

**Appeal No. 01-24-00073-CR**

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**In the First Court of Appeals**

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FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS  
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Clerk of The Court

**GRACIE ANN MATA, Appellant**

**Vs.**

**THE STATE OF TEXAS, Appellee.**

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**On Appeal from the 239th Judicial District Court  
of Brazoria County,  
Cause No. 97640-CR.**

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**BRIEF FOR APPELLANT,  
GRACIE ANN MATA**

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**ORAL ARGUMENT NOT REQUESTED**

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## IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38.1(a), appellant certifies that the following is a complete list of the parties to the final judgment and the names and addresses of counsel in the trial court and on appeal:

### Party

Gracie Ann Mata

### Trial Counsel

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### Judge Presiding

Courtney T. Gilbert

## TABLE OF CONTENTS

Identity of Parties and Counsel .....	i
Table of Contents .....	ii
Index of Authorities .....	iii
Statement of the Cases.....	iv
Issues Presented.....	vi
Statement of Facts.....	2
Summary of the Argument.....	11
Argument.....	11
 <b>THE TRIAL COURT ERRED BY ASSESSING A PUNISHMENT WHICH IS GROSSLY DISPROPORTIONATE TO THE CRIME COMMITTED.</b>	
Prayer for Relief.....	15
Certificate of Service.....	17

## INDEX OF AUTHORITIES

### CASES:

<i>Baldrige v. State</i> , 77 S.W.3d 890, 893 (Tex. App. – Houston [14th Dist.] 2002, review ref’d) .....	12
<i>Buerger v. State</i> , 60 S.W.3d, 358, 365 (Tex. App. – Houston [1st Dist.] 2001, review ref’d.).....	11,14
<i>Burt v. State</i> , 396 S.W.3d 574, 577 (Tex. Crim. App. 2013).....	14
<i>Culton v. State</i> , 95 S.W.3d 401,403 (Tex. App. – Houston [1st Dist.] 2002, review ref’d).....	12
<i>Hicks v. State</i> , 15 S.W.3d 626, 632 (Tex. App. – Houston [14th Dist.] 2000, review ref’d) .....	12,14
<i>Johnson v. State</i> , 43 S.W.3d 1, 8-9 (Tex. Crim. App. 2001).....	15
<i>Ovalle v. State</i> , 13 S.W.3d 774 (Tex. Crim. App. 2000).....	15
<i>Ratliff v. State</i> , No. 03-18-00569-CR, 2020, 604 S.W.3d 65, 85–86, 86–87(Tex. App.—Austin Feb. 14, 2020, no pet. h.).....	15
<i>Reeves v. State</i> , 420 S.W.3d 812, 816 (Tex. Crim. App. 2013).....	14
<i>State v. Ambrose</i> , 487 S.W.3d 587, 598 (Tex. Crim. App. 2016).....	14

### CONSTITUTIONS, CODES, STATUTES, AND RULES:

U.S. Const., Art. I, § 8 .....	11,13
Tex. Const., Art. I, § 13 .....	11,12
Tex. Penal Code, section 49.09.....	iv
Tex. R. App. P. 33.1.....	13

## STATEMENT OF THE CASES

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Appeal 01-24-00073-CR in the trial court, is an appeal from the plea of guilty, in the 239th Judicial District Court of Brazoria County. On October 17, 2024, appellant entered a plea of guilty, before the court, to the December 30, 2022, offense of driving while intoxicated. Texas Penal Code §49.09(b). Appellant was convicted and the trial court formally sentenced her to imprisonment for ten (10) years and no fine. (3 RR at 75). Appellant did file his motion for new trial. On January 26, 2024, Appellant filed her notice of appeal. (1 CR at 63).

ISSUES PRESENTED

**THE TRIAL COURT ERRED BY ASSESSING A PUNISHMENT WHICH IS GROSSLY DISPROPORTIONATE TO THE CRIME COMMITTED.**

**Appeal No. 01-24-00073-CR**

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**In the First Court of Appeals**

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**GRACIE ANN MATA, Appellant**

**Vs.**

**THE STATE OF TEXAS, Appellee.**

---

**On Appeal from the 239th Judicial District Court  
of Brazoria County,  
Cause No. 97640-CR.**

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**BRIEF FOR APPELLANT,  
GRACIE ANN MATA**

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To the Honorable Justices of the First Court of Appeals:

Comes now appellant, Gracie Ann Mata, by and through her attorney of record,  
Cary M. Faden, and files this his brief in the above-styled and numbered cause; and  
would respectfully show the Court:

## STATEMENT OF FACTS

On February 16, 2023, appellant was indicted in Cause No. 97640-CR, in the 239th District Court of the December 30, 2022, offense of driving while intoxicated upon plea. In that indictment, it was alleged that appellant did:

**GRACIE ANN MATA**, hereinafter styled Defendant, on or about the **30th day of December, 2022**, and before the presentment of this indictment, in the County and State aforesaid, did then and there commit an offense hereafter styled the primary offense, in that said Defendant did operate a motor vehicle in a public place in Brazoria County, Texas, to wit: a public roadway, while intoxicated;

And it is further presented to said court that prior to the commission of the primary offense by the said Defendant, on or about the 17th day of February, 2005, in the County Criminal Court at Law No. 5 of Harris County, Texas, Cause No. 1280283, the said Defendant was duly and legally convicted of an offense of Driving While Intoxicated;

And it is further presented to said court that prior to the commission of the primary offense by the said Defendant, on or about the 26th day of October, 2018, in the 178th District Court of Harris County, Texas, Cause No. 156426701010, the said Defendant was duly and legally convicted of an offense of Driving While Intoxicated.

(1 CR at 6).

Initially, on October 16, 2023, Appellant plead not guilty, and a jury was selected. Voir dire was commenced. (3 RR at 7-92). The jury was selected and sworn.(3 RR at 125-126).

On October 17, 2023, appellant changed her plea to guilty. (4 RR at 9).



Appellant was indicted in Cause No. 97640-CR, appellant filed and executed a verified document entitled "defendant's plea of guilty or nolo contendere - written admonishments, waiver of statutory and constitutional rights, and written stipulation and judicial confession, (1 CR at 50-51). That document is divided into three parts: (1) the court's written admonishments, (2) the waiver of statutory and constitutional rights, and (3) the written stipulation and judicial confession. (1 CR at 50-51).

In the "court's written admonishments," appellant acknowledged an understanding of admonitions: (1) that he was charged with the offense of driving while intoxicated and that the range of punishment for that offense is imprisonment for two (2) to ten (10) years TDCJ-ID and a fine not to exceed \$10,000.00; (2) that any plea bargain agreement constituted no more than a recommendation from the state and was not binding upon the court; that the court would inquire into the existence of such a plea bargain; and that, if the court should reject such a bargain, appellant would be permitted to withdraw his plea; (3) that, if the punishment assessed by the court did not exceed the agreed recommendation, his right of appeal would be limited to matters permitted by the court or ruled upon in response to a pretrial motion; (4) that, if he was not a United States citizen, his plea might result in deportation or denial of United States admission or naturalization; and (5) that a deferred adjudication has certain dire consequences. (1 CR at 50-51).

In the “waiver of statutory and constitutional rights,” appellant waived (1) the right to the reading of the indictment; (2) the right to trial by jury; (3) the right to remain silent and the privilege against self-incrimination; (4) the rights of appearance, confrontation and cross-examination of witnesses; (5) any right to additional time to prepare for trial; and (6) the right to have a court reporter record the proceedings. (1 CR at 50-51).

In the “written stipulation and judicial confession,” appellant (1) judicially confessed that, he committed the acts alleged in the indictment and constituting the offense of driving while intoxicated; (2) acknowledged that there was no agreed recommendation as to punishment; (3) asserted that he was competent to stand trial; (4) acknowledged his understanding of the admonishments and the consequences of his plea; (5) asserted that he voluntarily entered his plea of guilty; and (6) asserted that he had consulted fully with his attorney before entering his plea. (1 CR at 50-51).

Appellant entered a plea of guilty before the judge. The trial court accepted appellant's plea and entered judgment; deferring sentencing for a sentencing hearing subsequent to the preparation of a pre-sentence investigation.

In this cause number, the sentencing hearing, before the trial court, the parties announced ready to go forward with the sentencing hearing. (5 RR at 2-4).

The state called Jeffrey Kimball, a deputy with the Brazoria County Sheriff's

Office. On December 30, 2022, were you employed with the Brazoria County Sheriff's Office? Yes, sir, I was. And what was your job duties with the sheriff's office at that time? At that time I was assigned to patrol night shift. My duties just involved answering calls for service and conducting proactive stops as time allows. And that night did you conduct a traffic stop on a Gracie Ann Mata? Yes, sir, I did. The traffic stop initially began when I observed a vehicle traveling on a public roadway in the 3100 block of County Road 94. I noticed that the vehicle did not have a front license plate. When I was able to see the rear license plate, I checked on my mobile computer, showed that it had expired registration, and also showed did not have insurance. So initially on the contact, I noticed there was several cues of what I believe to be cues of intoxication, you know, listed in my report. And from what I can remember, she had very droopy, watery eyes; slurred speech; and slow reactions at the beginning of our contact when I was asking for her personal information and identification. At this point did you make a determination as to whether you believed the defendant to be intoxicated? I did. At the conclusion of the ABC's, I placed Ms. Mata in handcuffs and placed her in custody for suspicion of DWI. Okay. What happens next? So at this time Ms. Mata was read her DSE, and request for her blood was made. She had only shown two prior convictions for DWI. At the point with the investigation, also with what I had found on scene, which tested positive for PCP, I

