No. _____

In the
Supreme Court of the United States
OCTOBER TERM, 2020

MICHAEL RAY ORR,
Petitioner,

v.

THE STATE OF TEXAS
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

DID THE TRIAL COURT ERR BY DENYING MR. ORR'S OBJECTION TO IMPROPER CLOSING ARGUMENT BY THE PROSECUTOR?

THIS IMPROPER ARGUMENT CONSISTED OF:

1) BY DELIBERATELY PROVOKING A REACTION FROM MR. ORR IN FRONT OF THE JURY WHICH IS TANTAMOUNT TO FORCING MR. ORR TO TESTIFY, THE STATE VIOLATED MR. ORR'S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION; AND

2) COMMENTING ON MATTERS ON OUTSIDE THE RECORD INCLUDING MR. ORR'S DEMEANOR.

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The decision of the Twelfth Court of Appeals for Texas is reported as *Orr v. State*, No.19-41051 (5th Cir. November 9, 2020)(not published). It is attached to this Petition in the Appendix. The decision of the Texas Court of Criminal Appeals to deny Mr. Orr's Petition for Discretionary Review, dated February 10, 2021, is also attached to this Petition in the Appendix.

JURISDICTION

The decision by the Court of Criminal Appeals of Texas affirmed the Twelfth Court of Appeals of Texas's judgment of conviction and sentence in the 241st District Court of Smith County, Texas.

Consequently, Mr. Orr files the instant Application for a Writ of Certiorari under the authority of 28 U.S.C., § 1257(a).

BASIS OF FEDERAL JURISDICTION

IN THE COURT OF FIRST INSTANCE

Jurisdiction was proper in Smith County, Texas because Mr. Orr was indicted for violations of state law by a Grand Jury for Smith County, Texas.

CONSTITUTIONAL PROVISIONS

U.S. CONST. Amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. XIV

> This case also involves the Due Process Clause of the Fourteenth Amendment to the Constitution, which states that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law[.]"

STATEMENT OF THE CASE

1. Procedural History.

By an indictment filed May 15, 2018, Appellant was charged with one count of continuous sexual abuse of a child under 14 in Cause No. 241-1663-18.[1 C.R. 6-7][1].

On November 4, 2019 , a jury was selected [5 R.R. 30-177], seated,[5 R.R. 177] and sworn.[5 R.R. 178]. The trial commenced the next day. The indictment was read to Appellant in the presence of the jury and he entered a plea of "not guilty."[6 R.R. 11]. After two days of testimony, the trial court gave the case to the jury. On November 6, 2019, the jury convicted Appellant of the offense of continuous sexual abuse of a child under 14.[7 R.R. 198-199].

The punishment phase of trial commenced on November 7, 2019. The jury assessed Appellant's punishment at life imprisonment.[8 R.R. 29]. No fine was imposed.

On November 7, 2019, the trial court entered judgment in accordance with the jury's verdict of guilty and sentenced Appellant to a life sentence.[1 C.R. 92-95].

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[1]Hereinafter, the abbreviation C. R. will be used as citation for the Clerk's Record and the abbreviation R.R. will be used as citation for the Reporter's Record.

Mr. Orr timely perfected appeal by filing a written Notice of Appeal on November 18, 2019.[1 C.R. 109].

The trial Court subsequently sentenced Mr. Orr to a term of life imprisonment. The notice of appeal was then timely filed. On October 30, 2021, the Twelfth Court of Appeals for the State of Texas affirmed Mr. Orr's conviction and sentence in an unpublished, per curiam decision. *See Orr v. State*, No.12-19-00398-CR(Tex.App.-Tyler, 2020)(not published). The Texas Court of Appeals denied Mr. Orr's Petition for Discretionary Review on February 10, 2021.

2. Statement of Facts

This criminal case involves the alleged continuous sexual abuse of a child under the age of 14. The state alleged that Mr. Orr sexually assaulted A.R. The record reflects that the individuals involved in the trial knew each other. Mr. Orr was married to Loca Orr. [6 R.R. 92] A.R.'s mother is Tome Johnson. [6 R.R. 23]. Tome Johnson and Loca Orr are sisters. [6 R.R. 66]. Tome is an admitted methamphetamine user who uses her disability payments to purchase drugs and who lost custody of her children. [6 R.R. 66, 68].

Tome, A.R., and A.R.'s brother Jose moved in with Mr. and Mrs. Orr. Before they moved in with the Orrs, they had been fairly transient, last living with Dana Butler and Christy Whaling. [6 R.R. 36]. Tome and her children were "kicked out"

because Tome fought with Butler and Whaling. Tome, A.R. and Jose moved in with the Orrs on February 6, 2014. [6 R.R. 36-37].

Due to Tome's behavior, this arrangement did not work out well. Tome did not work and slept all day [6 R.R. 68-69]. She did not wake up to help her own children get ready for school. [6 R.R. 73]. Tome refused to assist in household chores but did smoke methamphetamine [6 R.R. 73, 76].

Tome testified that she and Mr. Orr got into a physical fight on April 30, 2014 [6 R.R. 78]. Mrs. Orr supplied further details on this altercation. She testified that she and Tome were fighting, and that Mr. Orr became involved. Tome claims Mr. Orr "pistol whipped" her in the head, and that she called her in-laws to come get her and the kids. [6 R.R. 82]. Tome did not press charges against Mr. Orr. [6 R.R. 91].

CPS eventually removed the children and Tome lost custody of them. She began using methamphetamine in earnest, "smoking it, snorting it, shooting it" which she paid for using her SSI check. [6 R.R. 81]. Tome elaborated her situation on cross-examination:

Q Let me ask you this: You said you were receiving SSI. Why are you receiving SSI? That means some kind of disability. Why are you -- what are you -- SSI, what disability do you have?
A I have multiple disabilities.
Q Like what?
A I have scoliosis, I have knee problems, I have mental problems.
Q Okay. What are your mental problems?
A I'm bipolar. I have seizures. I'm ADHD, ADD.

