No. 01-24-00686-CR

In The First Court of Appeals
Houston, Texas

Christian Avery Franklyn
Appellant

v.

State of Texas
Appellee

On Appeal from Cause # 1720687 from the 174th District Court of Harris County, Texas

Appellant's Brief

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Oral Argument Requested

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Statement of the Case

Appellant Christian Avery Franklyn was indicted for the felony offense of sexual assault. (CR 41.)

Appellant was found guilty after a jury trial. (CR 134; 5 RR 41.) Though he had originally elected jury sentencing, he switched his sentencing election to the visiting judge who presided over the trial, and the visiting judge sentenced him to eight years in prison without the right of appeal. (CR 124; 6 RR 4, 6.)

Appellant filed a motion for new trial on punishment alleging, among other things, that the visiting judge illegally pressured him into changing his election. (CR 148–161.) After a hearing, the elected judge granted the motion for a new trial. (CR 195; 1 Supp. RR 49–50.)

Thereafter, Appellant agreed to a plea bargain in which he pled to six years in prison while maintaining the right to appeal his conviction. (2 Supp. CR 5–6; 2 Supp. RR 5.)

The trial court certified Appellant's right of appeal and Appellant timely filed a notice of appeal. (1 Supp. CR 20, 22.)

Statement Regarding Oral Argument

Appellant requests oral argument because this case presents a unique opportunity for this Court to articulate a test to guide lower courts in determining when intervening convictions can permit the admission of a greater-than-ten-year-old conviction under Texas Rule of Evidence 609(b).

No such test currently exists. Appellate courts often apply a multi-factor test from *Theus v. State*, 845 S.W.2d 874 (Tex. Crim. App. 1992) to determine whether intervening convictions allow the admission of a remote conviction under Rule 609(b)—even though that test was developed for Rule 609(a). To make matters worse, the Court of Criminal Appeals has expressly stated that the *Theus* factors don't apply to Rule 609(b). *Hernandez v. State*, 976 S.W.2d 753, 755 (Tex. Crim. App. 1998).

This case is an ideal vehicle for this Court to set forth a new test. Both the complainant and Appellant had convictions just over the ten-year threshold, but only Appellant had intervening criminal history. The trial court admitted his conviction and excluded the complainant's.

Appellant's counsel also requests oral argument because he is working towards sitting for the criminal appellate law board

certification exam and needs additional oral arguments in order to qualify.

Issues Presented

Appellant was indicted for sexually assaulting complainant Felicia Justice at a party in October 2019.

Appellant testified that the sex was consensual; the complainant testified that it was not. There were no other witnesses to the alleged offense.

At a pretrial hearing, the trial court ruled that the State could impeach Appellant with two misdemeanor theft convictions from 2013, despite their being more than ten years old, because Appellant had been convicted of misdemeanor possession of marijuana in 2014 and was on deferred adjudication for aggravated robbery at the time of the alleged sexual assault.

Appellant asked the court for permission to impeach the complainant with her 2012 conviction for lying to a police officer. The court denied his request because the complainant's conviction was over ten years old and she had no subsequent convictions.

During cross-examination, the State impeached Appellant with one of his two theft convictions. But because of the court's ruling, the jury never learned about the complainant's conviction for lying to a police officer.

1. Did the court abuse its discretion in this he-said / she-said sexual assault trial by allowing the jury to hear about Appellant's 2013 theft conviction while preventing the jury from hearing about the complainant's 2012 conviction for lying to a police officer?

2. After his conviction, Appellant was assessed $185 in state consolidated court costs. But the law allows those costs to be assessed only for offenses committed after January 1, 2020. Was the

$185 assessment lawful for an offense that allegedly occurred in October 2019?

3. Appellant was also assessed $105 in local consolidated court costs. Under the law, those costs too can only be assessed for offenses committed after January 1, 2020. Was the $105 in local consolidated court costs lawful for an offense that allegedly occurred in October 2019?

Statement of Facts

1. The pretrial hearing

Appellant's trial began on August 13, 2024. (3 RR 1.)

At a pretrial hearing, the State asked Judge Randy Roll, the visiting judge who would preside over the trial, for permission to impeach Appellant under Texas Rule of Evidence 609(b) with two misdemeanor theft convictions from 2013.[1] (3 RR 8–9, 13.)

At the time of the alleged sexual assault, Appellant was on deferred adjudication for aggravated robbery, which he later successfully completed. (3 RR 7–8, 10–11, 12.) In 2014, Appellant was convicted of misdemeanor possession of marijuana, and in 2015, he was arrested for misdemeanor evading arrest on foot, but that case was dismissed. (3 RR 8, 16.)

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[1] The record is somewhat difficult to parse as both the State and defense counsel confused the dates and procedural posture of Appellant's theft convictions. On July 12, 2012, Appellant was placed on deferred adjudication for misdemeanor theft on in cause # 1833851 (Harris County Criminal Court at Law #4). While on deferred adjudication for that theft, he was charged with a second theft in cause # 1386323 (178th District Court, Harris County). On October 3, 2013, Appellant pled guilty to misdemeanor theft in cause # 1386323. The following day, October 4, 2013, the court adjudicated his guilt in cause # 1833851.

The State's notice of extraneous offenses incorrectly lists July 12, 2012—the date Appellant was placed on deferred adjudication—as his conviction date. (CR 93.)

Appellant respectfully requests that this Court take judicial notice of these two 2013 misdemeanor theft convictions. Certified copies are attached as Exhibit #1. *See* Tex. R. Evid. 201(b), (c)(2).

The State argued that it should be allowed to use Appellant's 2013 misdemeanor theft convictions for impeachment, despite them being more than ten years old, because Appellant's credibility was central to the case and because his subsequent criminal history "attenuated" their remoteness. (3 RR 9–10, 11, 13, 15–16.)

The court ruled that Appellant could be impeached with his misdemeanor theft convictions and granted Appellant a running objection to their admission under Rule 609. (3 RR 13–16.)

Appellant, in turn, argued that if his over-a-decade-old theft convictions were admissible, he should likewise be allowed to impeach the complainant with her 2012 misdemeanor conviction for providing false information to a police officer.[2] (3 RR 16.) The complainant had another misdemeanor conviction in 2012 for possession of a controlled substance but no other criminal history. (3 RR 16–17.)

The court denied Appellant's request because, unlike Appellant, the complainant had no subsequent criminal history. (3 RR 16–17.)

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[2] The complainant was convicted of "failure to identify to a police officer by providing false information," specifically by giving a fictitious name. Certified copies of the information and judgment and sentence in that case have been attached as Exhibit #2. Appellant respectfully requests that this Court take judicial notice of them as well. *See* Tex. R. Evid. 201(b), (c)(2).

2. The State's case

A. The complainant's testimony

The complainant testified that she attended a pajama party hosted by her friend Alexsis Mitchell. (4 RR 14.)

