *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011)); *see United States v. Sokolow*, 490 U.S. 1, 7 (1989); *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)). "[T]he likelihood of criminal activity need not rise to the level required for probable cause." *Kerwick*, 393 S.W.3d at 273–74. The reasonable-suspicion standard requires only "some minimal level of objective justification" for the stop. *Hamal v. State*,

390 S.W.3d 302, 306 (Tex. Crim. App. 2012) (quoting *Foster v. State*, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010)).

A reasonable-suspicion determination requires consideration of the totality of the circumstances. *Matthews*, 431 S.W.3d at 603; *Kerwick*, 393 S.W.3d at 274. The test for reasonable suspicion is an objective standard that disregards the subjective intent of the arresting officer and focuses, instead, on whether there was an objectively justifiable basis for the detention. *Wade*, 422 S.W.3d at 668 (citing *Derichsweiler*, 348 S.W.3d at 914); *Kerwick*, 393 S.W.3d at 274. "It is enough to satisfy the lesser standard of reasonable suspicion that the information is sufficiently detailed and reliable—i.e., it supports more than an inarticulate hunch or intuition—to suggest that something of an apparently criminal nature is brewing." *Wade*, 422 S.W.3d at 668 (quoting *Derichsweiler*, 348 S.W.3d at 917). Whether the facts known to the officer amount to reasonable suspicion is a mixed question of law and fact subject to de novo review. *Hamal*, 390 S.W.3d at 306; *State v. Mendoza*, 365 S.W.3d 666, 669–70 (Tex. Crim. App. 2012) (noting historical fact findings subject to abuse of discretion review whereas ultimate legal rulings such as probable cause subject to de novo review).

Evidence at the suppression hearing showed that police received a call from a woman who reported seeing an individual walking down the roadway armed with "a big black gun." The responding officer, Officer Ermis, testified that he was dispatched in response to the call and found appellant and his son walking near the location reported by the caller. When he encountered them, the officer observed that they were walking in the roadway on the wrong side of the road—on the right-hand side, traveling in the direction of traffic with their backs to oncoming cars. At the

hearing, the officer testified that he knew this conduct to be a violation of the Transportation Code. *See* Tex. Transp. Code § 552.006(b) (specifying that if sidewalk is not provided, pedestrian must walk on left side of roadway or on shoulder of roadway facing oncoming traffic). Officer Ermis's testimony demonstrated that he had specific, articulable facts establishing that appellant had committed a pedestrian traffic offense. *See McBride v. State*, 359 S.W.3d 683, 692–93 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd) (testimony established officer had belief, based on specific facts, that defendant had committed pedestrian traffic offense); *see also Trevino v. State*, Nos. 03-14-00009-CR & 03-14-00010-CR, 2016 WL 463658, at *6 (Tex. App.—Austin Feb. 5, 2016, pet. ref'd) (mem. op., not designated for publication) ("If an officer has a reasonable basis for suspecting that a person has committed a traffic offense, the officer may legally initiate a traffic stop.") (citing *Graves v. State*, 307 S.W.3d 483, 489 (Tex. App.—Texarkana 2010, pet. ref'd)). Thus, the trial court had before it evidence of an objectively justifiable basis for the detention. *See Wade*, 422 S.W.3d at 668.

Appellant complains in his brief, as he did at the suppression hearing, that Officer Ermis did not articulate prior to the hearing (in his offense report or other documentation concerning the offense) that the Transportation Code violation was a basis for appellant's detention. However, what Officer Ermis documented or relied on at the time of the detention is irrelevant. The standard for reasonable suspicion is *objective*, "thus there need be only an objective basis for the stop; the subjective intent of the officer is irrelevant." *Arguellez*, 409 S.W.3d at 663 (citing *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001)); *see Wade*, 422 S.W.3d at 668 ("This is an objective standard that disregards the actual subjective intent of the arresting officer and looks,

instead, to whether there was an objectively justifiable basis for the detention."). We conclude that the record supports the trial court's implied finding that, based on the totality of the circumstances, Officer Ermis had reasonable suspicion for the detention of appellant.[3] *See Ex parte Moore*, 395 S.W.3d 152, 158 (Tex. Crim. App. 2013) ("When the trial court does not file findings of fact concerning its ruling on a motion to suppress, we assume that the court made implicit findings that support its ruling, provided that those implied findings are supported by the record.").

After Officer Ermis pulled up behind appellant and his son, he exited his patrol car and approached appellant, instructing him not to touch the weapon. When the officer made contact,

---

[3] In their briefing, the parties dispute whether, under the circumstances of this case, Officer Ermis had reasonable suspicion to detain appellant based on his carrying a rifle as he walked down the roadway.