Q And the check you get from the government, the SSI check you get from the government, you were using it to buy drugs, meth?
A Yes, sir. [6 R.R. 105-106].

Tome testified that A.R. never told her that Mr. Orr abused her or made any outcry to her. [6 R.R. 81]. Tome testified that A.R. never reported any abuse to her teachers or school personnel at Chapel Hill I.S.D. [6 R.R. 81]. A.R. had a doctor's visit on April 17, 2014. [6 R.R. 81]. Tome testified that A.R., as far as she knew, did not tell the doctor or his staff that anyone was abusing her at that visit. [6 R.R. 81].

Loca Orr, Mr. Orr's wife and a witness for the State, testified that she did not witness anything out of the ordinary with Mr. Orr and A.R. [6 R.R. 144]. A.R. never appeared afraid of Mr. Orr. [6 R.R. 144]. Mrs. Orr testified that A.R. appeared to be happy, normal and "go lucky" [6 R.R. 144]. Her testimony was as follows:

Q Now let me ask you this: [A.R.] was in your house from February 8th, 2014 to April 30th, 2014, okay, did she act like a normal kid?

A She did.

Q Did she -- was she happy and go-lucky?

A She was go-lucky, yes.

Q Was she afraid to be around Michael?

A Not that I could see, no.

Q When Michael came around her, did she try to get away from him?

A No.

Q Did she act like she hated Michael?

A No.

Q Did she do anything or indicate to you in any way that she did not want to be around Michael?

A No. [6 R.R. 144-145].

The allegations against Mr. Orr began after law enforcement began investigating claims made by A.R. that she had been sexually assaulted by another person. The alleged abuser was a cousin named Bobby Orvale. [6 R.R. 36]. The report of abuse by Bobby Orvale was made on May 1, 2014.[7 R.R. 131]. A.R. was interviewed regarding the alleged abuse by Orvale on May 6, 2014. [7 R.R. 132][2].

Detective Stockwell testified that A.R.'s claims against Orvale were determined to be false. [6 R.R. 29].

A.R. allegedly also stated that a man named "Fabian" sexually assaulted her [6 R.R. 58]. Law enforcement also determined these claims were false. [6 R.R. 58].

[2]The alleged abuse by Orvale occurred before Tome and her children moved in with the Orrs. [6 R.R. 67].

A.R. went to the Child Advocacy Center (CAC) regarding the altercation between her mother and Mr. Orr. [7 R.R. 83]. The purpose of the interview was to discover more information about the fight between Mr. Orr and Tome. The CAC interviewer did not recall that A.R. was involved in a sexual abuse claim against Bobby Orvale the day before this interview. [7 R.R. 109-110]. During the interview with the CAC, A.R. stated she had been sexually abused by Mr. Orr. [7 R.R. 83] Her testimony at trial, however, varied a great deal from the interview with CAC.

Nurse Misty Permeter examined A.R. on May 7, 2014. [7 R.R. 36]. Ms. Permeter testified that, based on her examination, A.R. did not have any trauma to her vaginal area and there was no bleeding. [7 R.R. 32]. Ms. Permeter testified that A.R. did not have an "estrogenized hymen" [7 R.R. 37]. Since A.R. did not have an "estrogenized hymen, trauma should have been more prevalent if abuse had occurred [7 R.R. 37]. The nurse found no evidence of physical trauma. [7 R.R. 38]. No tests for sexually transmitted diseases were performed on A.R. [7 R.R. 39].

A.R. testified during the trial. Notably, she could not identify Mr. Orr in the courtroom during questioning by both the State and defense counsel. She testified:

Q Do you see your uncle in the courtroom today?
A No.
Q You don't see him in the courtroom today? Do you see the man you know as Michael in the courtroom?
A No. [6 R.R. 225]

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Q Now, before -- let me ask you this: The prosecuting attorney, Mr. B.J. there, said, Hey, look do you see Michael Orr in the courtroom? You said you didn't see Michael Orr in the courtroom?
A No.
Q You don't -- do you know who Michael Orr is?
A Yes.
Q That's supposed to be -- that was your uncle married to your aunt?
A Yes.
Q And you don't see him in the courtroom?
A No.[6 R.R. 246]

These events allegedly occurred in May 2014, but Mr. Orr was not indicted or prosecuted until four years later in 2019. After a jury trial, Mr. Orr was convicted of continuous sexual assault of a child under 14 years old and sentenced to a term of life imprisonment. The notice of appeal was then timely filed. On October 30, 2020, the Twelfth Court of Appeals for Texas affirmed Mr. Orr's conviction and sentence. On February 10, 2021, the Texas Court of Criminal Appeals denied Mr. Orr's petition for discretionary review.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. THE TRIAL COURT DENYING MR. ORR'S OBJECTION TO IMPROPER CLOSING ARGUMENT BY THE PROSECUTOR. THIS IMPROPER ARGUMENT CONSISTED OF:

1) COMMENTING ON MATTERS ON OUTSIDE THE RECORD INCLUDING MR. ORR'S DEMEANOR; AND

2) BY DELIBERATELY PROVOKING A REACTION FROM MR. ORR IN FRONT OF THE JURY WHICH IS TANTAMOUNT TO FORCING MR. ORR TO TESTIFY, THE STATE VIOLATED MR. ORR'S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION AND HIS FOURTEENTH AMENDMENT RIGHT TO A FAIR TRIAL.

The trial court erred by denying Mr. Orr's objection to the prosecutor's provoking a reaction from him, in violation of his Fifth Amendment privilege against self-incrimination, and then commenting on his demeanor. Under the Fifth Amendment to the United States Constitution, "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V.

