No. 14-24-00557-CR & 14-24-00558-CR

IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS

MELVIN HOUSTON
Appellant

v.

THE STATE OF TEXAS
Appellee

On Appeal from Cause Nos. 1782384 & 1782387
From the 209th District Court of Harris County, Texas

BRIEF FOR APPELLANT

Oral Argument Requested

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Statement of the Case

On September 20, 2022, Melvin Houston was charged by indictment with Felon in Possession of a Weapon. (C.R. at 26.)[1] On October 18, 2022, he was charged by indictment with Possession of a Controlled Substance, Penalty Group 3 (200-400 grams). (2 C.R. at 34). On September 8, 2023, Houston pleaded guilty to both charges and true to both enhancement paragraphs without an agreed recommendation and was placed on deferred adjudication for a period of five years. (C.R. at 50; 2 C.R. at 51; State Ex. 1 & 2). The State proceeded to adjudication on its First Amended Motion to Adjudicate Guilt. (C.R. at 71; 2 C.R. at 91). On June 27, 2024, a hearing was held regarding Houston's Motion to Suppress Evidence forming the basis of the First Amended Motion to Adjudicate. The trial court denied the suppression motion. (2 C.R. at 109). Houston pleaded "not true" to the state's First Amended Motion to Adjudicate Guilt. (1 R.R. at 13). After a hearing, the trial court found Houston had committed a new law violation, granted the State's First Amended Motion to Adjudicate Guilt and sentenced Houston to 25 years in the Institutional Division of the Texas Department of Criminal Justice, with the sentences to run concurrently. (1 R.R. at 160; C.R. at 79; 2 C.R. at 111). Houston timely filed a Notice of Appeal. (C.R. at 85; 2 C.R. at 117). Trial counsel withdrew

[1] Counsel will identify the Clerk's Record associated with Cause No. 1782384 as "1 C.R. at #," and the Clerk's Record associated with Cause No. 1782387 as "2 C.R. at #."

as attorney of record. (C.R. at 89-92; 2 C.R. at 119-122). The appeals were abated on September 5, 2024. (Supp. C.R. at 8; 2 Supp. C.R. at 8). After a post-abatement hearing, the trial court appointed Scott Pope of the Harris County Public Defender's Office for the appeal. (Supp. C.R. at 3-4, 8; 2 Supp. C.R. at 3-4, 9). According to information reflected in the Harris County District Clerk's online file, the trial court certified Houston's right to appeal Cause No. 1782384 (Felon in Possession of a Weapon) on November 7, 2024, and Cause No. 1782387 (Possession of a Controlled Substance, Penalty Group 3 (200-400 grams) on September 30, 2024.[2] No Motion for New Trial was filed. Oral argument is requested.

Issues Presented

Issue One: Whether the trial court abused its discretion in overruling Mr. Houston's Motion to Suppress evidence seized pursuant to an expired warrant?

Issue Two: Whether the evidence is insufficient to support the adjudication of Mr. Houston's guilt based on the trial court's finding that he violated the conditions of community supervision by "COMMITTING AN OFFENSE AGAINST THE STATE OF TEXAS?"

Issue Three: Whether the written judgment should be reformed to accurately reflect the trial court's proceedings regarding Mr. Houston's plea of "not true" to the allegations of the State's First Amended Motion to Adjudicate Guilt?

[2] As reflected in the Harris County District Clerk's online records, on January 16, 2025, undersigned counsel filed a Letter Requesting Supplemental Clerk's Record in these cases.

Statement of Facts

Motion to Suppress

A written pre-trial Motion to Suppress was filed by Houston seeking to suppress the evidence recovered by police at 3536 Lockwood Drive pursuant to a search warrant. (2 C.R. at 102-105). At the suppression hearing, Houston Police Department Detective James Kneipp testified that he prepared and executed the search warrant forming the foundation of the allegations in the Motion to Adjudicate Guilt. (R.R. at 14; Defense Ex. 1). In his warrant affidavit, Kneipp alleged that a group of shoplifters stole "large quantities" of items from Bath & Body Works from stores around Harris County, which they offloaded at Mr. Houston's business—Prime Tyme Exotic Kicks & Fits. (Defense Ex. 1). The search warrant was signed by a magistrate hearing officer on January 5, 2024. (R.R. at 15; Defense Ex. 1). It was executed five days later (January 10, 2024) at "Prime Tyme," located at 3536 Lockwood Drive in Houston. (R.R. at 19; Defense Ex. 1).

Kneipp testified that 1,600 alleged Bath & Body Works items were seized from inside the store pursuant to the warrant including: candles, lotions, shower gels and lip glosses. (1 R.R. at 17, 19). In addition, they also seized cell phones, security recordings, suspected drugs, and a rifle. (1 R.R. at 17-18).

When asked by defense counsel whether he was aware that police had three days to execute the warrant, Kneipp replied, "No, sir, I was not aware of that." (1

R.R. at 19). When asked by the prosecution why it took five days to execute the search warrant, Kneipp replied, "We [were] still doing surveillance. Just trying to build up the case." (1 R.R. at 21).

Suppression Motion denied, adjudication hearing proceeds

After arguments, the trial court denied Mr. Houston's Motion to Suppress and proceeded with the adjudication hearing. (1 R.R. at 27). The State's First Amended Motion to Adjudicate Guilt alleged four new law violations: Engaging in Organized Criminal Activity—Participate in Combination, Theft—Aggregate, Unlawful Possession of a Firearm by Felon, and Possession with Intent to Deliver a Controlled Substance. (1 C.R. at 71; 2 C.R. at 91).

In both Motions to Adjudicate, the State alleged the four new law violations and four additional grounds: failing to submit a current medical prescription to supervision officer, failing to submit evaluation of education skill level, possessing a firearm and failing to pay court costs. (1 C.R. at 71-72; 2 C.R. at 91-92). In Cause No. 1782387, the State also alleged failing to pay supervision fees and failing to pay drug testing fee. (2 C.R. at 91-92).

Community Supervision Officers testify about technical violations

Community Supervision Officer Jacquelia Scurry testified that she reviewed the probations conditions with Houston at the beginning of the probation term. (1 R.R. at 42-43). Community Supervision Officer Edgar Encinia testified that State

Exhibits 1 and 2 appear to reflect Mr. Houston's signature on the Orders for Deferred Adjudication for the underlying offenses, indicating that he understood the conditions of probation. (1 R.R. at 34-35). Encinia alleged Houston did not provide documentation of his educational skill level as required. (1 R.R. at 37-39). He further testified that Mr. Houston has "made payments towards his court costs," but was $260 behind. (1 R.R. at 38).