The party took place at a three-story townhome, with a kitchen, living area, and balcony on the second floor and bedrooms on the third floor. (4 RR 18.) The complainant planned to spend the night with Alexsis and have brunch with her and her friends the next day. (4 RR 16, 18.)

The complainant arrived at the party around 11 p.m. (4 RR 19.) She had worked a twelve-hour shift from 7 p.m. the previous night to 7 a.m. that morning and had not slept since finishing her shift. (4 RR 14–15.)

Upon arriving at the party, she drank three shots of Hennessy back-to-back. (4 RR 20.) She then went out onto the balcony and smoked marijuana. (4 RR 20–21.) After returning inside, she drank two or three more shots of Hennessy and a margarita. (4 RR 23–24.) She estimated that she drank seven or eight shots in total and was "drunk." (4 RR 23, 25.)

The complainant admitted that, due to her level of intoxication, she had gaps in her memory of that night. (4 RR 20.) After drinking, she sat at a table with her friend Alexsis, Alexsis's brother, and some other

people. (4 RR 24.) She began falling asleep at the table and decided to go upstairs. (4 RR 24–25.)

She went upstairs, entered a children's bedroom with a bunk bed, and collapsed onto the bottom bunk. (4 RR 28.) The lights were off. (4 RR 27.)

The complainant testified that she woke up to Appellant having sex with her from behind. (4 RR 28.) The lights were now on. (4 RR 29.) She did not know who Appellant was. (4 RR 30.)

Appellant placed his cell phone in front of her face and asked her to type her number into his phone. (4 RR 29, 31.) When she was unable to put her number into the phone, Appellant threw the phone onto the bed. (4 RR 32.) She started to tap buttons on the phone and then fell back asleep. (4 RR 32.)

The next morning, the complainant began to have flashes of memory from the night before. (*Id.*) She told Alexsis that she believed she had been raped. (*Id.*) She said that the man wore a red shirt, which caused Alexsis to identify Appellant as the suspect. (4 RR 33.)

The complainant logged onto her Instagram account and saw a message from Appellant asking her to contact him after she woke up.

(*Id.*) She was unable to explain how Appellant obtained her Instagram handle without having spoken to her. (4 RR 70–71.)

She then called Appellant and accused him of raping her, but he denied that they had sex. (4 RR 35–36.)

Several hours later, the complainant went to a hospital, where she underwent a sexual assault examination. (3 RR 107–08, 121; 4 RR 36–37.) DNA recovered from that examination matched Appellant's DNA. (3 RR 160–61; State's Exhibit #18.)

B. The complainant's friends' testimony

Alexsis Mitchell testified that she saw Appellant walking downstairs from the third floor. (3 RR 42.) He told her that he had been upstairs talking with the complainant. (*Id.*)

Sharbrittaney Graham, another friend of the complainant, also saw Appellant come downstairs from the third floor. (3 RR 71.) He told her and others that he had been "chilling" upstairs with the complainant, and then left the party. (3 RR 71, 85.)

3. Appellant's testimony

Appellant testified that he didn't know the complainant before arriving at the party. (4 RR 87.) He sat next to her at a table and made small talk with her. (4 RR 88.)

Appellant drank several shots at the party and had taken some Oxycontin earlier that evening. (4 RR 85, 88.) He described himself as being "high." (4 RR 94.)

Later that night, Appellant went upstairs to use the bathroom. (4 RR 91.) He saw several women exiting the bedroom where the complainant was. (*Id.*) The women then went into the bathroom, causing him to wait for them to finish. (*Id.*)

While waiting, Appellant heard the complainant's voice asking someone to turn off the bedroom lights. (4 RR 92.) He opened the bedroom door, went inside, and began talking to the complainant, who was lying in the bed. (4 RR 92, 94.)

Appellant was unsure how long they spoke but estimated it was about fifteen or twenty minutes. (4 RR 94.) He asked for her phone number, but the complainant declined and instead gave him her Instagram handle. (4 RR 94–95.)

Appellant got up to leave. (4 RR 95.) The complainant got up to close the door behind him. (4 RR 96.) She gave him a goodbye kiss, a lengthy hug, and complimented his cologne. (4 RR 97.)

They then had sex. (4 RR 98–99.) At no point did the complainant indicate that she did not know what was happening or that she did not consent. (4 RR 100.)

Afterwards, Appellant went to the bathroom, walked downstairs, and told Alexsis that he'd been upstairs with the complainant. (4 RR 101.)

He left the party and started driving home. (4 RR 102.) Feeling too tired to drive home safely, he pulled over and slept in his car. (4 RR 103.) The next morning, he drove home and messaged the complainant on Instagram. (4 RR 103–04.)

The complainant messaged back and accused him of raping her. (4 RR 104; Defendant's Exhibit #1.) Appellant gave her his phone number. (4 RR 105; Defendant's Exhibit #1.) The complainant called him and again accused him of rape. (*Id.*)

Appellant admitted that he initially denied having sex with the complainant because he was scared that she'd accused him of rape. (4 RR 104–05, 108.) Eventually, however, Appellant admitted to her that they did have sex. (4 RR 109.)

Under cross-examination, the State asked if Appellant had been convicted of misdemeanor theft in 2012. (4 RR 111.) He answered "yes."[3] (*Id.*)

4. Guilty verdict and post-conviction proceedings

The jury found Appellant guilty. (CR 134; 5 RR 41.)

Under pressure from Judge Roll, Appellant changed his sentencing election from the jury to the court, waived his right of appeal, admitted responsibility to the complainant, and was sentenced to eight years in prison. (6 RR 3–4, 6.) Appellant was also assessed $185 in state consolidated court costs and $105 in local consolidated court costs. (CR 140.)

Appellant subsequently filed a motion for a new trial on punishment alleging that his plea was involuntary due to the trial court's coercion and that his Fifth Amendment right against self-incrimination was violated when the court conditioned his sentence on admitting guilt to the complainant. (CR 148–162.)

[3] As explained above, Appellant's two misdemeanor theft convictions occurred in 2013. The State was still apparently under the mistaken belief that Appellant's deferred adjudication in 2012 was a final theft conviction. It's also unclear why the State, having argued for the admissibility of both convictions at the pretrial hearing, did not ask Appellant about his second theft conviction.

After a hearing, Judge Hazel Jones—the elected judge of the court—granted the motion for a new trial. (CR 195; 1 Supp. RR 49–50, Motion for a New Trial.) The State did not appeal.

Appellant later entered into a plea agreement for six years in prison while maintaining the right to appeal his conviction. (1 Supp. CR 8–14; 1 Supp. RR 5, Plea Proceedings.)

This appeal followed.

Summary of the Argument

The trial court abused its discretion by admitting Appellant's theft conviction under Texas Rule of Evidence 609(b) while excluding the complainant's conviction for lying to a police officer.

Rule 609(b) presumes that convictions over ten years old are inadmissible unless their probative value, supported by specific facts and circumstances, substantially outweighs their prejudicial effect. Both convictions were more than ten years old, but only Appellant had intervening criminal history. The trial court relied on Appellant's intervening history but failed to identify any facts showing how that history—which did not involve lying—made his remote theft conviction probative of his credibility at the time of trial.

