TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00654-CR

Felix Serrano, Jr., Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 427TH JUDICIAL DISTRICT
NO. D-1-DC-13-900310, THE HONORABLE JIM CORONADO, JUDGE PRESIDING

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

A jury found appellant Felix Serrano, Jr. guilty of two counts of indecency with a child by sexual contact and one count of indecency with a child by exposure for engaging in multiple acts of sexual misconduct with his wife's niece when she was a young child. *See* Tex. Penal Code § 21.11(a), (b). The jury assessed appellant's punishment at confinement for ten years in the Texas Department of Criminal Justice for each of the sexual contact counts and five years for the exposure count, *see id.* §§ 12.33, 12.34, and the trial court ordered the sentences to be served concurrently, *see id.* § 3.03(b)(2)(A). On appeal, appellant complains about ineffective assistance of counsel and challenges the sufficiency of the evidence supporting one of his convictions. We affirm the trial court's judgments of conviction.

BACKGROUND[1]

Fifteen-year-old K.A. testified that "when [she] was young, [she] had been sexually abused" by her uncle.[2] She explained that when she was five or six years old, she and her siblings would stay with her aunt and her husband, appellant, when her parents went to work. She described an occasion when she and her younger sister were watching a movie in the master bedroom. They were on an air mattress on the floor, appellant was on the bed, and her aunt was in the bathroom. She testified that appellant told her to lay down with him on the bed and get under the covers, and she complied. According to K.A., appellant "grabbed [her] breasts" and then "grabbed [her] wrist" and moved it to the lower half of his body. She recalled that appellant was only wearing shorts or was "just in his boxers." She recounted that appellant then "took out his penis," "grabbed her wrist," and made her touch his penis, which she said felt "stiff." K.A. said that appellant forced her to touch him "skin to skin" and moved her hand up and down his penis. The covers were still over them so she did not see his penis. After a few minutes, appellant "just stopped" and let go of her hand. K.A. said that nothing came out of appellant's penis, but that after he let her hand go she went to the other bathroom and washed her hands. She then rejoined her sister on the air mattress and went back to watching the movie.

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[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.

[2] K.A. first disclosed the sexual abuse to a school counselor, telling him that she had been "sexually assaulted when she was younger." The counselor contacted the school resource officer, who advised him to contact the police. After K.A. met with police at the school, her father came to the school, and she told him that appellant had "abused" her.

While K.A. initially indicated in her testimony that this happened only once, she subsequently testified about "this other time" that she remembered. She said that the same thing happened on that occasion: "just [her] touching him again." She recounted that she and appellant were again lying down together on the bed in the master bedroom, under the covers, and appellant "just kind of got [his penis] out again, grabbed [her] wrist, and then started getting [her] to do it again."

K.A. also described an incident where appellant touched her privates. She testified that she and her sister were again on the air mattress in the master bedroom watching another movie. She said that appellant knelt down next to her, reached under the covers, and "started touching [her.]" She explained that he touched her "on the vagina" under her shorts and underwear. She stated that appellant rubbed the outside of her vagina but did not touch inside. She said that he used two fingers of his left hand and "pressed his fingers against it, moving circular." K.A. indicated that this rubbing lasted three or four minutes and said it "felt weird."

DISCUSSION

In two points of error on appeal, appellant claims that he suffered ineffective assistance of counsel at trial and challenges the sufficiency of the evidence supporting his conviction for indecency with a child by exposure.

Ineffective Assistance Claim

In his first point of error, appellant contends that his counsel rendered ineffective assistance at trial. He complains of multiple inactions on the part of trial counsel, including failing

to question "biased jurors" during voir dire, failing to object to the State's opening statement, failing to give an opening statement, failing to object to allegedly inadmissible hearsay evidence, and failing to object to certain testimony from the police detective who interviewed appellant.

To establish ineffective assistance of counsel, an appellant must demonstrate by a preponderance of the evidence both deficient performance by counsel and prejudice suffered by the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Nava v. State*, 415 S.W.3d 289, 307 (Tex. Crim. App. 2013). The appellant must first demonstrate that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *Strickland*, 466 U.S. at 687–88; *Nava*, 415 S.W.3d at 307. The appellant must then show the existence of a reasonable probability—one sufficient to undermine confidence in the outcome—that the result of the proceeding would have been different absent counsel's deficient performance. *Strickland*, 466 U.S. at 694; *Nava*, 415 S.W.3d at 308. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see Perez v. State*, 310 S.W.3d 890, 893 (Tex. Crim. App. 2010).