Appellant maintains that he was not subject to detention because, as appellant correctly notes, openly carrying a long gun in public generally is not illegal in Texas. *See* Tex. Const. art. I, § 23 ("Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State[.]"). The State maintains that Officer Ermis had reasonable suspicion to detain appellant because he believed that appellant was committing or had committed the offense of disorderly conduct. *See* Tex. Penal Code § 42.01(a)(8) ("A person commits an offense if he intentionally or knowingly . . . displays a firearm or other deadly weapon in a public place in a manner calculated to alarm."); *see also* Tex. Const. art. I, § 23 ("[T]he Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime."); *Ex parte Poe*, 491 S.W.3d 348, 355 (Tex. App.—Beaumont 2016, pet. ref'd) ("[A]lthough there clearly are constitutional rights to bear arms and to express oneself freely, there is no constitutionally protected right to display a firearm in a public place in a manner that is calculated to alarm.").

The issue, however, is whether the trial court could conclude, based on the totality of the circumstances, that Officer Ermis had reasonable suspicion to detain appellant. Given the undisputed evidence demonstrating that appellant was committing a pedestrian traffic offense when Officer Ermis encountered him, the trial court's conclusion that the officer had reasonable suspicion to detain appellant is supported by the record. A possible alternative basis for reasonable suspicion, or lack thereof, is not dispositive in this case. *See Young v. State*, 283 S.W.3d 854, 873 (Tex. Crim. App. 2009) ("If the trial court's ruling regarding a motion to suppress is reasonably supported by the record and is correct under any theory of law applicable to the case, the reviewing court must affirm.").

he asked appellant what he was doing. Appellant responded, "We're hiking." The officer then asked appellant why he had the weapon. Appellant responded, "Because I can." As he questioned appellant, Officer Ermis examined the rifle to determine if the weapon was a real firearm or a toy gun. He determined that the weapon was not a toy but was an AR-15 style rifle—and further, that it was loaded.[4] Uncertain about appellant's intentions relating to the loaded weapon immediately at his disposal, which made the officer feel threatened, Officer Ermis sought to disarm appellant so he could safely conduct his investigation.[5]

To disarm appellant, Officer Ermis reached up to release the clasp holding the weapon to the shoulder strap of appellant's backpack. At that point, appellant grabbed the weapon and loudly told the officer not to disarm him. Again, concerned for his safety and not knowing appellant's intentions, Officer Ermis drew his service weapon and ordered appellant to take his hands off the gun. He placed appellant on the hood of his patrol car, repeating his instruction for appellant to keep his hands away from the gun. Officer Ermis then holstered his weapon and asked appellant to put his hands behind his back. Appellant refused. The officer repeated the instruction several times but appellant continued to refuse to comply. Appellant then physically resisted the officer's

---

[4] The officer observed that a magazine was inserted in the firearm and the magazine had a clear window that allowed him to see that the magazine had live rounds inside.

[5] "If an officer is justified in believing that a person whose suspicious behavior he is investigating is armed, he may frisk that person to determine if the suspect is, in fact, carrying a weapon and, if so, to neutralize the threat of physical harm." *Wade v. State*, 422 S.W.3d 661, 669 (Tex. Crim. App. 2013) (citing *Terry v. Ohio*, 392 U.S. 1, 24 (1968)). "The purpose of a *Terry* frisk is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence." *Id.* Appellant conceded at the suppression hearing that Officer Ermis had the authority to disarm him.

efforts to put appellant's hands behind his back to handcuff him. Eventually, the officer was able to handcuff appellant.[6] Appellant was subsequently arrested for resisting arrest.

A police officer may arrest an individual without a warrant if there is probable cause to believe an offense has been or is being committed with respect to that individual, and the arrest falls within one of the statutory exceptions to the warrant requirement set out in the Texas Code of Criminal Procedure. *Torres v. State*, 182 S.W.3d 899, 901 (Tex. Crim. App. 2005); *see* Tex. Code Crim. Proc. arts. 14.01–14.04 (listing situations under which police officer may arrest person without arrest warrant). One such exception is if the offense is committed in the presence of or within the view of a peace officer. *See* Tex. Code Crim. Proc. art. 14.01(b) ("A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view."); *see also Amador v. State*, 275 S.W.3d 872, 878 (Tex. Crim. App. 2009) ("[A] warrantless arrest for an offense committed in the officer's presence is reasonable if the officer has probable cause."). "'Probable cause' for a warrantless arrest exists if, at the moment the arrest is made, the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a prudent man in believing that the person arrested had committed or was committing an offense." *Id.* (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)); *Torres*, 182 S.W.3d at 901. The test for probable cause is objective; it is "unrelated to the subjective beliefs

[6] After Officer Ermis made several attempts to physically place appellant's hands behind his back, appellant agreed to comply if the officer allowed him to give his camera to his son so that his son could record the encounter. Appellant ceased his struggles against the officer after his son retrieved the camera.

of the arresting officer," and "it requires a consideration of the totality of the circumstances facing the arresting officer." *Amador*, 275 S.W.3d at 878.