Detective alleges organized theft

Detective Kneipp stated his investigation began after getting a call from a Bath & Body Works loss prevention manager, Israel Morero. (1 R.R. at 47). Morero told Kneipp he had found someone on Facebook Marketplace "selling large quantities of candles and Bath & Body Works products." (1 R.R. at 47). Kneipp began investigating Houston's social media accounts and believed the stolen products were going to Houston's store. (1 R.R. at 48). He identified four alleged shoplifters and began following them. (1 R.R. at 50-51). Kneipp stated he observed the suspects allegedly steal from a store and then take the products to Houston's store. (1 R.R. at 51).

Kneipp also testified that Houston published social media videos depicting the receipt and sale of items at his store. (1 R.R. at 52). State Exhibit 5 contained various videos that, according to Kneipp, showed Houston offering items for sale

and suspected shoplifters bringing Bath & Body Works items into the store. (1 R.R. at 56-66).

At this point, the court granted defense counsel's running objection "to the testimony of any evidence received as a function of search warrant based on our prior motion to suppress." (1 R.R. at 67). Kneipp then stated officers found a gun, drugs, and "tons of Bath & Body Works products." (1 R.R. at 67). He alleged the 1,600 found items were worth "$42,736." (1 R.R. at 67).

Police disabled in-store surveillance, let drug-toting mystery man go

Kneipp was aware that Houston also owned other businesses: a nightclub and a tire shop. (1 R.R. at 74-75). Kneipp agreed that Houston was not involved in any thefts from Bath & Body Works. (1 R.R. at 72). It was his testimony that police did not conduct any surveillance inside Houston's store—either with cameras or an undercover officer. (1 R.R. at 79). Kneipp further noted that when police officers went into the store to execute the search warrant, they disabled the store's interior surveillance cameras which would prevent a recording being made of their activities. (1 R.R. at 79-80).

A firearm and a backpack full of alleged drugs were found inside the store near a podium that also contained suspected drugs. (1 R.R. at 80-81, 94). Specifically, Officer Said Abdala claimed they found suspected "promethazine, crack cocaine, [cannabis], alprazolam, Xanax, hydrocodone, tizanidine and

carisoprodol." (1 R.R. at 98). The backpack belonged to someone named "Freddie Soularie" who was allowed to leave the scene after "narcotics took over." (1 R.R. at 81-82; 103-104). When asked by defense counsel whether Mr. Soularie was a confidential informant for the HPD Narcotics Division, Kneipp replied, "I have no clue" and "I have no knowledge." (1 R.R. at 82). Despite the fact that Soularie's backpack contained a significant number of alleged drugs, he was not arrested. (1 R.R. at 82).

Officer Said Abdala was the one who released Soularie from the scene. (1 R.R. at 104). When asked by defense counsel whether Soularie was a confidential informant, Abdala stated, "To my knowledge, he's not." (1 R.R. at 104). However, he also admitted that Soulaire *could have been an informant*, and he had made no inquiries about it. (1 R.R. at 104).

Abdala also stated Mr. Houston's vehicle was registered to store's address but provided no further documentation of this allegation. (1 R.R. at 100-101). He admitted that since Houston shares a name with his son, the vehicle registration they claimed was related to the store's address could have been for Houston, Jr. rather than Sr. (1 R.R. at 106). Abdala stated they also found a piece of mail for that address with the name "Melvin Houston" on it, but no supporting physical evidence or photograph of this was provided to the court. (1 R.R. at 99-100).

Houston was not present when the search warrant was executed, but his son, Curtis, was on the premises. (1 R.R. at 83; 103). Curtis, Solarie and an infant were the only people present at that time. (1 R.R. at 85). Later, an unknown woman went into the store and unsuccessfully tried to lock up. (1 R.R. at 85-86).

Police used social media to determine who owned/profited from Prime Tyme

According to Kneipp, police did not inquire with the Secretary of State's office, the Harris County Clerk's Office, the landlord, the Texas Workforce Commission, or utilities companies to determine who owned the store, worked there, or had control over the place. (1 R.R. at 86-88). They interviewed no employees. (1 R.R. at 87). Kneipp admitted he had no documentation with Melvin Houston Sr.'s name on it that related to ownership or control over the premises. (1 R.R. at 88).

Relating to the Instagram account Kneipp observed—The Fifth Ward African Prince—he indicated the account made postings of a commercial, not personal nature. (1 R.R. at 89). They made no effort to subpoena documentation from Instagram to determine who the account in question belonged to. (1 R.R. at 89). Further, Kneipp stated that of the five videos they produced for the hearing, Mr. Houston is only seen on one of them. (1 R.R. at 90).

Police also had no idea who, if anyone, profited from the alleged thefts or whether any of the alleged suspects were involved in a criminal street gang. (1 R.R.

at 91-92). There was no evidence that guns were ever present in the store except for the day of the search. (1 R.R. at 92).

Christian Rios is a forensic analyst at the Houston Forensic Science Center. (1 R.R. at 108). He analyzed a substance recovered from the scene and generated the laboratory report that became State Exhibit 7. (1 R.R. at 113). Rios' testing confirmed the presence of 39.67 grams of cocaine, the basis of one of the alleged new law violations. (1 R.R. at 114; State Ex. 7).

Houston's brother explains nature of resale, shared business interests

Despite having just been shot the day before and an open arrest warrant for an unrelated burglary charge, Melvin's brother Larry Houston, came to testify on his behalf. (1 R.R. at 136-137). Larry testified that he co-owns Prime Tyme with someone named Jerry Pointer, and also sells tires. (1 R.R. at 118-119, 121-122). He also testified that Houston has eleven children. (1 R.R. at 120).

According to Larry, Houston and Pointer had business interests in a nightclub, a record label, a used tire shop and other stores. (1 R.R. at 122-123). According to Larry, Freddie Soularie (the man with the alleged drug backpack who was released from the scene) and his wife worked at Prime Tyme, along with four others. (1 R.R. at 124-125). Larry also stated that the Fifth Ward African Prince Instagram account was used by everyone working at the store for advertising. (1 R.R. at 126).