The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. *Drope v. Missouri*, 420 U.S. 162, 172 (1975). This Court has declared

that “one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds . . . not adduced as proof at trial.” *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978). Mr. Orr’s demeanor while he was not on the witness stand was not evidence or testimony and it should not have been considered by the jury. The jury was allowed to consider the behavior, however. This violated Mr. Orr’s right to be tried solely on the basis of admissible evidence and testimony. A defendant’s nontestimonial demeanor is irrelevant to the issue of his guilt. *Good v. State*, 723 S.W.2d 734, 737 (Tex. Crim. App. 1986). Prosecutorial argument concerning a defendant’s non-testimonial demeanor can be improper. *See id*.

The Fifth Amendment enshrined the "ancient" English common law right against self-incrimination known as nemo tenetur seipsum prodere ("no man shall be compelled to criminate himself"). *See* John H. Wigmore, Nemo Tenetur Seipsum Prodere, 5 Harv. L. Rev. 71, 71 (1891); *Brown v. Walker*, 161 U.S. 591, 596-97 (1896). Under that maxim, "a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape when it is to be considered as the evidence of guilt, that no credit ought to be given to it; and therefore it is rejected." *R v. Warickshall* (1783), 168 Eng. Rep. 234, 235; 1 Leach 263, 263-64.

What originated in the old world quickly made its way over the Atlantic. By the Founding, "the principle of the nemo tenetur maxim was simply taken for granted and so deeply accepted that its constitutional expression had the mechanical quality of a ritualistic gesture in favor of a self-evident truth needing no explanation." Leonard W. Levy, Origins of the Fifth Amendment 430 (1968). Well before the Constitution was ratified, the right was ubiquitous: each of the eight states that had a separate bill of rights prohibited compelled self-incrimination. *Id*. at 412. Among the first proposed amendments to the federal Constitution was the right against self-incrimination . *See id.* at 422-23; *see* also *Brown*, 161 U.S. at 597 (noting that the maxim, "which in England was a mere rule of evidence, became clothed in this country with the impregnability of a constitutional enactment").

Justice Story confirmed that the Self-Incrimination Clause was "but an affirmance of a common law privilege." 3 Joseph Story, Commentaries on the Constitution of the United States § 1782, at 660 (Boston, Hilliard, Gray & Co. 1833). The right's focus on voluntariness remained throughout the transition from English to American common law. An early American treatise explained that "a confession, in order to be admissible, must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." 2 William Oldnall

Russell & Charles Sprengel Greaves, A Treatise on Crimes and Misdemeanors 826 (5th Am. ed., 1845).

Early precedent confirmed the basic common law understanding of the Clause—that its lodestar is voluntariness, not prophylaxis. According to Chief Justice Marshall, it was "a settled maxim of law that no man is bound to criminate himself," and that if a person's answer to a question might incriminate him, "it must rest with himself, who alone can tell what it would be, to answer the question or not." *United States v. Burr*, 25 F. Cas. 38, 39-40 (C.C.D. Va. 1807).

In this case, the State made several improper arguments during closing argument, to which Mr. Orr timely and properly objected. The statements by prosecutors constituted an impermissible comment on Mr. Orr's demeanor at trial. Further, certain comments and actions by the prosecutor were designed to evoke a reaction by Mr. Orr in front of the jury. The reaction was tantamount to forcing Mr. Orr to testify in violation of his Fifth Amendment right against self-incrimination.

The prosecutor made the following argument which is at issue in this case:

> MR. JIRAL: That disgust you're feeling right now, that hole in your belly, that is what makes his penis rise and fall like she described for you in State's 18.
>
> MR. ROBERSON: Judge, let the record reflect he's standing by my client and making those motions and making that statement.

THE COURT: The record will reflect that he was doing what he's doing. The jury was looking at him.

MR. ROBERSON: I have to make it for record purposes, Your Honor.

THE COURT: You made it for the record. Go ahead, Mr. Jiral.

MR. JIRAL: And so this case is simple. There is absolutely no other verdict you can render that is just. Sign guilty, find that man guilty of exactly --**Don't shake your head at me.**

MR. ROBERSON: Judge, I'm going to object to him doing that.

MR. JIRAL: **Don't get aggressive** --

THE BAILIFF: Sir --

MR. ROBERSON: No, no --

THE COURT: Okay. Mr. Roberson –

MR. ROBERSON: Judge, he was antagonizing him.

THE COURT: No. You listen to me. If I hear one more word out of him, I'm going to recess the jury.

MR. ROBERSON: I understand, Judge, but for record purposes I have to make --

THE COURT: It's all overruled. Mr. Jiral is making an argument. He can point at the defendant. He's arguing. If the defendant says anything, there'll be a break.

MR. ROBERSON: Judge, I understand what the Court is saying, but I know he can point at him, but he cannot

	walk over to him and put his finger in his face, Judge. It's antagonizing.
THE COURT:	Mr. Roberson, it's argument. It's all overruled.
MR. ROBERSON:	Judge, I'm just making a record, that's all.
THE COURT:	Well, it's made.
MR. ROBERSON:	Yes, Your Honor.[3]

The prosecutor's comments and actions were designed to provoke a reaction from Mr. Orr in front of the jury and were tantamount to forcing him to testify in violation of the Fifth Amendment. The Twelfth Court of appeals found that they could not find any cases in which "an appellant was granted relief under the Fifth Amendment based on a prosecutor's provoking a reaction from him in front of the jury. However, we cannot say that, in a proper case, such relief is not possible. Certainly, it should not be the practice of prosecutors to intentionally provoke reactions from defendants in the hopes that they will be convicted on that basis rather than their guilt of the charged offense.". *Orr* at 9.

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[3] To preserve an issue for appellate review, the record must show that a complaint was made to the trial court by an objection that "stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint." TEX. R. APP. P. 33.1(a)(1)(A). In contrast to the holding by the Twelfth Court of Appeals, the record demonstrates that Mr. Orr's counsel properly and timely urged objections to the argument by the prosecutor.