Appellate courts have uncritically applied the *Theus* factors to determine whether a remote conviction should have been admitted under Rule 609(b). But the *Theus* factors were designed to analyze the admissibility of convictions under Rule 609(a)—not Rule 609(b)'s much stricter standard. Applying the *Theus* factors to Rule 609(b) erases the meaningful differences between the two rules.

Appellant proposes a new test—the *contextual credibility factors*—which better implement Rule 609(b)'s text and purpose. Under that test, neither the Appellant's nor the complainant's conviction should have been admitted.

If the Court instead chooses to apply the *Theus* factors, then both convictions should have been admitted.

Either way, Appellant was harmed by the trial court's unequal treatment of the two convictions. His trial was a swearing contest between him and the complainant, and allowing the jury to hear about his conviction—while hiding the complainant's—made it far more likely that the jury would believe the complainant over him.

Finally, the trial court unlawfully assessed various court costs against Appellant. The current $185 assessment for state consolidated court costs did not apply at the time of Appellant's alleged offense; a

$133 assessment did. And no law permitted an assessment of $105 in local consolidated court costs at the time of Appellant's alleged offense.

Argument

1. The trial court abused its discretion by admitting Appellant's theft conviction while excluding the complainant's conviction for lying to a police officer

A. Standard of review

A trial court's ruling to admit or exclude evidence is reviewed for abuse of discretion. *Mbugua v. State*, 312 S.W.3d 657, 670 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd). A trial court abuses its discretion when its decision is arbitrary, unreasonable, or made without reference to any guiding rules or principles. *Id.* As long as the trial court's decision is within "the bounds of reasonable disagreement," it is not an abuse of discretion. *Id.*

However, a "trial court has no 'right' to be 'wrong' if that means to admit evidence which appears to the appellate court, affording all due deference to the trial court's decision, nevertheless to be substantially more prejudicial than probative." *Reese v. State*, 33 S.W.3d 238, 241 (Tex. Crim. App. 2000).

B. Applicable law

Under Texas Rule of Evidence 609(a), a witness may be impeached with a prior conviction for a felony or misdemeanor involving moral

turpitude as long as "the probative value of the evidence outweighs its prejudicial effect." Tex. R. Evid. 609(a).

In contrast, under Texas Rule of Evidence 609(b), if "more than 10 years have passed since the witness's conviction," then the conviction is "admissible only if its probative value, supported by specific facts and circumstances, *substantially outweighs* its prejudicial effect." *Id.* 609(b) (emphasis added).

Theft is a crime of moral turpitude. *Ex parte De Los Reyes*, 392 S.W.3d 675, 676 (Tex. Crim. App. 2013). So is any crime that involves lying to law enforcement, such as failure to identify oneself to a police officer by giving a false name. *Martin v. State*, 265 S.W.3d 435, 444 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *Lape v. State*, 893 S.W.2d 949, 958 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd).

Under the common law "tacking doctrine," a conviction over ten years old could be admitted under Rule 609(a)'s "outweighs" standard rather than Rule 609(b)'s stricter "substantially outweighs" standard if the witness had "more recent convictions for felonies or misdemeanors involving moral turpitude." *Meadows v. State*, 455 S.W.3d 166, 170 (Tex. Crim. App. 2015).

But in *Meadows v. State*, the Court of Criminal Appeals held that the adoption of Rule 609 "supplanted the common-law tacking doctrine." *Id.* at 171. Since *Meadows*, trial courts have been required to analyze convictions over ten years old under Rule 609(b)'s stricter "substantially outweighs" standard. *Id.*

In applying that stricter standard, the *Meadows* Court ruled that trial courts could consider, as part of the "specific facts and circumstances," whether "intervening convictions dilute the prejudice of [a] remote conviction." *Id.* at 170.

In conducting a prejudice-versus-probative analysis under Rule 609, courts consider the five non-exclusive *Theus* factors: (1) the impeachment value of the prior conviction, (2) the similarity of the prior conviction to the charged offense, (3) the importance of the witness's testimony, (4) the importance of the witness's credibility, and (5) the temporal proximity of the past conviction relative to the charged offense and the witness's subsequent criminal history. *Blacklock v. State*, 611 S.W.3d 162, 170 (Tex. App.—Houston [14th Dist.] 2020, pet. ref'd).

C. Under the *Theus* factors, both Appellant's conviction and the complainant's should have been admitted

If the trial court admitted Appellant's conviction under the *Theus* factors, it was required to admit the complainant's as well.

i. Impeachment value of the conviction

Crimes involving deception, such as theft and lying to a police officer, bear directly on a witness's credibility and therefore "carry high impeachment value, which favors admission." *Id.* at 171. Accordingly, this factor favored admission of both Appellant's and the complainant's convictions.

ii. Similarity of the conviction to the charged offense

The more similar the past conviction is to the charged offense, the greater the risk that the jury will convict based on the witness's character rather than the evidence. *See Pierre v. State*, 2 S.W.3d 439, 443 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd). Conversely, the more dissimilar the past conviction is to the charged offense, the less likely this will occur and the more this factor weighs in favor of admission. *Cavitt v. State*, 507 S.W.3d 235, 258 (Tex. App.—Houston [1st Dist.] 2015, pet. ref'd).

Because neither theft nor lying to a police officer is similar to sexual assault, this factor favored admission of both convictions.

iii. Importance of the witness's testimony and credibility

Courts often consider these factors together because the more important a witness's testimony, the more critical the witness's credibility. *See Pierre*, 2 S.W.3d at 443.

In a typical he-said / she-said sexual assault case, the credibility of the defendant and complainant are critically important because only they "can provide testimony about what actually happened." *Cavitt*, 507 S.W.3d at 258.

Because Appellant's trial turned on the jury's assessment of his credibility versus the complainant's, these factors favored admitting both convictions.

iv. Temporal proximity and subsequent criminal history

The older a conviction, the less probative it is of the witness's present credibility. *See Blacklock*, 611 S.W.3d at 171. But if a witness has subsequent convictions, thus showing "a propensity for running afoul of the law," those convictions can reduce the prejudicial impact of a remote conviction. *See id.*

When a witness has a conviction more than ten years old but also has one or more intervening convictions, courts often treat this factor

as neutral. *See id.*; *Leyba v. State*, 416 S.W.3d 563, 571 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd).

Appellant had just one intervening conviction: a 2014 conviction for misdemeanor possession of marijuana. (3 RR 8, 16.) Though he was on the tail end of a lengthy deferred adjudication for aggravated robbery at the time of the alleged sexual assault, a deferred adjudication is not a conviction. *Jordan v. State*, 36 S.W.3d 871, 876 (Tex. Crim. App. 2001). And, per *Meadows*, courts should consider only whether "intervening *convictions* dilute the prejudice of [a] remote conviction." *Meadows v. State*, 455 S.W.3d 166, 170 (Tex. Crim. App. 2015) (emphasis added).