was able to gather that it was possibly going to be narcotics that she was under the influence of. After making the arrest and the evidence that I collected, the vehicle was towed; and I filed for a search warrant for Ms. Mata's blood. And ultimately did you obtain that warrant? Yes. Yes, sir, I did. And what did you do with that warrant? I was able to take her to UTMB Angleton for the blood draw and was able to obtain a substance -- or a specimen of Ms. Mata's blood. Okay. And when that blood was drawn from Ms. Mata, did you take possession of that blood? Yes, sir, I did. Did you observe it being drawn? Yes, sir, I did. And what did you do with it after you took possession of it? After I took possession of the blood, it was logged and submitted into evidence at the sheriff's office. (5 RR at 5-14). Cross examination. (5 RR at 14-21).

Erin Harris was called, who are you employed by? Brazoria County Adult Probation. Do you also prepare, when requested by a Court, a pre-sentence investigation report? Yes. And were you requested to prepare one of those reports in this case? I believe it was October of 2023. Okay. So you were asked to prepare one for this case? Yes. When a pre-sentence investigation report is requested, how do you go about preparing that report? Well, we first give them a pre-sentence investigation form to fill out. And then after that, we also do a TRAS assessment on that. So what is a TRAS assessment? It is a Texas Risk Assessment System. Let's start with the

prior criminal history. Upon reviewing the documents that you received, how many convictions for driving while intoxicated does Ms. Mata have? I believe two. It originally started as a DWI third or more. Okay. And what was the ultimate sentence on that case? It was reduced to a Class A DWI second, and she was convicted. Okay. And going down a little bit on that page, is there another DWI from March the 4<sup>th</sup>? So on my page 4, I think it's numbered "page 3" is there also a conviction? Is there another DWI charge from March the 4th of 2020? Yes. And does it indicate what happened with that DWI case? That one was also reduced to a Class A misdemeanor. Okay. So, in fact, would it appear that Ms. Mata has now had four, making this the fifth DWI conviction? Yes. Let me ask you this: Did she tell you that she was going to use PCP for the rest of her life and that she wants to party until the day she dies? Yes. (5 RR at 21-29). Cross examination, so if she were on probation, she would have to do 10 straight years of probation, correct? Correct. All right. Now, you indicated that, yes, she wanted to -- she liked PCP because it made her feel like Super Woman, correct? Correct. (5 RR at 29-33).

Mike Thomas was called, with the Brazoria County Sheriff's Department. My current role is sergeant for courthouse security. That day I was in my office, doing some work, when I heard sort of some loud voices. I could tell that it was not just normal loud conversation. So at that point I stood up and I walked outside of my

office door on the first floor. Sergeant Thomas, when you're in the vestibule, trying to take Ms. Mata into custody, what did she do in your response to your efforts to that? She just is spinning and wiggling and, you know, moving around while I'm trying to gain control of her. Is she using force against you? It's force to try to get away. (5 RR at 33-41). Cross examination, force to get away. Did she use force against you? She was forcefully trying to be, not be restrained. Okay. But did she use any force against you? Did she attempt to hit you, strike you, harm you in any way? No, she did not. (5 RR at 41-42). The State rested. (5 RR at 42).

Appellant was called, now, we're here because of a stop that was made on December the 30th, 2022, almost a full year ago, correct? Yes, sir. And you've entered a plea of guilty to driving while intoxicated, three or more? Correct. You and I have discussed your various options prior to coming to court today, correct? Yes. And have you ever been convicted of a felony prior to today? No, sir. Are you currently on probation for a felony or a misdemeanor? No. What would you request that the Court do as punishment for the offense of driving while intoxicated? Because this is a third-degree felony, not a state jail felony. Correct. All right. So if the Court can't grant you a 12.44(a) for that, what is the other option? Probation. You understand that on December 1, 2023 [sic], if you stub your toe on probation, a motion to revoke that probation could be filed; and you could be sentenced to the Texas Department, well,