This case presents the rare situation in which a prosecutor's repeated, egregious misconduct during closing argument explicitly invited the jury to convict and punish the defendant based on invented "evidence" and personal animus and prejudice. This Court should thus reverse Mr. Orr's conviction and sentence.

A basic element of a fair conviction is that a defendant be convicted on the evidence alone. *See*, e.g., *Watts v. State*, 371 S.W.3d 448, 459 (Tex. App. – Houston [14th Dist.] 2012) ("Convictions cannot be had on the invention or fabrication of evidence."). As such any "[a]rgument injecting matters not in the record is clearly improper," *Berryhill v. State*, 501 S.W.2d 86, 87 (Tex. Crim. App. 1973). It has long been the rule in Texas that "there is abundant room for legitimate discussion of the testimony and the law applicable, without indulging in personal abuse of the man who is at the bar of justice." *Swilley v. State*, 25 S.W.2d 1098, 1099 (Tex. Crim. App. 1929); *see* also *Stevison v. State*, 89 S.W. 1072, 1073 (Tex. Crim. App. 1905) ("[A]buse is not argument, and vituperation is not logic."). Castigating a defendant in personal and demeaning terms, particularly before a jury, serves "no legitimate purpose except to jeopardize the State's case on appeal." *Tompkins v. State*, 774 S.W.2d 195, 217 (Tex. Crim. App. 1987).

Nearly a half century ago this Court counseled prosecutors "to refrain from improper methods calculated to produce a wrongful conviction . . . ." *Berger v. United*

States, 295 U.S. 78, 88 (1935). The Court made clear, however, that the adversary system permits the prosecutor to "prosecute with earnestness and vigor." *Ibid*. In other words, "while he may strike hard blows, he is not at liberty to strike foul ones." *Ibid*.

The line separating acceptable from improper advocacy is not easily drawn; there is often a gray zone. Prosecutors sometimes breach their duty to refrain from overzealous conduct by commenting on the defendant's guilt and offering unsolicited personal views on the evidence.

"The long-established rule governing prosecutions for crime in Texas is that the accused is to be tried upon the merits of each case alone, and proof of extraneous crimes or of specific acts of misconduct by the accused is generally not admissible." *Wilson v. State*, 819 S.W.2d 662, 664 (Tex. App. – Corpus Christi 1991, pet. ref'd). Concomitant with this basic requirement is the rule that "[a] defendant's nontestimonial demeanor is irrelevant to the issue of his guilt." *Good v. State*, 723 S.W.2d 734, 737 (Tex. Crim. App. 1986). Using "a defendant's behavior in the courtroom to establish guilt violates [this] fundamental requirement," because it invites the jury to render a conviction on something other than evidence of guilt. *Id*. at 737 n.4. As this Court recognized in *Good*, commentary on a defendant's in-court actions are "an invitation for the jury to convict a defendant based on rank speculation of bad character rather than evidence of guilt." *Id*. at 737.

The prosecution in Mr. Orr's case flatly violated this prohibition.

The prosecution specifically called out Mr. Orr's courtroom demeanor to incite the jury's prejudice against him. These comments introduced irrelevant and highly prejudicial considerations into the jury's calculus. Second, the prosecution violated Mr. Orr's Fifth Amendment right against self-incrimination by invading Mr. Orr's personal space in the courtroom, gesturing aggressively in Mr. Orr's face while graphically recounting the evidence. By provoking a reaction from Mr. Orr, the prosecutor basically forced Mr. Orr to testify against himself. The prosecutor then made demeaning remarks about Mr. Orr's response. The State, then, impermissibly burdened Mr. Orr's right to not testify at one's own criminal trial. *See Brooks v. Tennessee* , 406 U.S. 605, 610–11 (1972).

The prosecution engaged in improper closing arguments, in violation of the United States Constitution, Texas law and state constitutional parameters. In addition, the prosecution's arguments violated federal due process requirements. *See*, e.g., *Caldwell v. Mississippi*, 472 U.S. 320, 339 (1985). Given the magnitude, extent, and egregious nature of the misconduct, the errors also cannot be found to be harmless. *Chapman v. California*, 386 U.S. 18, 23 (1967).

CONCLUSION

This Petition for Writ of Certiorari should be granted and the decision of the Texas Court of Criminal Appeals and the Twelfth Court of Appeals for Texas should be vacated, and the case should be remanded for proceedings consistent with this Court's opinion.

Respectfully submitted,

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RELIEF REQUESTED

FOR THESE REASONS, the Petitioner moves this Court to grant a Writ of Certiorari in order to review the Judgment of the Court of Criminal Appeals for the State of Texas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 12th day of July 2021, I served one (1) copy of the foregoing Petition for Writ of Certiorari on the following individuals by mail (certified mail return receipt requested) by depositing same, enclosed in post paid, properly addressed wrapper, in a Post Office or official depository, under the care and custody of the United States Postal Service, or by other recognized means pursuant to the Rules of the Supreme Court of The United States of America, Rule 29:

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/s/ Amy R. Blalock
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No. _____

In the

Supreme Court of the United States

OCTOBER TERM, 2020

MICHAEL RAY ORR,

Petitioner,

V.

THE STATE OF TEXAS,

Respondent.

APPENDIX

APPENDIX

“A”

NO. 12-19-00398-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

MICHAEL RAY ORR, APPELLANT	***§***	***APPEAL FROM THE 241ST***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Michael Ray Orr appeals his conviction for continuous sexual abuse of a young child. In four issues, Appellant challenges the sufficiency of the evidence, the propriety of the State's closing arguments, and the constitutionality of his court costs. We affirm.

BACKGROUND

Appellant was charged by indictment with continuous sexual abuse of a young child. He pleaded "not guilty," and the matter proceeded to a jury trial.