At best, this factor was neutral for Appellant. For the complainant, who had no criminal convictions, it weighed against admission.

The following table summarizes how the *Theus* factors apply to both convictions:

***Theus* factor**	**Defendant's theft conviction**	**Complainant's lying to a police officer conviction**
Impeachment value	For	For
Lack of similarity	For	For
Importance of witness's testimony	For	For
Importance of witness's credibility	For	For

Temporal proximity / subsequent history	Neutral	Against

Because four of the five *Theus* factors favored admission, applying the test consistently would have required admitting both convictions.

v. A nonexclusive *Theus* factor: avoiding a false impression with the jury

The *Theus* factors are "nonexclusive." *Blacklock*, 611 S.W.3d at 170. Yet appellate courts rarely identify additional factors, perhaps out of a concern that doing so could cause them to creep in as new, mandatory *Theus* factors.

Blacklock is a notable exception. That case involved an aggravated assault prosecution in which the defendant was allowed to impeach the complainant with six prior convictions: a burglary of a motor vehicle, three thefts, and two felony prostitutions. *Id.* On appeal, the defendant argued that the trial court erred by excluding two older prostitution convictions and two additional thefts. *Id.*

The court upheld the exclusion, reasoning that because the defendant was able to cross-examine the complainant with a substantial number of convictions, admitting additional ones would have offered minimal impeachment value. *Id.* at 172. This "cumulative

impeachment" factor, though not one of the enumerated *Theus* factors, was nonetheless treated as an important factor.

This case presents the opposite situation. In *Blacklock*, exclusion prevented cumulative impeachment. Here, exclusion prevented a powerful form of impeachment—the complainant's prior conviction—and deprived the jury of an objective reason to disbelieve her.

Appellant's need to impeach the complainant's credibility was paramount. Her conviction for lying to a police officer bore directly on her willingness to tell the truth to law enforcement—an issue central to this case. That conviction was more probative of credibility than Appellant's theft conviction, which, though also a crime of moral turpitude, did not involve deception to the same degree.

But more importantly, by allowing Appellant's conviction while disallowing the complainant's, the trial court created an asymmetry in impeachment that left the jury with a false impression: that only Appellant had a criminal history bearing on his credibility.

In cases like this one—where the outcome turns entirely on the jury's judgment of credibility between a complainant and a defendant—this Court should apply a nonexclusive factor: avoid giving the jury a false impression. When both the complainant and defendant have

convictions for crimes of moral turpitude from the same time period, the trial court should treat them equally: admit both or exclude both. Admitting one while excluding the other unfairly tips the scales in favor of one side.

By admitting Appellant's conviction while excluding the complainant's, the trial court failed to treat both sides equally and abused its discretion by tipping the scales in the State's favor.

D. This Court should not apply the *Theus* factors because they were developed for Rule 609(a), not for Rule 609(b)'s stricter admissibility standard

Even though Appellant prevails under a traditional *Theus* analysis, this Court should not uncritically apply *Theus* here, as other courts have. *See, e.g.*, *Blacklock*, 611 S.W.2d at 170; *Leyba*, 416 S.W.3d at 571; *Moore v. State*, 143 S.W.3d 305, 312–13 (Tex. App.—Waco 2004, pet. ref'd). That's because the *Theus* factors were created to evaluate the admissibility of convictions under Rule 609(a), which requires only that the probative value of a conviction *outweigh* its prejudicial effect. Tex. R. Evid. 609(a). Rule 609(b), in contrast, imposes a stricter standard: a conviction is admissible only if its probative value—supported by specific facts and circumstances—*substantially outweighs* its prejudicial effect. *Id.* 609(b).

As the Court of Criminal Appeals explained in *Hernandez v. State*, 976 S.W.2d 753, 755 (Tex. Crim. App. 1998):

> The drafters of [Rule 609] provided heightened protection against prejudice when a conviction is deemed remote (more than 10 years old). The State must demonstrate that the probative value "*substantially outweighs*," not merely "outweighs," the prejudicial effect. In instances in which remoteness is an issue, we look exclusively to the strictures of rule 609(b), not to the multiple factors of *Theus*.

Hernandez, decided seventeen years before *Meadows*, applied the common-law tacking doctrine. Under tacking, a conviction more than ten years old could be analyzed under Rule 609(a) and *Theus*—rather than Rule 609(b)—if the witness had "subsequent convictions for felonies or misdemeanors involving moral turpitude." *Id.* That was because, as the Court explained, "the 'tacking' of the intervening convictions causes a conviction older than 10 years to be treated as not remote." *Id.* In effect, tacking operated like a judicial time machine to bring remote convictions into the present.

The defendant in *Hernandez* was convicted of possession of cocaine after the State was allowed to impeach him with a 1977 conviction for felony delivery of marijuana. *Id.* Hernandez had five intervening misdemeanor convictions: criminal trespass in 1979, carrying a weapon

in 1983, possession of a controlled substance in 1985, possession of marijuana in 1990, and driving while intoxicated in 1995. *Id.*

The Court held that because none of Hernandez's intervening convictions were felonies or crimes of moral turpitude, they could not be tacked on to his 1977 felony conviction to make it admissible under Rule 609(a). *Id.* at 756.

The Court then turned to Rule 609(b)'s standard and asked whether the record contained "specific facts and circumstances showing that the probative value of the prior conviction substantially outweighs its prejudicial effect, as required by rule 609(b)." *Id.* Finding no specific facts or circumstances in the record, the Court held that the trial court abused its discretion in admitting the conviction. *Id.*

It also found the conviction's admission harmful. *Id.* at 757. Because the trial was a swearing match between Hernandez and the arresting officers, "the probative value of the prior conviction probably equaled, but did not substantially outweigh, its prejudicial value." *Id.*

Meadows did not mention or discuss *Hernandez*. Though *Meadows* jettisoned the tacking doctrine that *Hernandez* applied, it did not overrule *Hernandez*'s core holding: when a conviction is more than ten

years old, courts must apply the "substantially outweighs" standard of Rule 609(b)—not Rule 609(a) and its *Theus* factors.

That requirement makes sense. If the *Theus* factors governed both Rule 609(a) and Rule 609(b), there would be no distinction between the two rules. Applying the *Theus* factors to Rule 609(b) would render its stricter "substantially outweighs" standard meaningless.

E. This Court should instead adopt a better framework: the contextual credibility factors

The *Hernandez* Court did not articulate a multi-factor test for analyzing convictions under Rule 609(b). Instead, it simply applied the rule as written and asked if the record contained "specific facts and circumstances" demonstrating that the "probative value" of the conviction "substantially outweigh[ed] its prejudicial effect." Tex. R. Evid. 609(b).