you could be sent to the Texas Department of Public, Texas Criminal Justice system penitentiary for ten years beginning in December of 2033? Yes, sir, I do. 95 RR at 43-49). Cross examination, Do you remember telling this Court that you were going outside to try to hand off your keys to a friend who needed to have access to your apartment? To her it was for her vehicle. Let's talk about the night of December 30th, 2022. That's the night you were arrested for this, right? Uh-huh. Now, when you were talking to Deputy Kimball, you never admitted to him that you had any beers; isn't that correct? That's correct. You understand you've pled guilty in front of this court now? I understand. But you're not taking accountability for this offense? What I'm saying is I'm willing to take a plea deal because I want, I don't want to be in jail. But if you're asking me if I was intoxicated at that point in time, no, I was not. Okay. So just a simple "yes" or "no": You're not taking accountability for this offense at this point? No, huh-uh. All right. You understand and the State has admitted through the plea -- Uh-huh. -- to support the plea that there was PCP found in your blood that night. You understand that, correct? I understand that. And you're telling this Court that even though there was PCP in the car, it was -- you heard -- you heard the deputy's testimony today, and that PCP being found in your blood, you're still telling this Court that you were not intoxicated? Not at that point in time, I was not. All right. But you were not taking your depression medication that day either, correct? No. I

had just woken up. (5 RR at 49-62). Appellant rested. (5 RR at 63).

Both sides rested and closed. (5 RR at 63). The trial court made a finding of guilt and made the findings a final finding of guilt. (5 RR at 68). The trial court then formally imposed sentence on appellant. (5 RR at 68).



## SUMMARY OF THE ARGUMENT

Appellant contends that the sentence assessed against her was excessive and grossly disproportionate to the crime committed. “If the trial court assesses a punishment within the statutorily prescribed limits, the punishment is not cruel and unusual and generally will not be disturbed on appeal.” *Buerger v. State*, 60 S.W. 3d 358, 365 (Tex. App. – Houston [1st Dist.] 2001, review ref’d). However, Appellant contends that the trial court’s punishment was disproportionate to the crime committed and did violate her constitutional right under the Eighth Amendment to the United States Constitution and Article I, Section Thirteen of the Texas Constitution.

## ARGUMENT

### POINT OF ERROR NO. 1

#### **THE TRIAL COURT ERRED BY ASSESSING A PUNISHMENT WHICH IS GROSSLY DISPROPORTIONATE TO THE CRIME COMMITTED.**

Appellant contends that the sentence assessed against her was excessive and grossly disproportionate to the crime committed. “If the trial court assesses a punishment within the statutorily prescribed limits, the punishment is not cruel and unusual and generally will not be disturbed on appeal.” *Buerger v. State*, 60 S.W. 3d 358, 365 (Tex. App. – Houston [1st Dist.] 2001, review ref’d). However, Appellant contends that the trial court’s punishment was disproportionate to the crime

committed and did violate her constitutional right under the Eighth Amendment to the United States Constitution and Article I, Section Thirteen of the Texas Constitution. “Although a sentence may be within the range of permitted by statute, it may nonetheless run afoul of the Eighth Amendment prohibition against cruel and unusual punishment.” *Hicks v. State*, 15 S.W.3d 626, 632 (Tex. App. – Houston [14th Dist.] 2000, review ref’d).

In deciding whether the punishment is disproportionate to the crime committed, “[w]e first make a threshold comparison of the offense against the severity of the sentence, judging the gravity of the offense in light of the harm caused or threatened to the victim or society and the culpability of the offender.” *Culton v. State*, 95 S.W.3d 401,403 (Tex. App. – Houston [1st Dist.] 2002, review ref’d). “Only if we infer that the sentence is grossly disproportionate to the offense, will we then consider the remaining factors of the *Solem* test and compare the sentence received to (1) sentences for similar crimes in the same jurisdiction, and (2) sentences for the same crime in other jurisdictions. *Baldrige v. State*, 77 S.W.3d 890, 893 (Tex. App. – Houston [14th Dist.] 2002, review ref’d). Appellant acknowledges that the trial court’s sentence falls within the range of punishment which is prescribed by statute for the offense of driving while intoxicated which is 2 years to 10 years in prison. However, Appellant contends that the trial court’s decision to sentence her to ten (10)

years in prison, is grossly disproportionate to the crime for 4 reasons. First, Appellant has no felony criminal history.

