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COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

[SEAL]

4/14/2021

Tr. Ct. No. 1465955-A

HOWARD ASHLEY MERE **WR-92,267-01**

This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court without a hearing and on the Court's independent review of the record.

Deana Williamson, Clerk

RANDY SCHAFFER
ATTORNEY AT LAW
1021 MAIN ST. #1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

NO. 1465955-A

EX PARTE	§	IN THE 183RD DISTRICT
	§	COURT OF
ASHLEY HOWARD Applicant	§	HARRIS COUNTY, TEXAS

STATE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Court has considered the application for writ of habeas corpus, the State's answer (including any attached exhibits), the affidavit of David Rushing, the affidavit of Cynthia Rayfield-Aguilar, and official trial court records in the above-captioned cause. The Court finds that there are no controverted, previously unresolved facts material to the legality of the applicant's confinement which require an evidentiary hearing and recommends that the instant habeas application, cause number 1465955-A, be DENIED based on the following:

Findings of Fact and Conclusions of Law

1. Applicant is confined pursuant to the judgment and sentence of the 183rd District Court of Harris County, Texas, in cause number 1465955 (the primary case), where Applicant was convicted pursuant to a jury verdict for the felony offense of murder.

2. A jury assessed punishment at thirty-five years confinement in the Texas Department of Criminal Justice—Correctional Institutions Division.

3. The First Court of Appeals affirmed the trial court's judgment. *Howard v. State,* No. 01-16-00120-CR (Tex. App.—Houston [1st. Dist.] April 25, 2017, pet. ref'd.) (mem. op. not designated for publication).

4. Applicant filed the instant writ with habeas counsel on June 5, 2020.

5. The State was served with the writ on June 12, 2020.

6. The trial court timely designated issues to be addressed and ordered David Rushing and Cynthia Rayfield-Aguilar to file affidavits addressing Applicant's claims.

7. The court finds the affidavit of David Rushing to be credible and the facts asserted therein to be true.

8. The court finds the affidavit of Cynthia Rayfield-Aguilar to be credible and the facts asserted therein to be true.

9. Applicant presented an affidavit obtained from her trial counsel, Maverick Ray. *See Applicant's writ exhibit 4.*

10. Applicant's first and ground for relief alleges her trial counsel on a prior cause number, David Rushing, was ineffective because Applicant made an uninformed decision to withdraw her guilty plea on cause number 1465955. *Applicant's writ at 6.*

11. Applicant's second ground for relief alleges the trial court made improper comments during jury selection. *Applicant's Writ at 8.*

12. Applicant's third ground for relief alleges her trial counsel on the instant cause was ineffective. *Applicant's writ at 10.*

13. Applicant's fourth ground for relief alleges her appellate counsel was ineffective. *Applicant's writ at 12.*

Procedural History

1. David Rushing represented Applicant on three charges, cause numbers 1406308, 1394857, and 1389062.

2. Applicant was not initially charged with the instant case.

3. In 2014 Applicant pled guilty to cause 1406308 and her case was set for a Pre-Sentence Investigation ("PSI").

4. After the PSI report was complete, but before being sentenced by the trial court, the trial court informed Applicant that after reviewing the PSI report, Applicant would receive the maximum available sentence, ten years confinement.

5. The trial court informed Applicant that if she wished, she would be allowed to withdraw her guilty plea and proceed to trial.

6. Applicant chose to withdraw her plea.

7. On January 14, 2015, Applicant was charged with felony murder in cause 1454408.

8. Rushing did not represent Applicant on cause 1454408.

9. On April 24, 2015 Applicant's felony murder case was refiled under the instant cause.

10. Rushing did not represent Applicant on the instant cause.

11. Applicant's first jury trial for the instant cause commenced on May 21, 2015 and resulted in a hung jury on June 1, 2015.

12. Applicant's second jury trial for the instant cause commenced on January 27, 2016, resulted in a guilty verdict, and concluded on February 4, 2016.