But quoting the rule's text offers little practical guidance to trial and appellate courts. Fortunately, a more structured test can be derived from the language of Rule 609(b). This brief proposes calling this new test the *contextual credibility factors*. It consists of four factors that implement Rule 609(b) far better than the *Theus* factors ever could.

i. Presumption against admissibility

Rule 609(b)'s "substantially outweighs" standard creates a presumption against admissibility. Unless this demanding standard is overcome, convictions more than ten years old are inadmissible. Under this factor, if the remaining factors do not favor admission, the conviction must be excluded.

ii. Conviction involves dishonesty

Rule 609(b) does not permit admissibility based on assumptions or generalities—it requires "*specific* facts and circumstances" showing that a conviction's probative value substantially outweighs its prejudicial effect. *Id.* (emphasis added).

What type of probative value matters under Rule 609? The rule itself tells us: whether the conviction can "attack a witness's character for truthfulness." *Id.* 609(a).

Accordingly, the proponent of a conviction's admissibility under Rule 609(b) should show that the conviction directly bears on a witness's character for truthfulness—in other words, that it involves lying.

Crimes such as perjury, lying to a police officer, making a false report, and fraud directly implicate credibility. Other offenses—such as theft, prostitution, drug possession, or robbery—may be crimes of

moral turpitude or felonies, but they do not necessarily involve dishonesty. Such convictions remain available for impeachment if they under Rule 609(a) if they meet the *Theus* factors. But Rule 609(b)'s heightened "substantially outweighs" standard requires a more narrowly tailored approach—focused on dishonesty—if it is to have any independent meaning.

Consequently, if the conviction is for a crime that involves dishonesty, this factor favors admission. If not, it weighs against it.

iii. Remoteness beyond ten years (with dishonesty conviction tacking)

Rule 609(b) imposes a ten-year cutoff because the further back in time a conviction, the less probative it is of a witness's present credibility. A person convicted of making a false report last year is more likely to still be a liar than someone convicted of false report eleven years ago.

Thus, courts should account for the passage of time even past the ten-year mark. The older a conviction is beyond ten years, the more this factor should weigh against admissibility.

There is one exception. Though *Meadows* abandoned the tacking doctrine, it made clear that "whether intervening convictions dilute the prejudice of [a] remote conviction" remains a relevant consideration

under Rule 609(b). *Meadows v. State*, 455 S.W.3d 166, 170 (Tex. Crim. App. 2015).

Unlike the old tacking doctrine—which applied a rigid rule allowing any intervening felony or crime of moral turpitude to reset the clock—*Meadows* offers no guidance on when or how such intervening convictions should now be considered under Rule 609(b).

But logic provides the answer. The idea behind the tacking doctrine was that intervening convictions can sometimes show that a witness's character hasn't changed. Rule 609 is concerned about a witness's "character for truthfulness." Tex. R. Evid. 609(a). So, if intervening convictions reveal that a witness continues to have an untruthful character, the intervening convictions should weigh in favor of admitting the remote conviction.

The problem with the tacking doctrine was that it was concerned not with whether intervening convictions showed a witness's lack of honesty but with whether they showed a witness's "lack of reformation." *Hernandez*, 976 S.W.2d at 755. That focus reflected a Puritan moralism more concerned with a witness's perceived virtue than credibility. The doctrine treated all felonies and crimes of moral turpitude the same—even though many felonies (like drug possession,

robbery, or DWI – third offense) and crimes of moral turpitude (like theft and prostitution) don't involve lying.

Criminality alone doesn't prove dishonesty. Robin Hood isn't more likely to lie because he robs the rich. Nor is a drug addict more likely to lie because he repeatedly possesses cocaine. Under the tacking doctrine, a witness with an intervening conviction for misdemeanor possession of marijuana (3.9 ounces) would be deemed more trustworthy than someone with an intervening conviction for felony possession of marijuana (4.1 ounces). That's ridiculous.

What matters isn't whether intervening convictions show a "lack of reformation," but whether they show a pattern of dishonesty. A court should therefore ask whether the witness has any intervening convictions that involve lying, e.g., perjury, fraud, false report, or failure to identify. If there are such intervening convictions, this factor weighs in favor of admitting the remote conviction.

This approach—call it *dishonesty conviction tacking*—is simple and far less arbitrary than common law tacking. A witness convicted of false report fifteen years ago with intervening convictions for felony drug possession, prostitution, and DWI, would not have the remote conviction admitted because those intervening convictions don't show

continuing dishonesty. But a witness with even one intervening conviction for forgery, tax fraud, or failure to identify could have the old false report conviction admitted because the intervening conviction is probative evidence of an ongoing character for lying.

This is not a new idea. No less an authority than John Henry Wigmore argued over a century ago that only convictions involving dishonesty should be used for impeachment:

> [I]t would logically follow that when particular instances of misconduct are allowed to be used as throwing light on credibility—that is to say, conviction of crime … and other misconduct, when brought out on cross-examination … *only such instances should be used as are relevant to show a lack of truthfulness of disposition*,—for example, forgery, cheating, and the like.[4]

In Wigmore's view, only dishonesty-related convictions should be admissible because "a bad general disposition [i.e., bad character] does *not* necessarily or commonly involve a lack of veracity." *See id.* § 922, p. 1059; § 926, p. 1066 (emphasis in original). He bemoaned that courts continued to allow convictions unrelated to dishonesty for

[4] John Henry Wigmore, 2 *A Treatise on the System of Evidence in Trials at Common Law* § 926, p. 1066 (1904) (emphasis added), available online at https://www.google.com/books/edition/A_Treatise_on_the_System_of_Evidence_in/93gsAQAAMAAJ.

impeachment even though "logic and policy alike require such a restriction." *Id.* § 926, p. 1066.

Though Wigmore's stricter approach did not prevail in Rule 609(a), which permits impeachment with any felony or crime of moral turpitude, Rule 609(b) reflects a different policy judgment. Its heightened "substantially outweighs" standard and demand for "specific facts and circumstances" narrow the inquiry into what truly matters: credibility, not criminality. That is exactly the focus Wigmore urged. His concerns, though sidelined under Rule 609(a), are directly relevant under Rule 609(b), where the presumption is against admission and a remote conviction must be shown to bear specifically on truthfulness.

iv. Other convictions available for impeachment

The final factor is whether other convictions are available to impeach the witness. As the *Blacklock* court observed in the Rule 609(a) context, the availability of more recent convictions reduces the probative value of a remote one. 611 S.W.3d at 171.

Thus, if a witness with a twenty-year-old wire fraud conviction has more recent convictions for theft, prostitution, or drug possession that

are admissible under Rule 609(a), this factor weighs against admission. If no other admissible convictions exist, this factor is neutral.

v. The *Theus* factors should not be incorporated into Rule 609(b)

This four-factor test gives meaningful structure to Rule 609(b)'s text. It respects the rule's presumption against admissibility while allowing courts to admit remote convictions when justified by specific circumstances.