Appellate review of counsel's representation is highly deferential; we must "indulge in a strong presumption that counsel's conduct was *not* deficient." *Nava*, 415 S.W.3d at 307–08; *see Strickland*, 466 U.S. at 686. To rebut that presumption, a claim of ineffective assistance must be "firmly founded in the record," and "the record must affirmatively demonstrate" the meritorious nature of the claim. *See Menefield v. State*, 363 S.W.3d 591, 592 (Tex. Crim. App. 2012); *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005). Rarely will the trial record by itself be sufficient to demonstrate an ineffective-assistance claim. *Nava*, 415 S.W.3d at 308. If trial

counsel has not been afforded the opportunity to explain the reasons for his conduct, we will not find him to be deficient unless the challenged conduct was "so outrageous that no competent attorney would have engaged in it." *Id.* (quoting *Menefield*, 363 S.W.3d at 593); *Goodspeed*, 187 S.W.3d at 392.

No motion for new trial was filed in this case. Thus, the record is silent as to why trial counsel acted (or failed to act) in the manner that appellant now complains about on appeal. Consequently, the record before this Court is not sufficiently developed to allow us to evaluate trial counsel's supposedly deficient performance. The record is silent as to whether there was a strategic reason for counsel's conduct or what the particular strategy was. Appellant's assertion that "trial counsel's errors and omissions are obvious from the record and there is no conceivable 'reasonable trial strategy'" to account for or explain counsel's conduct is mere speculation. Such speculation does not constitute a demonstration, founded in the record, that no reasonable trial strategy existed.

Further, absent record evidence regarding counsel's strategy or reasoning, we will presume he exercised reasonable professional judgment. *Rago v. State*, No. 03-13-00798-CR, 2015 WL 9591347, at *3 (Tex. App.—Austin Dec. 31, 2015, no pet.) (mem. op., not designated for publication); *see Frangias v. State*, 450 S.W.3d 125, 136 (Tex. Crim. App. 2013) ("[U]nless there is a record sufficient to demonstrate that counsel's conduct was not the product of an informed strategic or tactical decision, a reviewing court should presume that trial counsel's performance was constitutionally adequate 'unless the challenged conduct was so outrageous that no competent attorney would have engaged in it.'") (quoting *Goodspeed*, 187 S.W.3d at 392); *Hill v. State*, 303 S.W.3d 863, 879 (Tex. App.—Fort Worth 2009, pet. ref'd) ("In the absence of direct evidence

in the record of counsel's reasons for the challenged conduct, an appellate court will assume a strategic motivation if any can be imagined.") (citing *Garcia v. State*, 57 S.W.3d 436, 441 (Tex. Crim. App. 2001)). Appellant has failed to rebut the strong presumption of reasonable assistance. Without explanation for trial counsel's decisions, the complained-of conduct does not compel a conclusion that counsel's performance was deficient. We cannot say that "no reasonable trial strategy could justify" counsel's decisions to engage in the complained-of conduct. *See Lopez v. State*, 343 S.W.3d 137, 143 (Tex. Crim. App. 2011). Nor can we conclude that counsel's conduct was "so outrageous that no competent attorney would have engaged in it." *See Menefield*, 363 S.W.3d at 592; *see also Ex parte Jimenez*, 364 S.W.3d 866, 883 (Tex. Crim. App. 2012) ("The mere fact that another attorney might have pursued a different tactic at trial does not suffice to prove a claim of ineffective assistance of counsel.").

For example, appellant condemns his trial counsel for not individually questioning allegedly "biased jurors." The record, however, does not demonstrate bias. Rather, the record reflects that a number of jurors were concerned about experiencing emotional discomfort with a case involving an allegation of the sexual abuse of a child. During the prosecutor's voir dire, one juror on the panel indicated her difficulty with sitting on this type of case. The prosecutor followed up by asking how many on the panel "agreed with [that juror] that this makes you upset." The record reflects that 37 of the 75 jurors, nearly half of the venire panel, raised their hands, including ten of the 12 jurors who were ultimately seated on the jury. Appellant faults his trial counsel for not individually questioning each of the panel members who expressed this sentiment. However, as the prosecutor noted, it is normal to be uncomfortable or disturbed by this type of case. After all,

allegations of child sexual abuse are disturbing to us as a society and have been criminalized. *See, e.g.*, *Ex parte Amador*, 326 S.W.3d 202, 208 (Tex. Crim. App. 2010) (discussing gravamen of indecency with child and observing that "there would be no crime if the defendant's act were not considered to be offensive or alarming by someone").