Facts of the Case

13. Applicant and Raquel Gonzalez were planning to steal men's Polo shirts from Deerbrook Mall, and Shiquinta Franklin would be the getaway driver (V RR 82-83).

14. On May 23, 2013, Applicant picked up Gonzalez and Franklin in her vehicle, a 2013 Dodge Avenger (V RR 82-84).

15. Franklin stayed in the car while Applicant and Gonzalez went inside the Dillard's store at Deerbrook, then into a Macy's (IV RR 45; V RR 84, 86).

16. Gonzalez was scared so the two women left Macy's and argued in the parking lot (V RR 84-85).

17. Applicant and Gonzalez went back to Macy's, grabbed some Polo shirts, and ran out of the

store, setting off the store alarm (IV RR 46-50; V RR 87-88).

18. The total value of the shirts was $2,200 (IV RR 48).

19. Gonzalez got into the front passenger seat of the Avenger and Applicant got into the back seat (V RR 88-89).

20. Humble Police Department officer Richard Moore was in the parking lot when he was informed about the theft (IV RR 66, 73).

21. Moore pulled in behind Applicant's vehicle, turned on his emergency lights, and pursued the vehicle onto Highway 59 (IV RR 74-75).

22. Franklin called her boyfriend, who told her to slow down (V RR 91).

23. Gonzalez told Franklin to stop the car (V RR 92, 95).

24. Applicant said to "keep going" (V RR 92).

25. Gonzalez called her cousin Shericia Zenon on her phone and told her that she was going to jail for theft (IV RR 165-166) (V RR 90, 95). Zenon told Gonzalez to pull over, and the call ended with a boom (IV RR 168-170).

26. The vehicle reached speeds of over 100 miles per hour and passed vehicles by driving on the inside shoulder of the highway (IV RR 124-125).

27. The vehicle ran a red light on the Highway 59 feeder at Quitman, crashing into Rosalba Quezada's car (IV RR 77, 136; V RR 93).

28. Quezada's car flipped over and landed on its roof (IV RR 79, 128, 131-132). She sustained multiple injuries including a tear to her brain stem, which caused her death (V RR 65, 69, 70, 72).

29. Applicant lived a block or two from the crash site and attempted to run away (IV RR 78, 120-121; V RR 53, 94). She ran underneath Highway 59 and into a residential area where she was arrested (IV RR 78-79, 127, 174-175).

30. Applicant was taken to the hospital for a twisted her ankle and spoke with Robert Klementich from the Houston Police Department's vehicular crime division (IV RR 175; V RR 19-20, 21-23).

31. Applicant told Klementich that she put paper tags on her car to hide the actual license plate (V RR 26).

32. Applicant admitted that it was her idea to steal the shirts (V RR 27).

33. Applicant said that she told Franklin to go even though the police were behind them (V RR 27).

34. Applicant said she didn't see the car coining at the Quitman intersection, but said that she told Franklin to "keep going and not to stop" (V RR 28).

Alleged Ineffective Assistance of Counsel

David Rushing

35. Applicant alleges David Rushing was ineffective because he failed to request a recess to advise Applicant about the differences in parole

between felony theft and felony murder before she withdrew her plea in cause number 1406308. *Applicant's Writ at 6-7.*

36. Applicant's claim regarding Rushing is improperly brought under the instant cause. Applicant was not represented by Rushing on the instant cause.

37. Providing Applicant with relief in the instant cause would not remedy her complaint about Rushing.

38. Because the alleged deficiencies regarding Rushing occurred during his representation of Applicant on a different cause, Applicant fails to plead and prove facts which entitle her to relief in this particular claim. *Ex parte Rains,* 555 S.W.2d 478 (Tex. Crim. App. 1976).