There's no reason to incorporate any of the *Theus* factors into a Rule 609(b) analysis. As shown below, the contextual credibility factors better serve the rule's text and purpose:

***Theus* factor**	**Contextual credibility response**
Impeachment value of the conviction	Counts only if the conviction involves dishonesty
Similarity to charged offense	Irrelevant under Rule 609(b); similarity or lack of similarity doesn't affect credibility
Importance of the witness's testimony	Irrelevant—Rule 609(b)'s text applies to all witnesses and doesn't say "important" witnesses should be treated differently
Temporal proximity and criminal history	Only dishonest intervening convictions matter

Unlike the *Theus* factors, which were designed for Rule 609(a), the contextual credibility factors give Rule 609(b) independent force. They honor the rule's text by preserving its presumption against

admissibility, its heightened standard, and its demand for specific facts that make an old conviction genuinely probative of a witness's present credibility. And just as importantly, they offer courts a clear, workable framework that can be applied consistently across cases.

vi. Under the contextual credibility factors, neither Appellant's nor the complainant's conviction should have been admitted

Applying the contextual credibility factors to this case, neither Appellant's nor the complainant's conviction should have been admitted:

Contextual credibility factor	Appellant's conviction	Complainant's conviction
Presumption against admissibility	Yes – against admission	Yes – against admission
Conviction involved dishonesty	No – against admission	Yes – for admission
Remoteness with dishonesty conviction tacking	Remote; no intervening dishonesty conviction – against admission	Remote; no intervening dishonesty conviction – against admission
Other convictions available for impeachment	No – neutral	No – neutral

For Appellant, none of the factors favor admission.

For the complainant, only one factor—a conviction involving dishonesty—supports admission. But that alone cannot and should not overcome Rule 609(b)'s presumption against admissibility. If it did, then every remote dishonesty conviction would become admissible, gutting the rule's purpose.

This Court should adopt the contextual credibility framework—or at least a close variant—because it implements Rule 609(b) text and purpose far better than the *Theus* factors. Under this standard, the trial court abused its discretion by admitting Appellant's conviction.

F. The admission of Appellant's conviction and the exclusion of the complainant's was harmful

i. Standard of review

A nonconstitutional error "must be disregarded" unless it affects a defendant's "substantial rights." Tex. R. App. P. 44.2(b). "A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict." *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997).

If the error had a "substantial influence" on the jury's verdict, or if the court has "grave doubt" as to whether it did, the error is harmful and the conviction must be reversed. *Thomas v. State*, 505 S.W.3d 916,

926 (Tex. Crim. App. 2016) (quoting *Kotteakos v. United States*, 328 U.S. 750, 764 (1946)).

"Grave doubt means that in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error." *Burnett v. State*, 88 S.W.3d 633, 637–38 (Tex. Crim. App. 2002) (cleaned up).

ii. Appellant was harmed because the conviction gave the jury a reason to disbelieve his testimony and shielded the complainant from powerful impeachment evidence

Appellant's trial turned entirely on credibility. DNA evidence confirmed that Appellant and the complainant had sex, but there was no video, no eyewitness, and no physical evidence bearing on whether the encounter was consensual. The jury had to decide whether to believe Appellant's testimony that the sex was consensual or the complainant's testimony that it was not.

It's true that the Appellant initially denied having sex with the complainant because her accusation scared him. But he admitted the truth before he was even charged. Jurors can, and often do, believe witnesses who initially lied, especially when their trial testimony is consistent and makes sense.

But Appellant's theft conviction gave the jury a piece of official, independent evidence from which it could have concluded that he was a criminal unworthy of belief. That's exactly the kind of prejudice Rule 609(b) is designed to guard against—especially in a trial that turns solely on credibility.

At the same time, the jury was prevented from learning that the complainant had been convicted of lying to a police officer—a crime that bears directly on truthfulness. Had her conviction been admitted, the jury could have reasonably concluded that she was lying again.

The trial court's rulings created a credibility imbalance that tipped the scales toward guilt. In a case that came down to the Appellant's word against the complainant's, that difference may well have been decisive.

If this Court adopts the proposed contextual credibility factors, neither conviction should have been admitted—and Appellant was harmed by the improper admission of his theft conviction. If it instead follows the *Theus* factors, both convictions should have come in—and the harm was even greater because the jury never heard the strongest impeachment evidence against the complainant.

2. The trial court unlawfully assessed $185 in state consolidated court costs

The trial court assessed $185 in state consolidated court costs. (CR 140.)

Though the law currently sets this amount at $185 for felony convictions, that amount does not apply to offenses committed before January 1, 2020. For offenses committed between January 1, 2004 and January 1, 2020, the correct amount is $133. *See* Tex. Gov't Code §§ 133.102(a)(1), (d); *Junior v. State*, 676 S.W.3d 228, 232 (Tex. App.—Houston [14th Dist.] 2023, no pet.).

Because Appellant was convicted of a felony that occurred in October 2019, his state consolidated court costs should have been $133. (CR 41, 139.)

3. The trial court illegally assessed $105 in local consolidated court costs

Appellant was also assessed $105 in local consolidated court costs. (CR 140.)

Though the law currently requires a defendant convicted of a felony to pay $105 in local consolidated court costs, this law only applies to offenses committed on or after January 1, 2020. Tex. Loc. Gov't Code § 134.101(a); *Junior*, 676 S.W.3d at 233.

Because Appellant was convicted of a felony that occurred in October 2019, the $105 assessment for local consolidated court costs was unlawfully assessed.

Conclusion and Prayer

Appellant's trial turned entirely on credibility. The trial court tipped the scales toward conviction when it admitted Appellant's theft conviction while excluding the complainant's conviction for lying to a police officer.

Appellant's intervening criminal history did not justify admitting his remote theft conviction under Rule 609(b). Rule 609(b)—properly implemented through the contextual credibility factors—would have excluded it. Indeed, his theft conviction would not have been admissible even under the now-abolished tacking doctrine.

Even if the *Theus* factors somehow applied, the trial court could not have admitted Appellant's conviction while excluding the complainant's. That test would have required admitting both.

No matter which framework this Court chooses to adopt, the result is the same: both convictions should have been treated equally.

Appellant now sits behind bars because they were not.

Appellant respectfully asks that the Court reverse his conviction and remand the case for a new trial. Alternatively, the Court should modify the judgment to strike the illegally imposed court costs.

Respectfully submitted,

/s/ Stephen Aslett____

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SBOT: 24064841
stephen@aslettlaw.com
Counsel for Appellant

Certificate of Service

I certify that a true and correct copy of this brief was served upon counsel for the State, Assistant District Attorney Jessica Caird, 1201 Franklin St., Houston, TX 77002 via the efile system on May 6, 2025.

/s/ Stephen Aslett_____
Stephen Aslett

Certificate of Compliance

I certify that, according to Microsoft Word, this document contains 8,261 words.