The ultimate question here is whether, at the moment of appellant's arrest, facts and circumstances within Officer Ermis's knowledge (or of which he had reasonably trustworthy information) were sufficient to warrant a prudent person in believing that appellant had committed or was committing a criminal offense. *See State v. Woodard*, 341 S.W.3d 404, 412 (Tex. Crim. App. 2011). Officer Ermis's testimony at the suppression hearing established that during his encounter with appellant: (1) appellant grabbed his weapon and tried to keep the officer from disarming him; (2) appellant did not put his hands behind his back when asked, and refused to comply with that instruction at least six times; and (3) appellant physically resisted when the officer tried to grab appellant's hands to place them behind his back to handcuff him. These facts were sufficient to permit a prudent person to believe that appellant had committed the offense of resisting arrest or search.[7] *See* Tex. Penal Code § 38.03 ("A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer . . . from effecting an arrest [or] search . . . by using force against the peace officer . . . ."); *see also Finley v. State*, 484 S.W.3d 926, 928 (Tex. Crim. App. 2016) (concluding that pulling away from officers satisfies force-against-peace officer

[7] Moreover, an officer may, without a warrant, arrest a person found committing a violation of section 552.006. *See* Tex. Transp. Code § 543.001 ("Any peace officer may arrest without a warrant a person found committing a violation of this subtitle."); *see also* Tex. Code Crim. Proc. art. 14.01(b) ("A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view."). Thus, not only did Officer Ermis have reasonable suspicion to stop appellant for the pedestrian traffic offense, but he had a basis to make an arrest for that traffic offense had he chosen to do so. *See McBride v. State*, 359 S.W.3d 683, 692 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd) (officer had probable cause to make warrantless arrest when he observed defendant violating Transportation Code section 552.006).

requirement of resisting arrest). Accordingly, we conclude that the record supports the trial court's implied finding that, based on the totality of the circumstances, Officer Ermis had probable cause to arrest appellant without a warrant for an offense committed in his presence. *See Ex parte Moore*, 395 S.W.3d at 158.

In sum, viewing the evidence in the light most favorable to the trial court's ruling, the record demonstrates that not only did Officer Ermis have reasonable suspicion to detain and arrest appellant initially based on the pedestrian traffic violation, but as the situation evolved, he developed an additional basis, supported by probable cause, to arrest appellant without a warrant for the resisting arrest offense committed in his presence. Accordingly, we conclude that the trial court did not abuse its discretion by denying appellant's motion to suppress. We overrule appellant's first point of error.

Denial of Requested Jury-Charge Instructions

In his next two points of error, appellant contends that the trial court erred by denying his request for two defensive instructions in the jury charge: an instruction on the statutory "speech only" defense and an instruction on self-defense.

We review alleged jury-charge error in two steps: first, we determine whether error exists; if so, we then evaluate whether sufficient harm resulted from the error to require reversal. *Price v. State*, 457 S.W.3d 437, 440 (Tex. Crim. App. 2015) (citing *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985) (op. on reh'g)); *Ngo v. State*, 175 S.W.3d 738, 743–44 (Tex. Crim. App. 2005).

The trial court must provide the jury with "a written charge distinctly setting forth the law applicable to the case." *See* Tex. Code Crim. Proc. art. 36.14. In fulfilling that duty, the trial court is required to instruct the jury on statutory defenses, affirmative defenses, and justifications whenever they are raised by the evidence and requested by the defendant. *Walters v. State*, 247 S.W.3d 204, 208–09 (Tex. Crim. App. 2007); *see* Tex. Penal Code §§ 2.03(d), 2.04(d). A defensive issue is raised by the evidence if there is some evidence, regardless of its source, on each element of a defense that, if believed by the jury, would support a rational inference that the element is true. *Shaw v. State*, 243 S.W.3d 647, 657–58 (Tex. Crim. App. 2007). When deciding whether a defensive issue has been raised by the evidence, a court must rely on its own judgment, formed in light of its own common sense and experience, as to the limits of rational inference from the facts that have been proven. *Id*. at 658. A defendant is entitled to an instruction on every defensive issue raised by the evidence, regardless of whether the evidence is strong, feeble, unimpeached, or contradicted, and even when the trial court thinks that the testimony is not worthy of belief. *Walters*, 247 S.W.3d at 209; *Shaw*, 243 S.W.3d at 658; *see Krajcovic v. State*, 393 S.W.3d 282, 286 (Tex. Crim. App. 2013) ("[A] judge must give a requested instruction on every defensive issue raised by the evidence without regard to its source or strength, even if the evidence is contradicted or is not credible.").