A review of the record demonstrates that the prosecutor conducted a thorough exploration of the panel members' feelings of discomfort during the State's voir dire. In fact, during subsequent questioning, the initial juror expressed further concerns about her ability to sit as a juror based on her personal experiences with the victimization of her children, and the parties agreed to excuse her. Similarly, during later questioning, another juror, who indicated that she was a former sexual assault victim, expressed an inability to sit as a juror in this case and also was excused by agreement of the parties. Moreover, at one point, the prosecutor asked the entire panel who had been impacted, directly or indirectly, by a "sexual abuse against a child type of offense" and then went row by row to obtain the answers to his follow up question of whether those who had been so impacted or those who were upset by this type of case could be fair. Several jurors expressed an inability to sit as fair and impartial jurors and were subsequently excused. Based on the thorough questioning conducted by the prosecutor during the State's voir dire and the responses of the panel members, appellant's trial counsel could very well have determined that he had obtained sufficient information from the jurors who expressed discomfort with sitting as a juror on this type of case to make challenges for cause and exercise peremptory strikes. Thus, counsel may have considered further individual questioning of each of these jurors on this topic unnecessary and a waste of time.

Appellant also asserts that his trial counsel was ineffective for failing to object to the following portion of the prosecutor's opening statement:

> And here we are now today. Right? This didn't happen yesterday. It didn't happen last month. The evidence is not going to show there was an eyewitness in the room. Right? There was no DNA evidence. There is none of that. The evidence is going to be from now a 15-year-old child who has nothing to gain to come here today and tell you about what happened to her as a child. There is no motive to lie. There is nothing to gain, but she is here because it's the right thing to do and it happened to her.

Appellant complains that these comments were improper opening statement because the prosecutor was "vouching [for] the key and actually only witness with personal knowledge."

The State's opening statement in a criminal case serves to outline the facts that the prosecution, in good faith, expects to prove. *Fisher v. State*, 220 S.W.3d 599, 603 (Tex. App.—Texarkana 2007, no pet.); *Ketchum v. State*, 199 S.W.3d 581, 597 (Tex. App.—Corpus Christi 2006, pet. ref'd); *see Parra v. State*, 935 S.W.2d 862, 871 (Tex. App.—Texarkana 1996, pet. ref'd) ("The purpose of an opening statement is to advise the jury of facts relied on and of issues involved, and to give the jury a general picture of the facts and the situations so that the jury will be able to understand the evidence.") (citing *Black's Law Dictionary* 1091 (6th ed. 1990)); *see also* Tex. Code Crim. Proc. art. 36.01(a)(3) ("The State's attorney shall state to the jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof."). Taken in context, the complained-of comments could be understood to convey to the jury what the prosecutor anticipated the evidence would show, or fail to show. Appellant cites no authority for the proposition that every reference to what the State anticipates the evidence will be must be

prefaced with the specific words "the evidence will show" or something similar. Here, appellant's trial counsel could have understood the prosecutor to be informing the jury that the State anticipated that the evidence would show that K.A. had no motive to lie. Thus, trial counsel could have concluded that the prosecutor's comments during opening statement properly stated facts that the prosecution in good faith expected to prove and were not objectionable.

Appellant also contends his trial counsel was ineffective because he failed to make an opening statement that outlined the defense theory. Whether to deliver an opening statement is entirely optional. *Darkins v. State*, 430 S.W.3d 559, 570 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd); *see Calderon v. State*, 950 S.W.2d 121, 127 (Tex. App.—El Paso 1997, no pet.) ("The option for defense counsel to deliver an opening statement immediately after the State makes its opening statement is entirely discretionary.") (citing Tex. Code Crim. Proc. art. 36.01(b)). "'Few matters during a criminal trial could be more imbued with strategic implications than the exercise of this option.'" *Darkins*, 430 S.W.3d at 570 (quoting *Calderon*, 950 S.W.2d at 127); *see Etienne v. State*, No. 08-12-00266-CR, 2014 WL 4450096, at *3–4 (Tex. App.—El Paso Sept. 10, 2014, no pet.) (not designated for publication) (noting that such decision is "inherently strategic in nature, and there are several logical reasons to refrain from delivering opening argument or give a brief opening statement"); *Taylor v. State*, 947 S.W.2d 698, 704 (Tex. App.—Fort Worth 1997, pet. ref'd) (observing that choosing to not make opening statement is one of several trial decisions that "are all inherently tactical decisions that need to be made based on the way a trial is unfolding, the trial strategy employed, the experience and judgment of the defense attorney, and other factors"); *see, e.g.*, *Standerford v. State*, 928 S.W.2d 688, 697 (Tex. App.—Fort Worth 1996, no pet.) (concluding