Second, no one was seriously injured, in fact no one was injured. Third, Appellant spent some time in jail awaiting the resolution of his felony charge. Fourth, Appellant pleaded guilty to the felony charge and accepted responsibility for her actions while asking the court to grant him community supervision or at the minimum sentence. While Appellant admits that she should receive punishment, she contends that his listed four reasons demonstrate that the trial court rendered a grossly disproportionate sentence for the crime committed for a first-time felony offender. The trial court could easily have granted Appellant community supervision or a lower prison sentence. By assessing ten 10-year TDC sentence, the trial court administered an excessive and grossly disproportionate sentence for the crime Appellant committed. In addition, Appellant contends that a sentence for the crime of driving while intoxicated in Brazoria County and other Texas counties would have been significantly lower than the 10-year sentence for a first-time felony offender who did not injure anyone.

Courts have held the record does not show that appellant raised his Eighth Amendment complaint in the trial court. Thus, appellant has not preserved error. *See* Tex. R. App. P. 33.1. Appellant argued, that the sentence assessed against her was

excessive and grossly disproportionate to the crime committed. “If the trial court assesses a punishment within the statutorily prescribed limits, the punishment is not cruel and unusual and generally will not be disturbed on appeal.” *Buerger v. State*, 60 S.W. 3d 358, 365 (Tex. App. – Houston [1st Dist.] 2001, review ref’d). However, Appellant contends that the trial court’s punishment was disproportionate to the crime committed and did violate her constitutional right under the Eighth Amendment to the United States Constitution and Article I, Section Thirteen of the Texas Constitution. “Although a sentence may be within the range of permitted by statute, it may nonetheless run afoul of the Eighth Amendment prohibition against cruel and unusual punishment.” *Hicks v. State*, 15 S.W.3d 626, 632 (Tex. App. – Houston [14th Dist.] 2000, review ref’d).

Courts are requiring an objection to the sentence, “A sentencing issue may be preserved by objecting at the punishment hearing, or when the sentence is pronounced,” and sometimes by a motion for new trial. *Burt v. State*, 396 S.W.3d 574, 577 (Tex. Crim. App. 2013). In assessing harm, reviewing courts “consider: (1) the jury charge as a whole, (2) the arguments of counsel, (3) the entirety of the evidence, and (4) other relevant factors present in the record.” *Reeves v. State*, 420 S.W.3d 812, 816 (Tex. Crim. App. 2013); see also *State v. Ambrose*, 487 S.W.3d 587, 598 (Tex. Crim. App. 2016) (setting out these factors in issue regarding error from omission of

accomplice-witness instruction); *Ratliff v. State*, No. 03-18-00569-CR, 2020, 604 S.W.3d 65, 85–86, 86–87(Tex. App.—Austin Feb. 14, 2020, no pet. h.) (applying these factors to issue of whether jury-charge error constituted “an impermissible comment on the weight of the evidence”).

However, Appellant was harmed, this is constitutional error, an objection should not be required in this instance to preserve constitutional error. Harm analysis or lack of complete harm analysis does not create waiver. As a reminder, you don’t have to argue harm. There’s no constitutional or statutory right to be free from harm. “No burden to show harm should be placed on the defendant who appeals.” *Johnson v. State*, 43 S.W.3d 1, 8-9 (Tex. Crim. App. 2001). “We hold that it is the responsibility of the appellate court to asses harm . . . and that the burden to demonstrate whether the appellant was harmed by a trial court error does not rest on the appellant or the State.” *Id* at 9. See also, *Ovalle v. State*, 13 S.W.3d 774 (Tex. Crim. App. 2000). “[N]o party should have the burden to prove harm from an error, and there ordinarily is no way to prove actual harm.” *Id* at 787.

### **PRAYER FOR RELIEF**

**WHEREFORE, PREMISES CONSIDERED**, appellant, Gracie Ann Mata, for the reasons stated, prays the Court to reverse and acquit or in the alternative to reverse and remand this cause for a new trial.

Respectfully submitted,

**/S/CARY M. FADEN**

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**CERTIFICATE OF COMPLIANCE, T.R.A.P., RULE 9.4(3)**

\_\_\_\_\_ In accordance with TEX. R. APP. P. 9.4(3), I Cary M. Faden, certify that this is a computer generated document and I state that the number of words in this document is 4,176 words. I am relying on the word count of the computer program used to prepare this document.

**/S/CARY M. FADEN**

**Cary M. Faden**

### **CERTIFICATE OF SERVICE**

In accordance with TEX. R. APP. P. 9.5, I, Cary M. Faden, certify that a true and correct copy of the foregoing brief for appellant has been served, by U.S. Mail, upon appellant, Gracie Ann Mata, and upon the attorney of record for the State of Texas, the Brazoria County District Attorney, Tom Selleck, Appellate Division, 111 E. Locust Street, Angleton, Texas 77515, by electronic filing manager, on September 24, 2024.

**/S/CARY M. FADEN**

**Cary M. Faden**

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