When reviewing a trial court's ruling denying a requested defensive instruction, we view the evidence in the light most favorable to the defendant's requested instruction. *Bufkin v. State*, 207 S.W.3d 779, 782 (Tex. Crim. App. 2006); *Ferrel v. State*, 55 S.W.3d 586, 591 (Tex.

Crim. App. 2001). The question of whether a defense is raised by the evidence is a sufficiency question, which we review as a question of law. *Shaw*, 243 S.W.3d at 658.

Statutory Defense

A person commits the offense of interference with public duties if the person "with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with . . . a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law." Tex. Penal Code § 38.15(a)(1). It is a defense to prosecution if the interruption, disruption, impediment, or interference consisted of speech only. *Id.* § 38.15(d). At trial, appellant requested a jury-charge instruction on the statutory "speech only" defense, which the trial court denied.[8] In his second point of error, appellant contends that the trial court erred in failing to include the statutory defense instruction in the jury charge.

Appellant's brief fails to include any analysis, argument, or citation to the record to support his contention that the trial court erred in failing to include the requested instruction on the statutory defense. Beyond proffering a few statements of law—the statutory defense as set forth in the Penal Code and an excerpt from one opinion from this Court—appellant makes no effort to analyze how the law applies to the circumstances in this case. He does not identify the comments or statements upon which he founds his "speech only" defense. Similarly missing is any discussion

[8] The record reflects that appellant made his request for the "speech only" defense at two points during the charge conference. First, appellant's counsel argued, "Also, the defense of speech only should — the defense be offered into the Charge by the testimony we presented." He did not, however, detail or discuss any of the presented testimony referenced. Later in the charge conference, counsel repeated the request, "The other one is that the — that speech only is a defense in this matter. We argue that should be put into the pattern jury charge also — or the Jury Charge."

about how the evidence raised at trial supports his request for the statutory defense. Nor does appellant specify any portion of the record that demonstrates his efforts to show the trial court why he was entitled to this defensive instruction.

Instead, appellant merely summarily asserts that the trial court erred in failing to submit the statutory defense in the court's charge to the jury. Such a conclusion is not enough to comply with the briefing requirements of Rule 38.1(i) of the Texas Rules of Appellate Procedure or to preserve the complaint for appellate review. An appellant has the obligation to provide a "clear and concise argument for the contentions made with appropriate citations to authorities and to the record." *See* Tex. R. App. P. 38.1(i). Encompassed within that duty is the task of explaining or discussing why his argument has substance. *Lummus v. State*, No. 07-15-00120-CR, 2015 WL 6153003, at *3 (Tex. App.—Amarillo Oct. 19, 2015, no pet.) (mem. op., not designated for publication).

Appellant's failure to adequately brief this issue—by failing to specifically argue and analyze his position or provide record citations—presents nothing for our review. *See* Tex. R. App. P. 38.1(i); *Lucio v. State*, 351 S.W.3d 878, 896–97 (Tex. Crim. App. 2011) (appellant's brief contained no argument or citation to any authority that might support argument, therefore court decided point of error was inadequately briefed and presented nothing for review "as this Court is under no obligation to make appellant's arguments for her"); *Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008) (affirming that appellate court has no obligation "to construct and compose" party's "issues, facts, and arguments 'with appropriate citations to authorities and to the record'"); *Jessop v. State*, 368 S.W.3d 653, 681, 685 (Tex. App.—Austin 2012, no pet.) (appellant failed to

proffer any argument or authority with respect to claims and therefore waived any error as to claims due to inadequate briefing). We overrule appellant's second point of error due to inadequate briefing.

Self-Defense Instruction

Section 9.31(a) of the Penal Code establishes the elements of self-defense and provides, in relevant part, that "a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force." Tex. Penal Code § 9.31(a). Subsection (b) of the statute then establishes certain exceptions to self-defense, including that the use of force against another is not justified "to resist an arrest or search that the actor knows is being made by a peace officer . . . even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c)." *Id.* § 9.31(b)(2). Subsection (c) provides that the use of force to resist an arrest or search "is justified: (1) if, before the actor offers any resistance, the peace officer . . . uses or attempts to use greater force than necessary to make the arrest or search; and (2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's . . . use or attempted use of greater force than necessary." *Id.* § 9.31(c).