At trial, the evidence showed that in February 2014, Tome Johnson and her two children moved into the home of Johnson's sister, Loca "Kai" Orr, and Orr's husband, Appellant. In April 2014, Johnson and Appellant were involved in a physical altercation that culminated in Appellant's beating Johnson in the head with a pistol in front of her seven-year-old daughter, A.R.[1] After the incident, Johnson called her mother-in-law and father-in-law to pick up her and A.R., and they called 911. During an investigation into the aggravated assault, A.R. made an outcry of sexual abuse by Appellant.

[1] To protect the victim's identity, we use initials to identify her.

Ultimately, the jury found Appellant "guilty" and assessed his punishment at imprisonment for life. This appeal followed.

EVIDENTIARY SUFFICIENCY

In Appellant's first issue, he argues that the evidence is insufficient to support his conviction because no physical evidence or eyewitness testimony corroborated A.R.'s story, A.R.'s testimony was vague, and there is insufficient evidence to show that two or more acts of sexual abuse occurred during a period of thirty or more days.

Standard of Review and Applicable Law

The ***Jackson v. Virginia***[2] legal sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the state is required to prove beyond a reasonable doubt. *See* ***Brooks v. State***, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. *See* ***Jackson***, 443 U.S. at 315-16, 99 S. Ct. at 2686-87; *see also* ***Escobedo v. State***, 6 S.W.3d 1, 6 (Tex. App.—San Antonio 1999, pet. ref'd). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; *see also* ***Johnson v. State***, 871 S. W.2d 183, 186 (Tex. Crim. App. 1993). The evidence is examined in the light most favorable to the verdict. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; ***Johnson***, 871 S.W.2d at 186. This requires the reviewing court to defer to the jury's credibility and weight determinations, because the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony. ***Brooks***, 323 S.W.3d at 899; *see* ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789. A "court faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." ***Jackson***, 443 U.S. at 326, 99 S. Ct. at 2793. A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *See* ***Tibbs v. Florida***, 457 U.S. 31, 41-42, 102 S. Ct. 2211, 2217-18, 72 L. Ed 2d 642 (1982).

[2] 443 U.S. 307, 315-16, 99S. Ct. 2781, 2786-87, 61 L. Ed. 2d 560 (1979).

The sufficiency of the evidence is measured against the offense as defined by a hypothetically correct jury charge. *See* ***Malik v. State***, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge would include one that "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the state's burden of proof or unnecessarily restrict the state's theories of liability, and adequately describes the particular offense for which the defendant is tried." ***Id.***

To prove Appellant guilty of continuous sexual abuse of a child as charged in this case, the State was required to prove that during a period that was thirty or more days in duration, specifically from about February 6, 2014 through May 1, 2014, when Appellant was seventeen years of age or older and A.R. was younger than fourteen years of age, he intentionally or knowingly committed two or more of the following acts of sexual abuse: (1) engaging in sexual contact with A.R. by touching her genitals, (2) causing A.R. to engage in sexual contact by touching his genitals, (3) causing the penetration of A.R.'s female sexual organ by his finger, (4) causing the penetration of A.R.'s female sexual organ by his sexual organ, and (5) causing the penetration of A.R.'s mouth by his sexual organ. *See* TEX. PENAL CODE §§ 21.02 (b), (c)(2), (4) (West 2019); 21.11(a)(1), (c)(1) (West 2019); 22.021 (a)(1)(B)(i), (ii) (West 2019).

Analysis

Appellant first argues that the evidence is insufficient to support his conviction because no physical evidence or eyewitness testimony corroborated A.R.'s story. He contends the facts that A.R. told law enforcement where to look for semen but no semen was found, and that Appellant took photographs of her but no photographs were found casts reasonable doubt on A.R.'s testimony. Despite the lack of recovery of such evidence, a rational trier of fact could have found Appellant guilty beyond a reasonable doubt.

Based on the evidence in this case, the jury could have reasonably inferred that no semen was found because Appellant took measures to hide evidence of his offenses. In A.R.'s forensic interview, she said that the incidents occurred in the house and the shed, and she was lying on a purple "thing"[3] during at least one incident. Detective Jennifer Stockwell with the Smith County Sheriff's Office testified that law enforcement officers searched for semen in the shed and on the couch and surrounding area. They also looked for a purple blanket to check for semen but did not find one. However, Kai testified that a purple blanket or rug was in the house before the

[3] Throughout the trial, this item is referred to variously as a blanket, rug, or sheet.

fight between Johnson and Appellant. She said that after the fight, Appellant took her to a friend's house to stay the night, and the blanket or rug was gone when she returned the next day.

In A.R.'s forensic interview, she also said that Appellant took photographs of her in various states of undress. Detective Stockwell testified that the law enforcement officers collected cell phones and computers from the residence to look for the photographs but found no photographs matching A.R.'s description. They found a cell phone matching A.R.'s description of the one Appellant used to take the photographs, but it was missing its memory card. Kai testified that before she left to stay the night at her friend's house, she gave a cell phone containing an SD card to Appellant. When she returned home the next day, Appellant gave the cell phone to her without the SD card.

Based on all the evidence in this case, including the evidence tending to show that Appellant took measures to hide evidence before the search was conducted, we conclude that a rational trier of fact could have found Appellant "guilty" beyond a reasonable doubt despite law enforcement's failure to locate Appellant's semen and photographs of A.R. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; ***Johnson***, 871 S. W.2d at 186.

Appellant further argues that the evidence is insufficient because A.R.'s testimony was "impossibly vague" and inconsistent with her forensic interview, A.R. failed to identify Appellant in court, and the evidence does not show that two or more acts occurred during a period of thirty days or more. We disagree.

Regarding the alleged vagueness and inconsistency of A.R.'s testimony, we observe that she appeared somewhat reluctant at times and said she could not remember many of the details she gave in her forensic interview. However, we cannot conclude that such "vagueness" and "inconsistency" renders the evidence insufficient in this case. The evidence in this case, including the videotape of the forensic interview and the testimony of A.R. and others, contains all the facts necessary to support Appellant's conviction.