It was Larry's testimony that Prime Tyme sold shoes and clothing for men, women, and children, food items and more: "if you got a good price…we will buy it because we going to resell it." (1 R.R. at 127-128). He indicated that Prime Tyme bought items from other people and would sometimes buy bulk lots of items from stores going out of business. (1 R.R. at 129-130). He also stated that sometimes people repackaged items for resale and one could buy such packaging on Harwin Drive. (1 R.R. at 131). "You can go on Harwin and get anything—just about anything you want," he added. (1 R.R. at 131).[3] Prime Tyme bought and resold candles many times in the past and also re-molded candle wax into new candles to sell. (1 R.R. at 130-132).

Larry stated that all who worked at Prime Tyme interacted with product-sellers—including Soularie. (1 R.R. at 132). No real records of transactions were kept. (1 R.R. at 133).

Trial court notes Prime Tyme practices not "necessarily" illegal

Before cross-examination began and after a discussion of Larry's warrant status, the trial court telegraphed its (as of that moment) still open mind about the proceedings generally and Larry's testimony specifically. "I mean, clearly he's

[3] Harwin Drive is locally famous for its bargain shopping. According to the website run by one of the city's marketing organizations—the Houston First Corporation—Harwin Drive is "[a] treasure trove of designer look-a-likes and no-frills shopping, Harwin is the place to find an ever-changing inventory of bags, shades, perfumes, electronics and more-for less." *See* https://www.visithoustontexas.com/things-to-do/shopping/insiders-guide-to-harwin-drive/.

admitted to participating in agreement with these other individuals," the court stated. "—[A]nd a profit of that as well. You just—doesn't mean it's illegal necessarily." (1 R.R. at 138).

State attacks Larry's credibility

Larry served ten years in the penitentiary for a 2006 aggravated robbery conviction. (1 R.R. at 139). It was Larry's testimony that Houston was rarely at Prime Tyme since he had multiple businesses to run. (1 R.R. at 140-141). He also described a general practice that sounded like a flea market or consignment shop in that different people bought and sold different things at different times in different ways, and everyone helped to pay the rent. (1 R.R. at 141-142).

Larry admitted they did not know where the sellers acquired the items they were selling. (1 R.R. at 143). The state lingered on the fact that Prime Tyme workers did not know the origin of the items they were buying and selling.

> STATE: So you were selling potentially stolen goods without any idea where they're coming from, anything like that, for your business?
>
> WITNESS: I mean, I – I didn't realize nothing about none of this until now…Clothes – look at the world now. Everybody doing their own – everybody make their own clothing. It's just different. It's not all just in one spot. If you go on Instagram, you'll find—I don't even be knowing some of the people. Like, you know, it's just a post.

(1 R.R. at 143-144).

Larry did not know the names of the alleged shoplifters listed by the State. (1 R.R. at 144-146). He was not aware of any drugs or guns being in the store. (1 R.R.

at 146). When Larry's testimony was finished, the bailiff took him into custody. (1 R.R. at 149).

Summary of Argument

The court abused its discretion in denying Houston's Motion to Suppress. The warrant was clearly executed outside the three-day period allowed by Texas Code of Criminal Procedure articles 18.06 and 18.07 and subsequent case law interpreting the statutes. The warrant was stale, and the fruits of the illegal search should have been suppressed. The court also abused its discretion in adjudicating Mr. Houston guilty because the evidence is legally insufficient to support such an adjudication. Based on the trial court's written order, it is impossible to determine what it meant by its finding that Mr. Houston violated the deferred adjudication terms by "COMMITTING AN OFFENSE AGAINST THE STATE OF TEXAS." Further, the testimony presented does not support a finding that he committed the crimes alleged in the state's motion to adjudicate. In addition, the written Judgments Adjudicating Guilt state that Mr. Houston pled "True" to the Motion to Adjudicate. The reporter's record indicates Mr. Houston pled "Not True." This court should reform the judgment to accurately reflect the trial court's proceedings.

Issue One

Whether the trial court abused its discretion in overruling Mr. Houston's Motion to Suppress evidence seized pursuant to an expired warrant?

Standard of Review & Applicable Law

An appellate court is to review a trial court's decision to grant or deny a motion to suppress using an abuse-of-discretion standard. *Swain v. State*, 181 S.W.3d 359, 365 (Tex. Crim. App. 2005); *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014). In reviewing the trial court's denial of a motion to suppress, an appellate court must uphold the trial court's judgment as long as it is reasonably supported by the record and is correct under any applicable theory of law. *Hereford v. State*, 339 S.W.3d 111, 117–18 (Tex. Crim. App. 2011) (citing *State v. Steelman,* 93 S.W.3d 102, 107 (Tex. Crim. App. 2002); *Romero v. State,* 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). Reviewing courts give almost total deference to a trial court's express or implied determination of historical facts and consider *de novo* the court's application of law to the facts. *Alford v. State*, 358 S.W.3d 647, 652 (Tex. Crim. App. 2012).

The appellate court must view the record in the light most favorable to the trial court's ruling and reverse that ruling only if it is outside the zone of reasonable disagreement. *Hereford v. State*, 339 S.W.3d 111, 118 (Tex. Crim. App. 2011) (citing *State v. Dixon,* 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)).

The *Hereford* Court stated:

> In its review, the appellate court does not perform its own fact-finding mission but limits the scope of its factual review to determining whether the trial court's findings were reasonable in light of the evidence presented. If these findings are reasonable, the appellate court must defer to the trial court.
>
> However, as explained in *Guzman,* this standard of almost total deference applies only to findings of historical fact and "mixed questions of law and fact" that rely upon the credibility of a witness. It has long been recognized that, during a hearing on a motion to suppress, the trial judge is the sole judge of the credibility of the witnesses and the weight to be given their testimony. The trial judge has the opportunity to view the demeanor of the witnesses and is therefore in a better position to make these factual determinations than appellate judges. In situations such as this, in which no findings of historical fact were made by the trial judge, the appellate court will infer factual findings implicit in the trial court's conclusion *as long as the implied findings are supported by the record*.

Hereford v. State, 339 S.W.3d 111, 118 (Tex. Crim. App. 2011) (internal citations omitted.) (emphasis added).