In his third point of error, appellant asserts that the trial court erred by denying his requested jury-charge instruction on self-defense. Specifically, he argues that the trial court erred in not submitting an instruction "that 'self-defense' is a defense to resisting arrest." He asserts that the evidence that Officer Ermis arrested him for resisting arrest was sufficient to require the trial court submit the self-defense instruction in the jury charge. We disagree.

First, the right to use force against a police officer who is attempting to effect an arrest or search is limited. *Shadden v. State*, No. 07-10-00331-CR, 2012 WL 1820643, at *2 (Tex. App.—Amarillo May 18, 2012, no pet.) (mem. op., not designated for publication) (citing *Porteous v. State*, 259 S.W.3d 741, 747 (Tex. App.—Houston [1st Dist.] 2007, pet. dism'd)); *see* Tex. Penal Code § 9.31(c). Under section 9.31(c), "a defendant must show greater force than necessary on the part of the police officer before the justification of self-defense is applicable." *Steele v. State*, 490 S.W.3d 117, 131 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (quoting *Porteous*, 259 S.W.3d at 748). Thus, to be entitled to an instruction pursuant to section 9.31(c), "there must be some evidence in the record to raise the issue of whether the peace officer used or attempted to use greater force than necessary in attempting to arrest or search the defendant." *Id.* Appellant fails to identify any such evidence in his brief.[9]

Furthermore, in order for a trial court to submit a self-defense instruction to the jury, a defendant must produce sufficient evidence on each element of the defense to raise the issue. *See Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003) ("[A] defendant bears the burden of production [in a self-defense claim], which requires the production of some evidence that supports

[9] At trial, to support his claim that Officer Ermis used excessive force against him, appellant relied on Officer Ermis's responses during cross examination indicating that he could have asked appellant to relinquish his weapon but instead chose to physically disarm him. This testimony, however, does not demonstrate that the officer used "excessive force" or "greater force than necessary" to disarm appellant, only that appellant disagreed with the method used to disarm him because the officer did not use appellant's preferred method—a verbal request that he considered "less intrusive" or "less invasive" than physically taking the weapon. Appellant provided no authority to the trial court establishing a requirement that a police officer must first ask an armed suspect to give up his weapon before physically disarming him. Indeed, announcing an intent to disarm a suspect could, in some instances, pose a safety risk to the officer.

the particular defense."); *see also* Tex. Penal Code § 2.03(c) ("The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense."); *Juarez v. State*, 308 S.W.3d 398, 404 (Tex. Crim. App. 2010) ("The defendant bears the burden of showing that each element of the defense has been satisfied."). In this case, even assuming Officer Ermis used excessive or greater than necessary force in physically disarming appellant—which we do not conclude on this record—there is no evidence that appellant reasonably believed his use of force against the officer was immediately necessary to protect *himself*—that is, no evidence showed that appellant believed it necessary to grab the weapon to defend *himself*.

Instead, the evidence demonstrated that appellant acted as he did—impeding the officer's efforts to disarm him by grabbing the weapon (the alleged conduct of the charged offense)—to protect his gun. The video recording of the encounter depicts appellant grabbing the weapon after Officer Ermis reached to release the clasp on the shoulder strap while simultaneously saying,"Whoa, whoa, whoa. Hey, no, don't disarm me, man." Even if the officer's conduct of physically disarming him constituted greater force than necessary, as appellant claims, the record demonstrates that appellant's conduct in interfering with the officer's authority to disarm him was to prevent the officer from taking his gun. As the trial court aptly noted when denying the self-defense instruction, "[Appellant] wasn't defending himself. He was defending his right to have his gun." The evidence, viewed in the light most favorable to the requested instruction, reflects that appellant acted in defense of his weapon, not in defense of himself.

Because the record does not reflect evidence supporting each of the elements of self-defense, we conclude that appellant was not entitled to a self-defense instruction. *See Ferrel*,

55 S.W.3d at 591 ("A defendant is entitled to an instruction on self-defense if the issue is raised by the evidence," but "if the evidence, viewed in the light most favorable to the defendant, does not establish self-defense, the defendant is not entitled to an instruction on the issue."). Thus, the trial court did not abuse its discretion in denying the requested instruction. We overrule appellant's third point of error.

CONCLUSION

Having overruled appellant's three points of error, we affirm the trial court's judgment of conviction.

Melissa Goodwin, Justice

Before Chief Justice Rose, Justices Goodwin and Bourland

Affirmed

Filed: March 23, 2017

Do Not Publish