In her forensic interview, A.R. told Jennifer Subin that she was currently seven years old. She was living with her "Uncle Mike" when he "bashed [her] mommy's head open . . . with a butt of a gun." While she was living there, her uncle was touching her "no no spot"[4] during "special time." This happened more than five times. The first time was in her uncle's shed,

[4] When asked what she called the parts of her body no one should see or touch, A.R. said her "no no spots," and pointed to her bottom, breasts, and vagina. She later additionally referred to her vagina as her "tutu."

where he asked her to "do all kinds of stuff with his thing," like touch it, suck it, suck chocolate off it, rub lotion on it, and bounce it up and down. Also in the shed, A.R.'s uncle asked her to lie down, pulled down her pants and panties, "went back and forth," and had an orgasm. He also touched A.R.'s "no no spot" with his finger and put his finger inside her. In the bedroom, A.R.'s uncle made her put her mouth on his "thing." In the living room, A.R. was lying down and her uncle "st[u]ck his thing up in [her] thing." The last incident also occurred in the living room, when A.R.'s uncle had her bend over so he could "stick his wee wee through [her] legs and rock back and forth."

At trial, A.R. testified that she was currently twelve years old. In 2014, when she was around seven or eight years old, she, her mother, and her brother moved in with her uncle and aunt, Michael and Kai. When asked whether she saw her uncle, the man she knew as Michael, in the courtroom, she responded, "No." A.R. said her uncle started hurting her sexually a couple of weeks after they moved in, it happened "a whole bunch of times," and it continued the whole time they lived there. He touched her "tutu," which means her vagina, with his hands almost every night and his penis about twice. After the State played the video of the forensic interview, A.R. said she remembered making the statements in it and they were the truth. She said one day her mother and uncle were fighting, and he hit her mother in the forehead with the corner of a gun.

Although A.R.'s forensic interview and testimony alone are insufficient to establish Appellant as the perpetrator or show that the acts occurred in the requisite period of thirty days or more, her interview and testimony along with that of Johnson and Kai are sufficient to establish those facts. Johnson identified Appellant as the husband of her sister, Loca Kai Orr, which established Appellant as A.R.'s uncle. Johnson further testified that she and her children lived with Appellant and Kai from February 6, 2014 through April 30, 2014, and that Appellant hit her in the head with a pistol during a fight the day she moved out. Kai also identified Appellant as her husband and the person who hit Johnson with a gun. She further said that Johnson and her children lived with her and Appellant from February 8, 2014 through April 30, 2014. Together, this evidence supports an inference that Appellant is the "Uncle Mike" who committed this offense, and that he committed the acts during a period that was thirty or more days in duration

In the light most favorable to the jury's verdict, the evidence shows that Appellant committed many acts of sexual abuse against A.R from roughly February 22, 2014—a "couple of weeks" after she moved in, through April 30, 2014—the day she moved out, a period that is more than thirty days in duration. We conclude that the jury was rationally justified in finding, beyond a reasonable doubt, that Appellant committed continuous sexual abuse of a young child. *See* TEX. PENAL CODE §§ 21.02 (b), (c)(2), (4); 21.11(a)(1), (c)(1); 22.021 (a)(1)(B)(i), (ii); ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789; *see also* ***Brooks***, 323 S.W.3d at 899.

For the reasons stated above, we overrule Appellant's first issue.

IMPROPER ARGUMENT

In Appellant's second and third issues, he argues that the trial court erred by allowing improper argument by the prosecutor.

Standard of Review and Applicable Law

Permissible jury argument generally falls into one of four areas: (1) summation of the evidence, (2) reasonable deduction from the evidence; (3) an answer to the argument of opposing counsel, or (4) a plea for law enforcement. ***Davis v. State***, 329 S.W.3d 798, 821 (Tex. Crim. App. 2010). To preserve error in prosecutorial argument, a defendant must pursue his objections to an adverse ruling. ***Archie v. State***, 221 S.W.3d 695, 699 (Tex. Crim. App. 2007). The usual sequence is an objection, a request for an instruction to disregard, and a motion for mistrial. ***Id.*** However, this sequence is not essential to preserve complaints for appellate review. ***Id.*** The essential requirement is a timely, specific request that the trial court refuses. ***Id.*** A request for an instruction to disregard is essential only when the instruction could have resulted in the continuation of the trial by an impartial jury. ***Id.*** If an instruction could not have had such an effect, the only suitable remedy is a mistrial, and a motion for mistrial is the only essential prerequisite to presenting the complaint on appeal. ***Id.***

Striking at Defendant over Defense Counsel's Shoulders

In Appellant's second issue, he argues that the trial court erred by allowing the prosecutor to strike at him over the shoulders of his defense counsel. Argument that strikes at a defendant over the shoulders of defense counsel is improper. ***Davis***, 329 S.W.3d at 821. A prosecutor runs a risk of improperly striking at a defendant over the shoulders of counsel when he makes an argument in terms of defense counsel personally that explicitly impugns defense counsel's

character. ***Mosley v. State***, 983 S.W.2d 249, 259 (Tex. Crim. App. 1998). Legitimate arguments by defense counsel cannot serve as a basis for permitting prosecutorial comments that cast aspersion on defense counsel's veracity. ***Id.***

Here, Appellant complains about the prosecutor's response to defense counsel's argument regarding the lack of injuries found to A.R.'s body. At trial, the sexual assault nurse examiner (SANE) who examined A.R. testified that she did not find injuries on her. She also testified that it is uncommon to find injuries during examinations because of the rapid healing rate of the genitalia. In defense counsel's closing argument, he argued that if the allegations against Appellant were true, the SANE would have found injuries to A.R. In the State's final closing argument, the prosecutor argued in part, without objection, the following:

> Mr. Roberson.[5] I guess I should say Dr. Roberson, because he can now testify better than a SANE nurse and he is now an expert on child sexual abuse trauma. In fact, you can probably discount everything that the SANE nurse said. You should probably discount everything that Jennifer Subin said, with her almost two thousand different forensic interviews.
>
> No, see, Dr. Roberson wants you to think that if there is some type of sexual abuse, it's going to always leave a mark, flying in the face of everything that the SANE nurse told you on her decades old career as a sexual assault nurse examiner. As a medical professional, not the defense attorney, but a medical professional whose job it is to find the truth, she tells you that that little body, that seven-year-old girl heals, and that is the only reason why she lacks trauma, not because it didn't happen to her.