> The Texas Code of Criminal Procedure provides in pertinent part:
>
> (a) Unless the magistrate directs in the warrant a shorter period for the execution of any search warrant issued under this chapter, Chapter 18A, or Chapter 18B, the period allowed for the execution of the warrant, exclusive of the day of its issuance and of the day of its execution, is:
>
> (3) three whole days if the warrant is issued for a purpose other than that described by Subdivision (1) or (2).[4]

Tex. Code Crim. Proc. Ann. art. 18.07.

[4] Subdivision (1) refers to DNA specimens and (2) refers to electronic data.

The Court of Criminal Appeals has held that a warrant unexecuted by the expiration of the allowed time period, becomes "*functus officio*" and inoperative, and the search conducted pursuant to it is invalid. *See Swanson v. State*, 113 Tex. Crim. 104, 18 S.W.2d 1082, 1082 (1929). This rule was reaffirmed in *Green v. State*, 799 S.W.2d 756, 758–61 (Tex. Crim. App. 1990).

Analysis

Houston alerted trial court to the state's incorrect legal analysis

Defense counsel articulated the legal principles at issue:

> I'm not sure the law could be more clear, and I don't know why Counsel is trying to cite to this Court the case law that absolutely does not apply… There is absolutely no case in this State, from any court, that argues that you can execute a search warrant outside of the time limits provided very clearly in 18.07(3), which is three whole days if the warrant is issued for the purposes other than those described in the Code which deal with electronic evidence. In this circumstance, this is simply a matter of counting. The officer acknowledged he made a mistake. The State should as well. This search warrant was simply executed too late. It was illegal, and all of the evidence seized as a function of this search warrant must be suppressed.

(1 R.R. at 27).

Defense counsel re-urged suppression after adjudication hearing

At the hearing's conclusion, defense counsel re-urged his argument for suppression and submitted another case for the trial court's consideration. "I would be remiss if I did not point out to the Court a case from the Court of Criminal Appeals dated 1990, but *Green v. State*, 799 S.W. 2d 756," counsel began. (1 R.R. at 151).

The relevant facts of *Green v. State*, 799 S.W. 2d 756 (Tex. Crim. App. 1990) are virtually identical to Houston's: the warrant was executed five days after its issuance. (1 R.R. at 151; *Green* at 757). The Court of Criminal Appeals noted:

> Facially, then, the warrant violates the requirements of Art. 18.07, V.A.C.C.P., which provides a warrant shall be executed within a time frame of three days, exclusive of the day of issuance and day of execution. This is the crux of appellant's argument which was rejected by the trial court but accepted by the Court of Appeals.

Green v. State, 799 S.W.2d 756, 757 (Tex. Crim. App. 1990)

Green had lost a pre-trial motion to suppress, retained the right to appeal the trial court's ruling, and subsequently pled "no contest" to the offenses of which she was accused—possession of amphetamine and [cannabis.] *Green* at 757. The Fourth Court of Appeals held the warrant was invalid and the State filed a Petition for Discretionary Review. *Id.* Finding no error in the appellate court's analysis, the Court of Criminal Appeals also found the warrant was stale when executed, the seizure was invalid, and the trial court improperly overruled Green's motion to suppress. *Green* at 758; 761.

In closing, defense counsel reiterated that the warrant was stale and, therefore, the search was invalid:

> In *Green versus State*, the Court of Criminal Appeals was specifically confronted with a warrant that was executed five days after its issuance, just as in this case. And just as in this case, the State took issue with the execution of the time and argued the totality of the circumstances. The Court of Criminal Appeals addressed that argument and concluded that the totality of the circumstances, while relevant to the warrant

> itself, has nothing whatsoever to do with the issuance of the warrant and that the time to issue the warrant is such that it must be executed within the three days the statue allows and that a warrant which is executed five days after its issuance is stale. It states in relevant part "when a search warrant is not executed within the time period provided" -- "it becomes *functus officio*, having no further official force or effect," and that "any search whose legality depends on the warrant is unauthorized." And in this case, the court concluded that any evidence seized from such a warrant should be suppressed. I would submit, Judge, that this case stands directly on point with our problem and that all of the evidence that was seized from the store should be suppressed.

(1 R.R. at 151-152).

State conceded "three-day issue" and argued inapplicable case law

The prosecution began argument by stating, "I do know that there is the three-day issue, but there's plenty of case law that's out there regarding the three days." (1 R.R. at 23). The first case the state relied on was *Ramirez v. State*, 611 S.W. 3d 645 (Tex. App. – Houston [14th Dist.] 2020, pet. ref'd) and it is inapplicable to the case at bar. (1 R.R. at 23)

Mr. Ramirez was convicted by a jury of felony Driving While Intoxicated and sought to suppress the results of his blood draw because the State did not conduct the actual analysis of the drawn blood within three days of the issuance of the search warrant. *Ramirez* at 651. Ramirez relied on article 18.07(a)(3) of the Texas Code of Criminal Procedure, which states the general three-day-period for a search warrant to be executed. *Id.* This court ultimately held in *Ramirez* that:

> the undisputed fact that the forensic analysis of appellant's blood occurred at a date beyond the three-day window for execution of the

> search warrant did not render the search warrant stale. Therefore, the trial court did not abuse its discretion when it denied the part of appellant's motion to suppress in which appellant asserted that the search warrant was not timely executed.

Ramirez v. State, 611 S.W.3d 645, 652 (Tex. App. 2020).

The Court's reasoning directly tied the waning strength of probable cause to the passage of time:

> This conclusion fits within the purpose of time restrictions on the execution of search warrants, which is to ensure that probable cause, as found by the neutral magistrate who signs the warrant, continues to exist. *See United States v. Syphers*, 426 F.3d 461, 469 (1st Cir. 2005) ("The policy behind the ten-day time limitation in Rule 41 is to prevent the execution of a stale search warrant."). This policy of requiring timely execution of warrants seeks to avoid a situation where, due to the passage of time, the information underlying the probable cause determination is no longer valid. *See United States v. Grubbs*, 547 U.S. 90, 95, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006) (stating that "the probable-cause requirement looks to whether the evidence will be found *when the search is conducted*") (emphasis in original)."

Ramirez v. State, 611 S.W.3d 645, 652 (Tex. App. 2020)

In *Ramirez*, the blood was drawn within the three-day time frame and analyzed later, and was held to be one search and not two. *Ramirez* does not apply.