/s/ Stephen Aslett_____
Stephen Aslett

Exhibit #1

Appellant's theft convictions

CASE NO. 138632301010
INCIDENT NO./TRN: 9168755600A001

THE STATE OF TEXAS	§	IN THE 178TH DISTRICT
V.	§	COURT P2
FRANKLYN, CHRISTIAN AVERY	§	HARRIS COUNTY, TEXAS
STATE ID NO.: TX50054704	§	

JUDGMENT OF CONVICTION BY COURT—WAIVER OF JURY TRIAL

Judge Presiding:	HON. DAVID MENDOZA	Date Judgment Entered:	10/3/2013
Attorney for State:	NATHAN MOSS	Attorney for Defendant:	MONKS, J.

Offense for which Defendant Convicted:
THEFT - $50-$500 (239920)

Charging Instrument: **INDICTMENT**	Statute for Offense: **N/A**

Date of Offense:
5/2/2013

Degree of Offense: **CLASS B MISDEMEANOR**	Plea to Offense: **GUILTY**	Findings on Deadly Weapon: **N/A**

Terms of Plea Bargain:
45 DAYS HCJ - STATE REDUCED FROM 2ND DEGREE

Plea to 1st Enhancement Paragraph:	N/A	Plea to 2nd Enhancement/Habitual Paragraph:	N/A
Findings on 1st Enhancement Paragraph:	N/A	Findings on 2nd Enhancement/Habitual Paragraph:	N/A

Date Sentence Imposed:	10/3/2013	Date Sentence to Commence:	10/3/2013

Punishment and Place of Confinement: **45 DAYS COUNTY JAIL**

THIS SENTENCE SHALL RUN **CONCURRENTLY.**

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR **N/A** .

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ N/A	$ 202.00	$ N/A	☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62

The age of the victim at the time of the offense was **N/A** .

Time Credited:
If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From ____ to ____	From ____ to ____
From ____ to ____	From ____ to ____
From ____ to ____	From ____ to ____

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.
155 DAYS NOTES: **TOWARD INCARCERATION, FINE, AND COSTS**

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in **Harris County, Texas**. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and

Franklyn

entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☐ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the . The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☒ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the **Sheriff of Harris County, Texas** on the date the sentence is to commence. Defendant shall be confined in the **Harris County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County District Clerk**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED.

Signed and entered on October 03, 2013

X David Mendoza

DAVID MENDOZA
JUDGE PRESIDING

Notice of Appeal Filed: _____

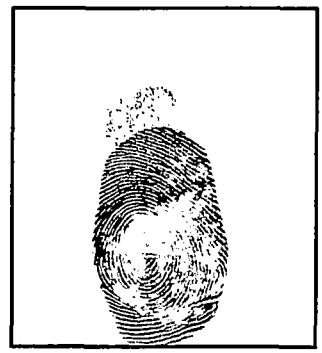
Mandate Received: _____ Type of Mandate: _____

After Mandate Received, Sentence to Begin Date is: _____

Jail Credit: _____

Def. Received on _____ at _____ AM / PM

By: _____, Deputy Sheriff of Harris County



Right Thumbprint

Clerk: S PINEDA

FIN (CAS 20.10): _____ EN/KR04: 909 LCBT: _____ LCBU: _____ EN/KR18: _____

ZF

I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 5, 2025

Certified Document Number: 57682796 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 51.301 and 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

CASE NO. 183385101010
INCIDENT NO./TRN: 9167868282A001

P2

THE STATE OF TEXAS	§	IN THE COUNTY CRIMINAL
	§	
V.	§	COURT AT LAW NO. 4
	§	
FRANKLYN, CHRISTIAN AVERY	§	HARRIS COUNTY, TEXAS
	§	
STATE ID NO.: TX50054704	§	

JUDGMENT ADJUDICATING GUILT

Judge Presiding:	HON. JOHN W. CLINTON	Date Judgment Entered:	10/4/2013
Attorney for State:	MCLEAREN, RYAN	Attorney for Defendant:	J MONKS

Date of Original Community Supervision Order: **07/12/12**

Statute for Offense: **N/A**

Offense for which Defendant Convicted: **THEFT - $50-$500**

Date of Offense: **6/5/2012**

Degree:	Plea to Motion to Adjudicate:	Findings on Deadly Weapon:
CLASS B MISDEMEANOR	**TRUE**	**N/A**

Terms of Plea Bargain: 90DAYS HCJ/176DAYS CREDIT

Date Sentence Imposed: **10/4/2013** Date Sentence to Commence: **10/4/2013**

Punishment and Place of Confinement: **90 DAYS COUNTY JAIL**

THIS SENTENCE SHALL RUN **CONCURRENTLY.**

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR **N/A** .

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ **N/A**	$ 287	$ **N/A**	☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Time Credited: If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.
176 DAYS NOTES: **TOWARD INCARCERATION, FINE, AND COSTS**

Driver's license is suspended for a period of N/A .

☐ **Family Violence:**
The Court FINDS that Defendant was prosecuted for an offense under Title 5 of the Penal Code that involved family violence. TEX. CODE CRIM. PROC. art. 42.013.

☐ **Weapon Forfeiture:**
The Court FINDS that a law enforcement agency, namely , seized a weapon, namely , in connection with an offense involving the use of a weapon or an offense under Chapter 46 of the Penal Code. The Court FINDS that 1) Defendant has been previously convicted under Chapter 46 of the Penal

Name changed from

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

The Court previously deferred adjudication of guilt in this case. Subsequently, the Court heard the matter of Defendant's compliance with and obedience to the terms and conditions of the Court's Order of Deferred Adjudication of Guilt. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

After hearing and considering the evidence presented by both sides, the Court FINDS THE FOLLOWING: (1) The Court previously found the Defendant to be qualified for community supervision; (2) The Court DEFERRED further proceedings, made no finding of guilt,

Certified Document Number: 97688 Page 2

and rendered no judgment; (3) The Court issued an order placing Defendant on community supervision for a period of **1 YEAR**; (4) The Court assessed a fine of **$ 300**; (5) While on community supervision, Defendant violated the terms and conditions of community supervision as set out in the State's **ORIGINAL** Motion to Adjudicate Guilt as follows:
FAIL TO COMMIT NO OFFENSE

Accordingly, the Court **GRANTS** the State's Motion to Adjudicate the Defendant's Guilt in the above cause. **FINDING** the Defendant committed the offense on the date as noted above, the Court **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the **Sheriff of Harris County, Texas** on the date the sentence is to commence. Defendant shall be confined in the **Harris County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY.** The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County District Clerk.** Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence **EXECUTED.**

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED.** The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Signed and entered on October 04, 2013

X _____
JOHN W. CLINTON
JUDGE PRESIDING

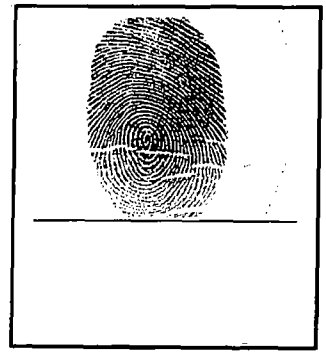
Community Supervision Expires On:

Ntc Appeal Filed: _____ Mandate Rec'd:

After Mandate Received, Sentence to Begin Date is: _____

Def. Received on _____ at _____ AM / PM

By: _____, Deputy Sheriff of Harris County



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Clerk: A JEREZ

Case Number: 1833851
Defendant: FRANKLYN, CHRISTIAN AVERY

EIN/KR23: 9987 LCBT: 0 LCBU: W

Certified Document Number: 67791 - Page 2 of 2

I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 5, 2025

Certified Document Number: 57677939 Total Pages: 2

Marilyn Burgess

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 51.301 and 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

Exhibit #2

Information and judgment and sentence for complainant's failure to identify conviction

02582963 (N)

THE STATE OF TEXAS
VS.
FELICIA JUSTICE
5422 FAIRVIEW FOREST DR
HOUSTON, TX 77088

SPN: **02582963**
DOB: **BF 05/26/1992**
DATE PREPARED: **2/17/2012**

D.A. LOG NUMBER: **1831108**
CJIS TRACKING NO.: **9167453074-A001**
BY: **TD** DA NO: **002128974**
AGENCY:**HPD**
O/R NO: **020626512-T**
ARREST DATE: **02/17/2012**

NCIC CODE: **4899 02**
RELATED CASES:

MISDEMEANOR CHARGE: **FAILURE TO IDENTIFY ONESELF TO A PEACE OFFICER**

CAUSE NO:
BAIL: **$500**
PRIOR CAUSE NO:

HARRIS COUNTY CRIMINAL COURT AT LAW NO: **1810714**
FIRST SETTING DATE: **3**
2-24-12

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Comes now the undersigned Assistant District Attorney of Harris County, Texas on behalf of the State of Texas, and presents in and to the County Criminal Court at Law No. _____ of Harris County, Texas, that in Harris County, Texas, **FELICIA JUSTICE**, hereafter styled the Defendant, heretofore on or about **FEBRUARY 17, 2012**, did then and there unlawfully intentionally give a false and fictitious NAME to a peace officer, namely R. BARRIOS, of the HOUSTON POLICED DEPARTMENT, who had LAWFULLY DETAINED THE DEFENDANT, and who the Defendant knew to be a peace officer.

FILED
Chris Daniel
District Clerk
FEB 17 2012
Time: 23:41
Harris County, Texas
By _____
Deputy

AGAINST THE PEACE AND DIGNITY OF THE STATE.

2405467

ASSISTANT DISTRICT ATTORNEY
OF HARRIS COUNTY, TEXAS.

BAR CARD NO.

INFORMATION

I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 5, 2025

Certified Document Number: 51388621 Total Pages: 1

Marilyn Burgess

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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CASE NO. 181071401010
INCIDENT NO./TRN: 9167453074A001

P2

THE STATE OF TEXAS	§	IN THE COUNTY CRIMINAL
	§	
V.	§	COURT AT LAW NO. 3
	§	
JUSTICE, FELICIA	§	HARRIS COUNTY, TEXAS
	§	
STATE ID NO.: TX08193279	§	

JUDGMENT OF CONVICTION BY COURT—WAIVER OF JURY TRIAL

Judge Presiding:	HON. JOHN CLINTON	Date Judgment Entered:	5/31/2012
Attorney for State:	S. ROBERTS	Attorney for Defendant:	K. HUFF

Offense for which Defendant Convicted:
FAIL TO ID TO P.O. FALSE INF

Charging Instrument:	Statute for Offense:
INFORMATION	**N/A**

Date of Offense:
2/17/2012

Degree of Offense:	Plea to Offense:	Findings on Deadly Weapon:
CLASS B MISDEMEANOR	**GUILTY**	**N/A**

Terms of Plea Bargain:
2 DAYS HCJ 1 DAY CREDIT $200.00 FINE

Plea to 1st Enhancement Paragraph:	N/A	Plea to 2nd Enhancement/Habitual Paragraph:	N/A
Findings on 1st Enhancement Paragraph:	N/A	Findings on 2nd Enhancement/Habitual Paragraph:	N/A

Date Sentence Imposed:	5/31/2012	Date Sentence to Commence:	5/31/2012

Punishment and Place of Confinement: **2 DAYS COUNTY JAIL**

THIS SENTENCE SHALL RUN **CONCURRENTLY.**

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ 200.00	$ 232.00	$ N/A	☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Time Credited: If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.
1 DAYS NOTES: **TOWARD INCARCERATION**

Driver's license is suspended for a period of N/A .

☐ **Family Violence:**
The Court FINDS that Defendant was prosecuted for an offense under Title 5 of the Penal Code that involved family violence. TEX. CODE CRIM. PROC. art. 42.013.

☐ **Weapon Forfeiture:**
The Court FINDS that a law enforcement agency, namely , seized a weapon, namely , in connection with an offense involving the use of a weapon or an offense under Chapter 46 of the Penal Code. The Court FINDS that 1) Defendant has been previously convicted under Chapter 46 of the Penal

Name changed from

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in **Harris County, Texas.** The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ ***County Jail—Confinement / Confinement in Lieu of Payment.*** *The Court* **ORDERS** *Defendant immediately committed to the custody of the* **Sheriff of Harris County, Texas** *on the date the sentence is to commence. Defendant shall be confined in the* **Harris County Jail** *for the period indicated above. The Court* **ORDERS** *that upon release from confinement, Defendant shall proceed immediately to the* **Harris County District Clerk's office**. *Once there, the Court* **ORDERS** *Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.*

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY.** The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County District Clerk**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence **EXECUTED.**

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED.** The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** *that Defendant is given credit noted above on this sentence for the time spent incarcerated.*

Furthermore, the following special findings or orders apply:

Signed and entered on May 31, 2012

X _____

JOHN CLINTON
JUDGE PRESIDING

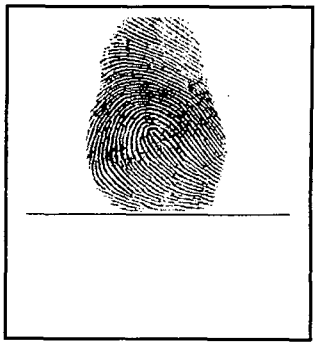
Community Supervision Expires On:

Ntc Appeal Filed: _____ Mandate Rec'd:

After Mandate Received, Sentence to Begin Date is: _____

Def. Received on _____ at _____ AM / PM

By: _____, Deputy Sheriff of Harris County



Right Thumbprint

Clerk: A VASQUEZ

Case Number: 181071401010
Defendant: JUSTICE, FELICIA
EN/KR23: _____ LCBT: _____ LCBU: _____

I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 5, 2025

Certified Document Number: 52607742 Total Pages: 2

Marilyn Burgess

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stephen Aslett on behalf of Stephen Aslett
Bar No. 24064841
stephen@aslettlaw.com
Envelope ID: 100444539
Filing Code Description: Brief Requesting Oral Argument
Filing Description: Appellant's Brief
Status as of 5/5/2025 2:24 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jessica Caird		caird_jessica@dao.hctx.net	5/5/2025 2:07:28 PM	SENT