Appellant argues that the prosecutor exceeded the boundaries of proper argument by calling defense counsel "Dr. Roberson" and "suggesting that defense counsel was misrepresenting the evidence regarding trauma left on crime sex victims." He acknowledges that this issue was not preserved but argues that "this is a rare situation where unpreserved error rises to the level of reversible error." Appellant cites no authority for the proposition that this Court can consider an improper argument issue that was not preserved by objection, request for instruction to disregard, or motion for mistrial. *See* TEX. R. APP. P. 38.1(i) (requiring brief to contain clear and concise argument with appropriate citations to authorities); *see also* ***Archie***, 221 S.W.3d at 699 (defendant must pursue objection to adverse ruling to preserve argument error). We conclude that Appellant failed to preserve this issue for our review.

[5] The record shows that Appellant's defense counsel was Mr. Clifton L. Roberson.

Furthermore, even if Appellant preserved his issue, we could not grant him relief because the prosecutor's argument was not improper. Defense counsel's argument that the SANE would have found injuries if the allegations were true was improper because there was no evidence of that fact and no evidence from which such a deduction could be made. *See* ***Davis***, 329 S.W.3d at 821. The prosecutor's argument pointed out to the jury that defense counsel's statement had no basis in the evidence and was therefore proper as an answer to the argument of opposing counsel. *See* ***id.***

For the reasons stated above, we overrule Appellant's second issue.

Provoking a Reaction from Defendant and Comment on Nontestimonial Demeanor

In Appellant's third issue, he argues that the trial court erred by denying his objection to the prosecutor's provoking a reaction from him, in violation of his Fifth Amendment privilege against self-incrimination, and then commenting on his demeanor. Under the Fifth Amendment to the United States Constitution, "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. A defendant's nontestimonial demeanor is irrelevant to the issue of his guilt. ***Good v. State***, 723 S.W.2d 734, 737 (Tex. Crim. App. 1986). Prosecutorial argument concerning a defendant's nontestimonial demeanor can be improper. *See* ***id.***

The record in this case shows that the following occurred during the State's closing argument:

> PROSECUTOR: [A.R.] has to sit here next to this man, and she has to go into that shed every day and feel that hand pull her hand to his penis. She can feel him taking off her clothes and pulling down her shorts.
>
> That disgust you're feeling right now, that hole in your belly, that is what makes his penis rise and fall like she described for you in State's 18.
>
> DEFENSE COUNSEL: Judge, let the record reflect he's standing by my client and making those motions and making that statement.
>
> TRIAL COURT: The record will reflect that he was doing what he's doing. The jury was looking at him.
>
> DEFENSE COUNSEL: I have to make it for record purposes, Your Honor.
>
> TRIAL COURT: You made it for the record. Go ahead, Mr. Jiral.
>
> PROSECUTOR: What sickens us as a society, as people, as human beings, turns him on, gives him an erection, gives him what she called an orgasm.

. . . .

And so this case is simple. There is absolutely no other verdict you can render that is just. Sign guilty, find that man guilty of exactly—

Don't shake your head at me.

DEFENSE COUNSEL: Judge, I'm going to object to him doing that.

PROSECUTOR: Don't get aggressive—

BAILIFF: Sir—

DEFENSE COUNSEL: No, no—

TRIAL COURT: Okay. Mr. Roberson—

DEFENSE COUNSEL: Judge, he was antagonizing him.

TRIAL COURT: No. You listen to me. If I hear one more word out of him, I'm going to recess the jury.

DEFENSE COUNSEL: I understand, Judge, but for record purposes I have to make—

TRIAL COURT: It's all overruled. Mr. Jiral is making an argument. He can point at the defendant. He's arguing. If the defendant says anything, there'll be a break.

DEFENSE COUNSEL: Judge, I understand what the Court is saying, but I know he can point at him, but he cannot walk over to him and put his finger in his face, Judge. It's antagonizing.

TRIAL COURT: Mr. Roberson, it's argument. It's all overruled.

DEFENSE COUNSEL: Judge, I'm just making a record, that's all.

TRIAL COURT: Well, it's made.

DEFENSE COUNSEL: Yes, Your Honor.

Appellant argues that the prosecutor's comments and actions were designed to provoke a reaction from him in front of the jury and were tantamount to forcing him to testify in violation of the Fifth Amendment. Appellant cites no caselaw, and we find none, in which an appellant was granted relief under the Fifth Amendment based on a prosecutor's provoking a reaction from him in front of the jury. However, we cannot say that, in a proper case, such relief is not possible. Certainly, it should not be the practice of prosecutors to intentionally provoke reactions from defendants in the hopes that they will be convicted on that basis rather than their guilt of the charged offense. Nonetheless, we do not reach the merits of Appellant's issue in this case because he did not preserve it.

To preserve an issue for appellate review, the record must show that a timely and sufficiently specific complaint was made to the trial court. *See* TEX. R. APP. P. 33.1(a)(1). A general or imprecise objection will not preserve error unless the legal basis for the objection is obvious to the trial court and opposing counsel. ***Vasquez v. State***, 483 S.W.3d 550, 554 (Tex. Crim, App. 2016).