The next case the State relied on was *State v. Patel*, 629 S.W. 3d 759 (Tex. App. — Dallas, 2021) —a Dallas DWI case evaluating along similar lines whether a blood draw itself is considered a separate search from the blood alcohol analysis such that it required a second search warrant. *Patel* at 762. *Patel* argued that the results of the blood alcohol analysis were illegally obtained because the analysis

occurred outside of the warrant's execution period. *Patel* at 767. The Court sustained the State's complaint and held: "The warrant at issue here was executed when the blood was drawn, which was within ten minutes of the warrant being issued. It was, therefore, executed within the six-hour execution window set out in the warrant regardless of when the blood specimen was tested." *State v. Patel*, 629 S.W.3d 759, 767 (Tex. App. –Dallas, 2021). *State v. Patel* is inapplicable to Mr. Houston's case.

Next, the State cited "*Schneider v. State*, that's out of the Court of Appeals, 623 S.W.3d 338." (1 R.R. at 24).[5] Ms. Schneider was convicted by a jury of felony DWI in Austin. *Schneider* at 39. She had refused a blood draw, and the arresting officer secured a search warrant for her blood. *Schneider* at 40. Schneider's blood was drawn "a couple hours after she was arrested," but was not analyzed for over a month. *Id*.

Schneider alleged ineffective assistance of counsel for failing to present her motion for new trial based on the newly presented theory that the blood alcohol results should have been suppressed. *Schneider* at 42. The motion for new trial asserted two grounds: 1) relying on *State v. Martinez*, 570 S.W.3d 278 (Tex. Crim. App. 2019), Schneider argued the search warrant must specifically authorize the

[5] A Westlaw search indicates the case the prosecution appeared to reference was *Schneider v. State*, 623 S.W. 3d 38 (Tex. App. – Austin, 2021, pet. ref'd.).

testing of a blood sample and the results should have been suppressed because the search warrant authorized the collection of the sample but not the testing of it, and 2) the results should have been suppressed because the sample was not tested within the warrant deadline set out in the Texas Code of Criminal Procedure Tex. Code Crim. Proc. art. 18.07. *Schneider* at 41-42.

The *Schneider* court found that *Martinez* did not apply because it "addressed a warrantless seizure and testing of blood obtained by hospital personnel for the purposes of medical treatment. *Schneider* at 42. Further, relying on *Ramirez*, 611 S.W. 3d 645 (Tex. App. – Houston [14th Dist.] 2020, pet. ref'd), the court found Schneider's staleness argument based on the plain language of Texas Code of Criminal Procedure art. 18.07 also failed because "the three-day requirement for the execution of a search warrant sets the limit for the actual search for and seizure of the evidence by a peace officer, not the timing for any subsequent forensic analysis that may be conducted on the seized evidence." *Id.* at 43. The State's reliance on *Schneider* in Mr. Houston's case is misplaced.

Finally, the state relied on "*Gonzalez v. State*, 768 S.W.2d at 436." (1 R.R. at 25-26). In *Gonzalez*, "[t]he search warrant was issued October 1, 1987 at "17:20" hours (5:20 p.m.) and was executed on October 5, 1987 at "21:30" hours (9:30 p.m.). *Gonzalez v. State*, 768 S.W.2d 436, 437 (Tex. App. – Houston [1st Dist.] 1989). Gonzalez complained that the trial court erred in overruling his motion to suppress

evidence seized pursuant to a warrant because it had expired. *Gonzalez v. State*, 768 S.W.2d 436, 436 (Tex. App. – Houston [1st Dist.] 1989). Specifically, Gonzalez argued the search warrant was executed four hours and 10 minutes past its expiration based on the language of Texas Code of Criminal Procedure art. 18.06 and 18.07. *Gonzalez* at 437.

To establish a baseline, the Court cited *Swanson v. State* in its reasoning: "When a search warrant is not executed within the time period provided for by articles 18.06 and 18.07, it becomes "functus officio," and any search whose legality depends on the warrant is unauthorized. *Swanson v. State,* 113 Tex.Crim. 104, 18 S.W.2d 1082 (1929)." *Gonzalez v. State*, 768 S.W.2d 436, 437 (Tex. App. 1989). However, relying on *Fletcher v. State*, 171 Tex. Crim. 74, 344 S.W. 2d 683, 685 (1961), the Court of Appeals held the warrant search was authorized because "the three days mentioned in article 18.06 are to be calculated as set out in article 18.07, "exclusive of the day of its issuance and of the day of its execution."
Gonzalez v. State, 768 S.W.2d 436, 437 (Tex. App. 1989) (internal citation omitted). In conclusion, the *Gonzalez* court held: "it is our opinion that a search warrant had to be executed by midnight of the fourth day after the day of its issuance." *Gonzalez v. State*, 768 S.W.2d 436, 438 (Tex. App. 1989). Even with the questionable exercise of stretching of a day's length beyond 24 hours, the facts of *Gonzalez* are still distinguishable from the instant case because here the search warrant was signed by

a magistrate hearing officer on January 5, 2024, and not executed until five days later: January 10, 2024. (R.R. at 15, 19; Defense Ex. 1).

As defense counsel argued to the trial court, *Green* controls and the evidence seized pursuant to the stale search warrant in the instant case should have been suppressed.

Issue Two

> Whether the evidence is insufficient to support the adjudication of Mr. Houston's guilt based on the trial court's finding that he violated the conditions of community supervision by "COMMITTING AN OFFENSE AGAINST THE STATE OF TEXAS?"

A. Relevant facts

At the hearing's conclusion, the trial court pronounced its order: "Mr. Houston, please stand. On your plea of not true, I find it true. I will sentence you to 25 years in the Texas Department of Criminal Justice." (1 R.R. at 160). The court's Orders Adjudicating Guilt indicate Houston violated the terms and conditions of his community supervision by "COMMITTING AN OFFENSE AGAINST THE STATE OF TEXAS." (1 C.R. at 80; 2 C.R. at 112).

B. Applicable Law and Standard of Review

An order revoking community supervision must be supported by a preponderance of the evidence, meaning that the greater weight of the credible evidence would create a reasonable belief that the defendant has violated a condition of his community supervision. *Rickels v. State*, 202 S.W.3d 759, 763-64 (Tex. Crim.