that because presenting opening statement provides State with preview of defense strategy, decision not to present opening statement is valid tactical decision). Here, trial counsel may have deemed an opening statement unnecessary or even strategically undesirable.

Appellant next asserts that his trial counsel was ineffective for failing to object to what he characterizes as inadmissible hearsay evidence. Appellant complains generally about "the hearsay details provided" in the testimony of the investigating detective, but he cites to no particular portion of the detective's testimony. We are not obligated to comb through the detective's testimony in an attempt to discern which portions of the testimony appellant maintains constituted inadmissible hearsay evidence that his trial counsel should have objected to. *See Alvarado v. State*, 912 S.W.2d 199, 210 (Tex. Crim. App. 1995) (noting that it is not appellate court's task to pore through record in attempt to verify appellant's claims). However, viewing the detective's testimony generally, we cannot conclude that her testimony about K.A.'s outcry was objectionable.

As appellant concedes, the detective was designated as one of three outcry witnesses through whom the State intended to offer K.A.'s outcry statements.[3] Article 38.072 of the Code of Criminal Procedure, the outcry statute, governs the admissibility of outcry witness testimony.[4] *See* Tex. Code Crim. Proc. art. 38.072. The outcry witness is the first adult, other than the defendant,

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[3] The State's pretrial notice regarding outcry testimony listed the school counselor, K.A.'s father, and the detective.

[4] Article 38.072 of the Texas Code of Criminal Procedure allows for the admission of certain hearsay evidence in specified crimes against a child younger than 14 years old. *See* Tex. Code Crim. Proc. art. 38.072. The statute creates a hearsay exception to make admissible the testimony of the first adult in whom a child confides regarding sexual or physical abuse. *Martinez v. State*, 178 S.W.3d 806, 810–11 (Tex. Crim. App. 2005). The child's statement to the adult is commonly known as the "outcry," and the adult who testifies about the outcry is commonly known as the "outcry witness." *Sanchez v. State*, 354 S.W.3d 476, 484 (Tex. Crim. App. 2011).

to whom the child victim made the outcry. *See id.* § 2(a)(3); *Lopez*, 343 S.W.3d at 140. The Court of Criminal Appeals has explained that, under article 38.072, the proper outcry witness is the first adult person to whom the child describes the offense in some discernible manner beyond general insinuations that sexual abuse occurred. *Lopez*, 343 S.W.3d at 140; *Garcia v. State*, 792 S.W.2d 88, 91 (Tex. Crim. App. 1990). In other words, the proper outcry witness is the first adult, other than the accused, to whom the child victim told the "how, when, and where" of the offense. *Reyes v. State*, 274 S.W.3d 724, 727 (Tex. App.—San Antonio 2008, pet. ref'd) (citing *Hanson v. State*, 180 S.W.3d 726, 730 (Tex. App.—Waco 2005, no pet.)); *see Garcia*, 792 S.W.2d at 91 ("The statute demands more than a general allusion."). Here, the record reflects that K.A. did not disclose specific details of the sexual abuse to either the school counselor or her father. Instead, she merely asserted general allegations of abuse to them.[5] Thus, based on the record before us, the detective was the proper outcry witness. Outcry testimony admitted pursuant to article 38.072 is considered substantive evidence, admissible for the truth of the matter asserted in the testimony. *Martinez v. State*, 178 S.W.3d 806, 810–11 (Tex. Crim. App. 2005); *Rodriguez v. State*, 819 S.W.2d 871, 873 (Tex. Crim. App. 1991); *Duran v. State*, 163 S.W.3d 253, 257 (Tex. App.—Fort Worth 2005, no pet.). Consequently, trial counsel could have concluded that the detective's outcry testimony, including "the hearsay details provided," was not objectionable hearsay evidence.