Here, Appellant objected to the following acts of the prosecutor: (1) "doing that," without stating what "that" was, (2) antagonizing him, (3) pointing at him, and (4) walking over to him and putting his finger in his face. However, Appellant did not state a legal basis for these objections, and we cannot say that a Fifth Amendment complaint should have been obvious to the trial court and opposing counsel. *See* TEX. R. APP. P. 33.1(a)(1); ***Vasquez***, 483 S.W.3d at 554. Because Appellant failed to preserve his Fifth Amendment complaint for our review, we overrule the portion of his third issue regarding that complaint.

Appellant likewise failed to preserve his complaint that the prosecutor's comments on his nontestimonial demeanor constitute improper argument. *See* TEX. R. APP. P. 33.1(a)(1). Furthermore, even if Appellant objected on that basis at trial, his objection would likely have been correctly overruled. The prosecutor's statements related to Appellant's demeanor—"Don't shake your head at me" and "Don't get aggressive"—appear to be directed to Appellant rather than the jury, and are therefore not jury argument at all.[6] Therefore, we overrule the portion of Appellant's third issue regarding improper comment on his nontestimonial demeanor.

At the end of Appellant's third issue, he asserts that the prosecutor's closing arguments violated federal due process requirements. The prosecutor's actions here are questionable but are not entirely apparent from the record. If the record were clearer, the prosecutor's actions and sidebar comments might support a lack of due process and right to a fair trial complaint. However, the issue was not preserved by objection in the trial court. *See* ***id.***; *see also* ***Clark v. State***, 365 S.W.3d 333, 340 (Tex. Crim. App. 2012) (non-due-process objections including badgering, sidebar, argumentative, invading province of jury, and mischaracterization insufficient to preserve due-process, fair-trial complaint). Therefore, we overrule the due process portion of Appellant's third issue.

[6] We note that the prosecutor did not refer to Appellant's nontestimonial demeanor in his argument to the jury.

UNCONSTITUTIONAL COURT COSTS

In Appellant's fourth issue, he argues that the trial court erred by assessing an unconstitutional time payment fee under former Section 133.103 of the Texas Local Government Code as a court cost. Act of June 2, 2003, 78th Leg., R.S., ch. 209, § 62, sec. 133.103, 2003 Tex. Gen. Laws 979, 996-97 (amended and redesignated 2019) (current version at TEX. CODE CRIM. PROC. ANN. art. 102.030 (West Supp. 2020)). Several courts, including this one, have held subsections (b) and (d) of Section 133.03 unconstitutional. *See, e.g.*, ***Irvin v. State***, No. 12-19-00347-CR, 2020 WL 5406276, at *7 (Tex. App—Tyler Sept. 9, 2020, no pet. h.) (mem. op., not designated for publication); ***Ovalle v. State***, 592 S.W.3d 615, 618 n.1 (Tex. App.—Dallas 2020, pet. filed); ***Simmons v. State***, 590 S.W.3d 702, 712 (Tex. App.—Waco 2019, no pet.); ***Dulin v. State***, 583 S.W.3d 351, 353 (Tex. App.—Austin 2019, no pet.); ***Johnson v. State***, 573 S.W.3d 328, 340 (Tex. App.—Houston [14th Dist.] 2019, no pet.). However, we do not agree that the trial court assessed the time payment fee in this case.

The judgment in this case shows $579.00 in court costs. The bill of costs likewise shows $579.00 in court costs and states the following:

> An additional time payment fee of $25.00 will be assessed if any part of a fine, court costs, or restitution is paid on or after the date the judgment assessing the fine, court costs or restitution is entered. ***See Texas Local Government Code, Section 133.103.***

Although the bill of costs states that the time payment fee could be assessed, the record does not show that it was assessed.[7] Because the record does not show that the time payment fee was assessed, we conclude Appellant's argument is without merit. Accordingly, we overrule his fourth issue.

DISPOSITION

Having overruled Appellant's first through fourth issues, we ***affirm*** the trial court's judgment.

[7] At oral argument, the State conceded that the time payment fee here is unconstitutional and will not be assessed.

JAMES T. WORTHEN
Chief Justice

Opinion delivered October 30, 2020.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley,

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

OCTOBER 30, 2020

NO. 12-19-00398-CR

MICHAEL RAY ORR,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 241st District Court
of Smith County, Texas (Tr.Ct.No. 241-1663-18)

THIS CAUSE came to be heard on the oral arguments, appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

APPENDIX

“B”

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

2/10/2021 **COA No. 12-19-00398-CR**
ORR, MICHAEL RAY **Tr. Ct. No. 241-1663-18** **PD-1148-20**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

MICHAEL J. WEST
ASSISTANT DISTRICT ATTORNEY
100 N. BROADWAY
4TH FLOOR
TYLER, TX 75702
* DELIVERED VIA E-MAIL *

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Deana Williamson, Clerk

DISTRICT ATTORNEY SMITH COUNTY
JACOB PUTNAM
100 N. BROADWAY
TYLER, TX 75702
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ORR, MICHAEL RAY **Tr. Ct. No. 241-1663-18** **PD-1148-20**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

AMY R. BLALOCK

LAW OFFICE
TYLER, TX 75710
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2/10/2021 **COA No. 12-19-00398-CR**
ORR, MICHAEL RAY **Tr. Ct. No. 241-1663-18** **PD-1148-20**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

STATE PROSECUTING ATTORNEY
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P. O. BOX 13046
AUSTIN, TX 78711
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2/10/2021 **COA No. 12-19-00398-CR**
ORR, MICHAEL RAY **Tr. Ct. No. 241-1663-18** **PD-1148-20**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

12TH COURT OF APPEALS CLERK
KATRINA MCCLENNY
1517 W. FRONT, ROOM 354
TYLER, TX 75701
* DELIVERED VIA E-MAIL *