App. 2006); *see also Hacker v. State*, 389 S.W.3d 860, 864-65 (Tex. Crim. App. 2013) and *Black v. State*, 411 S.W.3d 25, 28 (Tex. App. — Houston [14th Dist.] 2013, no pet.). An order revoking community supervision is reviewed under an abuse of discretion standard. *Hacker*, 389 S.W.3d at 865; *Rickels*, 202 S.W.3d at 763; *Black*, 411 S.W.3d at 28. In conducting this review, the Court views the evidence in the light most favorable to the trial court's order. *Moore v. State*, 11 S.W.3d 495, 498 (Tex. App. — Houston [14th Dist.] 2000, no pet.); *Greer v. State*, 999 S.W.2d 484, 486 (Tex. App. — Houston [14th Dist.] 1999, pet. ref'd). The trial court is the sole trier of fact and determines the credibility of the witnesses and the weight to be given their testimony. *Bell v. State*, 566 S.W.3d 398, 401-02 (Tex. App. — Houston [14th Dist.] 2018, no pet.); *Moore*, 11 S.W.3d at 498.

Violation of a single condition of community supervision will support the trial court's decision to adjudicate guilt. *Davis v. State*, 591 S.W.3d 183, 189 (Tex. App. — Houston [1st Dist.] 2019, no pet.). "When [an appellate court is] faced with a record supporting contradicting inferences, [it] must presume that the fact finder resolved any such conflict in factor of its findings, even if it is not explicitly stated in the record." *Id*. "The test for abuse of discretion is not whether, in the opinion of the appellate court, the facts present a suitable case for the trial court's action, but rather, whether the trial court acted without reference to any guiding rules or principles." *Id*. "A trial court abuses its discretion if the decision is so clearly wrong

as to lie outside the zone within which reasonable persons might disagree." *Armstrong v. State*, 82 S.W.3d 444, 448 (Tex. App. — Austin 2002, pet. ref'd), citing *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992) (en banc).

"A written order revoking community supervision controls over an oral pronouncement by the trial judge." *Ex parte Bolivar*, 386 S.W.3d 338, 345-46 (Tex. App. — Corpus Christi 2012, no pet.) (citing *Clapper v. State*, 562 S.W.2d 250, 251 (Tex. Crim. App. [Panel Op.] 1978); *Ablon v. State*, 537 S.W.2d 267, 269 (Tex. Crim. App. 1976); *Henderson v. State*, 681 S.W.2d 173, 174 (Tex. App. – Houston [14th Dist.] 1984, pet. ref'd)).

It should also be noted that "a docket entry made the same day as the oral pronouncement merely memorializes the oral pronouncement and is not a judgment. *Ex parte Bolivar* at 345-46. (citing *State v. Garza*, 931 S.W.2d 560, 561–62 (Tex. Crim. App. 1996); *Garcia v. State*, 45 S.W.3d 733, 736 (Tex. App. — Corpus Christi 2001, no pet.); *Gomes v. State*, 9 S.W.3d 170, 172 n. 2 (Tex. App. — Houston [14th Dist.] 1999, no pet.) (en banc)).

Finally, the sufficiency of the evidence is measured by the elements of the offense as defined in a hypothetically correct jury charge, which is 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 was tried. *Malik v. State,* 953 S.W.2d 234, 240 (Tex. Crim. App. 1997).

Analysis

The trial court's oral pronouncement of Mr. Houston's sentence only makes a reference to Mr. Houston's plea. "Mr. Houston, please stand," began the Court. "On your plea of not true, I find it true. I will sentence you to 25 years in the Texas Department of Criminal Justice." (1 R.R. at 160).

In addition to the four (1 C.R. at 71-72) and six (2 C.R. at 91-92) alleged technical violations, there were four new law violations alleged in the state's First Amended Motions to Adjudicate Guilt: On or about December 17, 2023, Engaging in Organized Criminal Activity—Participate in Combination and Theft-Aggregate; on or about January 10, 2024, Unlawful Possession of Firearm by Felon, and Possession with Intent to Deliver a Controlled Substance. (1 C.R. at 71-72; 2 C.R. at 91-92).

While the proceedings in this case contain discussions to support additional, separate grounds for revocation, the written judgment contains only a reference to a finding that Mr. Houston violated his deferred adjudication community supervision by "COMMITTING AN OFFENSE AGAINST THE STATE OF TEXAS." (1 C.R. at 80; 2 C.R. at 112). The simultaneous docket entries state: "Judge finds the MAJ

True and sentences defendant 25 years TDC." (1 C.R. at 99; 2 C.R. at 129). Which offense?

Offenses Alleged in Motion to Adjudicate Guilt

At the adjudication hearing, the state offered police testimony and social media videos to prove Houston committed the newly alleged crimes. Though the trial court did not recite which alleged offense it believed the state proved by a preponderance, for argument's sake Houston will briefly discuss each crime alleged and why it was not proven.

Engaging in Organized Criminal Activity – Participate in Combination

The Texas Penal Code delineates a laundry list of ways in which a person can be accused of the offense of Engaging in Organized Criminal Activity. In Mr. Houston's case, the following provisions may apply:

> (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination…, the person commits or conspires to commit one or more of the following:
>
> (1) …theft;

Tex. Penal Code Ann. § 71.02.

A "combination" is defined as "three or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

Tex. Penal Code Ann. § 71.01.

The state must prove both the mental state required for the commission of the alleged predicate offense and "that the defendant intended to establish, maintain, participate in, or participate in the profits of a combination…The proof must consist of more than evidence that a combination existed and that the defendant committed one of the enumerated offenses; the evidence must support a finding that the defendant intended to establish, maintain, or participate in, the profits of a combination." *Hart v. State*, 89 S.W. 3d 61, 63-64 (Tex. Crim. App. 2002). The state needs to prove the participation of at least three of the named members of the combination, and "that the defendant knew of the existence of the combination, but also that the defendant knew of the criminal activity of the group." *Smith v. State*, 500 S.W.3d 685, 690-91 (Tex. App. – Austin 2016, no pet.).

Finally, this court created a user-friendly roadmap for evaluating engaging cases because even the commission of multiple offenses is not enough to pass the threshold of intent to engage in a combination. As outlined in *Lashley v. State*, 401 S.W.3d 738 (Tex. App. – Houston [14th Dist.] 2013, no pet.):

> [E]vidence that multiple criminal violations occurred is not alone sufficient to establish an intent to engage in a continuous course of criminal activity as required under Section 71.01(a) when all of the alleged violations occurred during a single criminal episode…to satisfy

> the continuity element as set forth in *Nguyen,* the State must offer evidence to prove that a defendant intended to participate in a continuing course of criminal activity. The combination's members must be more than temporarily organized to engage in a single criminal episode. There must be proof of an intent to participate in a criminal combination that extends beyond a single criminal episode, *ad hoc* effort, or goal, regardless of whether multiple laws were broken within the confines of that episode or effort. Evidence of multiple criminal violations alone does not permit the inference that the members of the group intended to continue working together beyond the completion of an episode or achievement of a goal. Evidence must be offered that allows a jury to infer that the group intended to continue engaging in illegality over a period of time.