[5] The school counselor testified that "[K.A.] said she had been sexually assaulted when she was younger" but said that she provided "no specifics" about what happened. Similarly, K.A.'s father testified that his daughter told him that "she had been abused since she was five years old" by her uncle.

Finally, appellant criticizes his trial counsel for failing to object to testimony from the investigating detective regarding her belief that, based on the demeanor she observed, appellant was not being truthful during the police interview. Ordinarily, witnesses are not permitted to testify as to their opinion about the guilt or innocence of a defendant, *see Boyde v. State*, 513 S.W.2d 588, 590 (Tex. Crim. App. 1974); *Sandoval v. State*, 409 S.W.3d 259, 292 (Tex. App.—Austin 2013, no pet.), or the credibility of a complainant or the truthfulness of a complainant's allegations, *see Schutz v. State*, 957 S.W.2d 52, 59 (Tex. Crim. App. 1997); *Yount v. State*, 872 S.W.2d 706, 711 (Tex. Crim. App. 1993); *Sandoval*, 409 S.W.3d at 292. However, counsel's failure to object to this testimony could simply have been counsel's desire to avoid drawing attention to the detective's nonresponsive answer.[6] *See Ex parte Bryant*, 448 S.W.3d 29, 41 (Tex. Crim. App. 2014) (observing that trial strategy of not objecting to avoid drawing attention to evidence "may be particularly useful when, for example, only a passing, but possibly objectionable, reference is made and the defense attorney believes that the reference would largely go unnoticed"). Or, perhaps counsel did not object

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[6] During the prosecutor's questioning, the detective testified about her observations of appellant's demeanor during her interview of him. She described appellant's lack of response to being accused of sexual misconduct with a child—"And he was just very no affect. Just very calm."—and his "weak denials" when she confronted him with the conduct K.A. had described. The complained-of testimony then occurred during the following exchange:

> Q. So this one that just sticks out in your mind as far as his demeanor or lack thereof, is what you're saying?
>
> A. Yes. His body language, you know, was just in my experience of interviewing people, his body language just - - I did not believe he was being truthful with me.

Thus, after answering the prosecutor's question, the detective added the complained-of nonresponsive statement to her answer.

because he did not find this testimony, in these circumstances, to be particularly powerful. Given the fact that the detective secured a warrant for appellant's arrest, arrested appellant, forwarded this case to the district attorney's office for prosecution, and appeared at trial to testify on behalf of the State, one could logically assume that the detective did not believe that appellant was truthful during the police interview when he denied engaging in sexual misconduct with K.A.

In sum, appellant's trial counsel was not afforded an opportunity to explain the reasons for the complained-of conduct or to respond to the claim of ineffectiveness. *See Menefield*, 363 S.W.3d at 593. The record is silent as to why appellant's trial counsel did not individually question each juror who expressed emotional discomfort with this type of case, did not object to the prosecutor's opening statement, did not make an opening statement, did not object to the testimony of the outcry witness, and did not object to the detective's nonresponsive statement. Because the record is silent, we cannot discern the reasons underlying counsel's decisions to engage in the complained-of conduct. We decline to condemn trial counsel's conduct based on the assumption that his decisions were not based on reasonable trial strategy. Further, we cannot conclude that counsel's conduct was "so outrageous that no competent attorney would have engaged in it." *See Darkins*, 430 S.W.3d at 570 (quoting *Goodspeed*, 187 S.W.3d at 392).

Accordingly, based on the record before us, we find that appellant has failed to demonstrate deficient performance on the part of his trial counsel. Because appellant failed to meet his burden on the first prong of *Strickland*, we need not consider the requirements of the second prong—prejudice. *Lopez*, 343 S.W.3d at 144; *see also Williams v. State*, 301 S.W.3d 675, 687 (Tex.

Crim. App. 2009) ("An appellant's failure to satisfy one prong of the *Strickland* test negates a court's need to consider the other prong."). We overrule appellant's first point of error.

Sufficiency Claim

In his second point of error, appellant argues that the evidence is insufficient to support his conviction for indecency with a child by exposure. The entirety of appellant's point of error, including his argument, is reproduced below:

> **B. ISSUE TWO RESTATED:** The evidence is legally insufficient to sustain the conviction in count III, Indecency by Exposure.[7]
>
> Not surprisingly Trial Counsel did not request a directed verdict on Count III. The standard for legal sufficiency of the evidence is set out in *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A careful reading of the record fails to discover any evidence, direct or circumstantial by which a reasonable trier of fact could conclude that the Appellant had exposed himself to KA.
>
> The evidence to sustain Count III is insufficient.