Lashley v. State, 401 S.W.3d 738, 744–45 (Tex. App. – Houston [14th Dist.] 2013, no pet.) (internal citations omitted).

Failed to identify "combination"

While Detective Kneipp listed five names as people in the alleged "theft ring," the state offered no further proof that those names were connected to actual human beings who were also accused. (1 R.R. at 50). Listing names and accusing those names of being involved in a "theft ring" does not rise to the level of proving the existence of a combination by a preponderance, let alone that Mr. Houston was in combination with their alleged activities outside of Prime Tyme. Moreover, the state cannot rely on State Ex. 5-1 to establish anyone's identity because Kneipp admits the two people he claimed were helping bring items into the store are not visible on the video. (1 R.R. at 56). The state was required to prove the participation of at least

three of the named members of the "combination." *Smith* at 690-91. This, it did not do.

Failed to prove intent to engage in "continuing course of criminal activity"

Houston was not present when the warrant was executed. (1 R.R. at 83; 103). The state provided no financial documentation regarding Houston's alleged unjust enrichment at the expense of Bath & Body Works. There was no proof from which an inference can be made that Houston was part of a group that "intended to continue engaging in illegality over a period of time" as is required. *Lashley v. State*, 401 S.W.3d 738, 744–45 45 (Tex. App. – Houston [14th Dist.] 2013, no pet.). At most, the State proved that Mr. Houston appeared on a social media commercial for Prime Tyme advertising candles, sprays and lotions. (1 R.R. at 65; State Ex. 5-5). This, alone, is not evidence of the required *mens rea* for the offense of Engaging in Organized Criminal Activity.

Theft – Aggregate

Theft is defined, in pertinent part, as follows:

(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent;

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another…

Tex. Penal Code § 31.03.

"Aggregation of Amounts Involved in Theft" is a process of adding the value of multiple items together when there is a "continuing course of conduct:" When amounts are obtained in violation of Chapter 31 of the Penal Code pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Tex. Penal Code § 31.09.

Finally, value is determined by either the fair market value of the property or its replacement cost. Tex. Penal Code § 31.08. While hearsay is admissible as proof of value, such value testimony must come from the owner. *Jones v. State*, 821 S.W.2d 234, (Tex. App. – Houston [14th Dist.] 1991, pet. ref'd). *See also Smiles v. State*, 298 S.W. 3d 713, 719 (Tex. Crim. App. 2009, no pet.). The state must take more steps if using a non-owner to establish the property's value:

> It is settled that when the State seeks to establish the value of an item of property through the testimony of a non-owner the witness must first be qualified as having personal knowledge of the value of the property. Furthermore, to establish sufficient evidence of value the State must elicit testimony as to the fair market value of the property in question. See McCormick and Ray, Texas Law of Evidence, Section 1422 (1980).

Sullivan v. State, 701 S.W.2d 905, 908 (Tex. Crim. App. 1986).

Failed to establish property value

Where was Mr. Morero, the Bath & Body Works loss prevention manager who allegedly cracked the case on Facebook Marketplace? (1 R.R. at 47). Why didn't he provide a spreadsheet or inventory list of allegedly missing items? Detective Kneipp testified to a dollar amount—"$42,736"—but it is unclear how that number was calculated. (1 R.R. at 67). He appeared to read from a supposed list of recovered items from his offense report. (1 R.R. at 17). Kneipp's search warrant affidavit also lists various groups of items with apparently aggregated values, but the search warrant's Return and Inventory was not filled out or signed by the officer who executed the process. (Defense Ex. 1). The state failed to prove what items were allegedly stolen and how much they were worth.

Unlawful Possession of Firearm by Felon

"Possession" means "actual care, custody, control, or management." Tex. Penal Code Ann. § 1.07(a) (39). Possession is only a voluntary act under Texas law "if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control." Tex. Penal Code § 6.01(b).

The mere presence of the accused at the location where contraband is found is insufficient by itself to establish actual care, custody, or control of contraband. *Evans v. State,* 202 S.W.3d 158, 162 (Tex. Crim. App. 2006). Although *Evans*

addressed "affirmative links" between an appellant and a controlled substance, other courts have held the *Evans* factors applicable when appellants challenge the sufficiency of the evidence as to possession of a firearm. *See, e .g., Sutton v. State,* 328 S.W.3d 73, 76–77 (Tex. App.-Fort Worth 2010, no pet.); *Williams v. State,* 313 S.W.3d 393, 397–98 (Tex. App.-Houston [1st Dist.] 2009, pet. ref'd); *Bates v. State,* 155 S.W.3d 212, 216–17 (Tex. App.-Dallas 2004, no pet.). The links must raise a reasonable inference that the appellant knew of and controlled the weapon, and mere presence is insufficient to show possession. *Dickerson v. State,* 866 S.W.2d 696, 700 (Tex. App.-Houston [1st Dist.] 1993, pet. ref'd); *Evans,* 202 S.W.3d at 162.

The State must prove additional independent facts and circumstances that link the defendant to the contraband in such a way that it can be concluded that the defendant had knowledge of the contraband and exercised control over it. *Evans,* 202 S.W.3d at 162; *Reed v. State,* 158 S.W.3d 44 (Tex. App. – Houston [14th Dist.] 2005, pet ref'd); *Roberson v. State,* 80 S.W.3d 730, 735 (Tex. App. – Houston [1st Dist.] 2002, pet ref'd).