Appellant has inadequately briefed his sufficiency challenge.

To be adequately briefed, a point of error must cite relevant legal authority and provide legal argument based upon that authority. *See* Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record."). Appellant's brief fails to include the applicable law, any analysis, any argument, or any citation to the record to support his contention that the evidence is insufficient

[7] This restatement repeats the language appellant used to state this point of error in both the Table of Contents and the Issues Presented section. In his Summary of the Argument, a two-sentence paragraph, appellant stated, "And the [sic] there was no evidence direct or indirect from which the jury could find the Appellant guilty of indecency by exposure."

to support his conviction. Beyond proffering the name of the seminal case setting forth the sufficiency standard of review, appellant makes no effort to analyze how the law applies to the circumstances in this case. For example, he does not identify which of the offense elements is lacking evidentiary support. Similarly missing is any discussion about how the evidence adduced at trial fails to satisfy the State's burden of proof.

Instead, appellant summarily asserts that the evidence is insufficient. Such a conclusory statement does not suffice 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. *See* Tex. R. App. P. 38.1(i) ; *see, e.g.*, *Rhoades v. State*, 934 S.W.2d 113, 119 (Tex. Crim. App. 1996) (point of error was inadequately briefed where appellant "simply declare[d] that his right to counsel was violated, and present[ed] no argument or authority for this contention"). To avoid forfeiting a legal argument for inadequate briefing, an appellant's brief must contain "a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." Tex. R. App. P. 38.1(i); *see* George E. Dix & John M. Schmolesky, 43B *Texas Practice: Criminal Practice and Procedure* § 55:104 (3d ed. 2016) ("A point of error may be disregarded or overruled or dismissed as inadequately briefed if it is supported by neither citation to authority nor argument in the brief."); *see also Lucio v. State*, 351 S.W.3d 878, 896–97 (Tex. Crim. App. 2011); *Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008); *Cardenas v. State*, 30 S.W.3d 384, 393 (Tex. Crim. App. 2000). Encompassed within a party's duty of providing a "clear and concise argument for the contentions made" is the task of explaining or discussing why his argument has substance. *Grisham v. State*, No. 03-14-00137-CR, 2017 WL 1130371, at *7 (Tex. App.—Austin Mar. 23, 2017, no pet.)

(mem. op., not designated for publication) (citing *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)). The Court of Criminal Appeals has emphasized that an appellate court has no obligation to construct and compose issues, facts, and arguments for an appellant. *Wolfe v. State*, 509 S.W.3d 325, 343 (Tex. Crim. App. 2017); *see Lucio*, 351 S.W.3d at 896–97 (holding that appellant's point of error, which contained no argument or citation to any authority that might support argument, was inadequately briefed and presented nothing for review "as this Court is under no obligation to make appellant's arguments for her"); *Busby*, 253 S.W.3d at 673 (affirming that appellate court has "no obligation to construct and compose appellant's issues, facts, and arguments 'with appropriate citations to authorities and to the record'") (quoting Tex. R. App. P. 38.1).

Appellant's failure to adequately brief this issue—by failing to set forth the applicable law, analyze the evidence (or lack thereof), explain his contention, or provide record citations—presents nothing for our review. *See Stevenson v. State*, 499 S.W.3d 842, 852 (Tex. Crim. App. 2016) ("'When a party raises a point of error without citation of authorities or argument, nothing is presented for appellate review.'") (quoting *State v. Gonzalez*, 855 S.W.2d 692, 697 (Tex. Crim. App. 1993)); *Linney v. State*, 413 S.W.3d 766, 767 (Tex. Crim. App. 2013) (Cochran, J., concurring in refusal to grant petition for discretionary review) ("Failure to provide substantive legal analysis—'to apply the law to the facts'—waives the point of error on appeal. If the appealing party fails to meet its burden of adequately discussing its points of error, this Court will not do so on its behalf.") (internal citations omitted); *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. *See Cardenas*, 30 S.W.3d at 393 (overruling points of error that appellant inadequately briefed "by neglecting to present argument and authorities" in support of them); *Grisham*, 2017 WL 1130371, at *7 (overruling point of error due to inadequate briefing).

CONCLUSION

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

Melissa Goodwin, Justice

Before Chief Justice Rose, Justices Goodwin and Bourland

Affirmed

Filed: September 21, 2017

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