Circumstances that may link an accused to contraband include whether or not: (1) the contraband was in plain view; (2) the contraband was in close proximity and conveniently accessible to the accused; (3) the accused was the owner of the place where the contraband was found; (4) the place where the contraband was found was enclosed; (5) the size of the item was large enough to indicate the accused's

knowledge of its existence; (6) the accused made incriminating statements when arrested; (7) the accused attempted to flee; (8) the accused made furtive gestures; (9) other contraband was present; and (10) the conduct of the accused indicated a consciousness of guilt. *Cole v. State,* 194 S.W.3d 538, 548–49 (Tex. App. — Houston [1st Dist.] 2006, pet. ref'd) (citing *Gilbert v. State,* 874 S.W.2d 290, 298 (Tex. App. — Houston [1st Dist.] 1994, pet. ref'd); *Robles v. State,* 104 S.W.3d 649, 651 (Tex. App. — Houston [1st Dist.] 2003, no pet.). The number of linking factors present is not as important as the "logical force" they create to prove that an offense was committed. *Roberson,* 80 S.W.3d at 735.

Failed to prove possession

Houston was not present when the search warrant was executed so the alleged rifle could not have possibly been in his possession. (1 R.R. at 83, 99). Kneipp testified about two firearms and seemed to be saying that Houston was carrying a pistol on the day of the search: "There was -- in the building itself, there was also a firearm, a 2 -- .223 rifle, in the building. And there was another pistol that was recovered that day that was on Defendant Houston." (1 R.R. at 99). The state did not produce either firearm, nor did it provide body worn camera videos, photographs, or any identifying descriptors of the alleged firearms. In a world where cameras are everywhere, the state relied on Kneipp's afterthought alone to establish the commission of this offense. This begs the question: why did officers destroy the

Prime Tyme surveillance cameras when they were allegedly recording crimes and the subsequent warrant search in real time? (1 R.R. at 79-80).

Possession with Intent to Deliver a Controlled Substance

Failed to prove possession

Houston re-asserts the law cited *supra* regarding the affirmative links necessary to prove possession. Considering the state of the testimony as a whole, it is a stretch to say that Houston "owned" Prime Tyme, but that's what the state relied on to establish possession. The prosecution argued: "that is the day the search warrant was executed where a -- the cocaine was found at the store, which was attributed to Mr. Houston as the owner of the store." (1 R.R. at 159). Ownership of the place is a factor that *may* create an affirmative link, but would the state have this court ignore the logical force of the fact that a whole person who had carried in a backpack full of alleged drugs was quietly released from the scene after police destroyed the surveillance cameras? (1 R.R. at 81-82; 103-104). Both testifying officers claimed to have no knowledge of whether Mr. Soularie was a confidential informant but could not explain why he was released from the scene. (1 R.R. at 82; 104). How convenient.

"Nothin' from nothin' leaves nothin'…"[6]

As discussed *supra*, defense counsel reasserted the merits of his suppression motion in light of *Green*: "The effect of suppressing the evidence would be effectively that it eliminates the gun and the drugs and, arguably, eliminates the theft and the aggregate because we're left without valuation." (1 R.R. at 153). He argued that Larry Houston's testimony added context to "this world that I'm not familiar with, you may not be familiar with, but that is very common in other areas of Houston, and that is the concept of these small storefront resale shops like all of Harwin." (1 R.R. at 153).

Counsel argued the proof was insufficient to order the adjudication of guilt: "And without demonstrable proof that the documents or items that these people are bringing in are stolen, we are left with nothing but conjecture." (1 R.R. at 153).

No rational trier of fact could have found the essential elements of the alleged offenses proven by a preponderance of the evidence. When the State fails to meet its burden of proof, the trial judge abuses his discretion in issuing an order to revoke probation. *Walkovak v. State,* 576 S.W.2d 643, 644–45 (Tex. Crim. App. 1979). In *Walkovak*, the Court of Criminal Appeals held that the trial court had abused its discretion in revoking probation because there was insufficient evidence to support

[6] Lyrics from "Nothin' From Nothin'" by Billy Preston and Bruce Fisher recorded by Preston for 1974 album *The Kids & Me*.

his stated ground for revocation. The Court reversed, stating, "Although it would appear that there was ample evidence available to prove that appellant had violated conditions of probation, there is no evidence that he breached the condition which the court found had been breached." *Id.* at 644. Likewise, the evidence is insufficient to support the condition the court found in writing to have been breached in this case and so the convictions should be reversed.

Issue Three

> Whether the written judgment should be reformed to accurately reflect the trial court's proceedings regarding Mr. Houston's plea of "not true" to the allegations of the State's First Amended Motion to Adjudicate Guilt?

A. Relevant facts

According to the Reporter's Record, Mr. Houston pled "not true" to the state's First Amended Motion to Adjudicate Guilt. (1 R.R. at 13). The trial court noted this fact again in its pronouncement of the adjudication: "On your plea of not true, I find it true." (1 R.R. at 160). However, the Judgments Adjudicating Guilt indicate Mr. Houston pled "True." (1 C.R. at 79; 2 C.R. at 111).

B. Standard of Review & Applicable Law

Texas Rule of Appellate Procedure 43.6 states the court of appeals "may make any other appropriate order that the law and the nature of the case require." This has been interpreted to mean that appellate courts have "broad, remedial powers to correct errors in the record" meaning "an appellate court has the power to modify to

make the record speak the truth if the matter has been called to the court's attention by any source and if the court has the necessary information to do so." *Briceno v. State*, 675 S.W.3d 87, 100 (Tex. App. – Waco 2023, no pet.). *See also French v. State,* 830 S.W.2d 607, 609 (Tex. Crim. App. 1992) ("an appellate court has authority to reform a judgment to . . . make the record speak the truth when the matter has been called to its attention by any source.")

C. Analysis

The written judgment inaccurately announces that Mr. Houston pled "True" to the Motion to Adjudicate. (1 C.R. at 79, 2 C.R. at 111). As the reporter's record shows, Mr. Houston pled "not true." (1 R.R. at 13). Accordingly, this Court should reform the written judgment to speak the truth and reflect that Mr. Houston pled "Not True" to the state's First Amended Motion to Adjudicate Guilt.

PRAYER

Mr. Houston respectfully prays this Court reverse and remand and order the trial court to suppress the illegally obtained evidence. Mr. Houston also requests that this Court reverse the adjudications of guilt and remand these cases so that he can continue his deferred adjudication term. He also prays that this Court reform the written judgments to reflect that he pled "Not True" to the state's First Amended Motion to Adjudicate Guilt. Appellant prays for such other relief that this Court may deem appropriate.

Respectfully submitted,

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Certificate of Service

A true and correct copy of the foregoing brief was e-filed with the Fourteenth Court of Appeals and was served electronically upon the Appellate Division of the Harris County District Attorney's Office on February 12, 2025.

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