39. Rushing does not retain his file for cause number 1406308. *See affidavit of David Rushing at 1.*

40. Rushing has an independent recollection of the case due to the unusual facts and circumstances of the case. *See affidavit of David Rushing at 1.*

41. Rushing recalls Applicant's chief concern in cause number 1406308 was to avoid jail at all cost. *See affidavit of David Rushing at 1.*

42. Applicant was never concerned with parole eligibility during the course of Rushing's representation; her focus was entirely on avoiding prison and receiving probation. *See affidavit of David Rushing at 1.*

43. Prior to Applicant's plea, there was never any indication from the State that Applicant may be charged with murder instead of theft. *See affidavit of David Rushing at 1.*

44. On the day of the PSI hearing, the State informed Rushing that if Applicant withdrew her plea, a felony murder charge would be filed. *See affidavit of David Rushing at 1-2.*

45. Rushing recalls the events happened so quickly, Applicant and her mother were in shock and were not thinking clearly. *See affidavit of David Rushing at 2.*

46. Rushing was only given a few minutes to discuss the issue with Applicant in a witness room. *See affidavit of David Rushing at 2.*

47. The trial court would not allow a reset to give Applicant time to think about her decision. *See affidavit of David Rushing at 2.*

48. Applicant's options were to take a prison sentence or have her case reified as a murder charge. *See affidavit of David Rushing at 2.*

49. Resetting the case would result in Applicant's guilty plea being withdrawn, and a murder charge being filed. *See affidavit of David Rushing at 2.*

50. Applicant did not want to continue with the PSI and receive a prison sentence, so she chose to withdraw her plea, with full knowledge a murder charge would be filed. *See affidavit of David Rushing at 2.*

51. Rushing informed Applicant that the punishment range for murder is significantly higher than that of theft, and that it was not uncommon for a jury to return a sentence of life. *See affidavit of David Rushing at 3.*

52. Even if Applicant were able to proceed on her claim regarding Rushing under the instant cause, Applicant fails to demonstrate that Rushing rendered ineffective assistance.

53. The totality of the representation afforded Applicant was sufficient to protect his right to reasonable effective assistance of counsel in cause 1406308.

Maverick Ray

54. Applicant alleges her trial counsel in the instant cause, Maverick Ray, was ineffective for failing to file a motion in limine, failing to object to the trial court's voir dire, failing to object to the prosecutor's voir dire, and failing to object to the jury charge. *Applicant's writ at 10-11.*

The Trial Court's Voir Dire

55. In voir dire, it is proper to use hypothetical fact situations to explain the application of principles of the law. *Cuevas v. State,* 742 S.W.2d 331, 336, note 6 (Tex. Crim. App. 1987)

56. Improper questions include those that ask potential jurors to reach conclusions based on "hypothetical facts" that mirror the case. *See White*

v. State, 629 S.W.2d 701, 706 (Tex. Crim. App. 1981)

57. A trial court's comments are permissible when analyzed as a whole and found to not undermine the defendant's rights. *See Unkart v. State,* 400 S.W.3d 94 (Tex. Crim. App. 2013) (Where the trial court's remarks were made during an explanation of the defendant's rights and did not imply guilt or otherwise infringe on the defendant's rights, in stark contrast to trial court's exasperated comments in *Blue*).

58. The trial court's comments were somewhat similar in voir dire between the two trials, but not identical.

59. The hypothetical presented by the trial court in both the first and second voir dire closely mirrors the facts of the case.

60. The trial court's hypothetical in both instances was to demonstrate how a person may be charged under the law of parties.

61. The trial court's hypothetical in the second trial did not end with an assertion that a jury must find someone under those facts guilty, but instead concluded with: "You can be charged with the same offense. . . . We're all going to be charged with felony murder" (III RR 29-30).

62. Shortly after the hypothetical in the second trial, the trial court indicated a neutral opinion as to guilt or innocence by stating "And that's if there's a theft and then after the theft if [the State is] able to prove that Ms. Ashley Howard

was in a vehicle that ran a red light that killed somebody" (III RR 31).

63. During voir dire in the second trial, the trial court repeatedly indicated a neutral opinion to the State's ability to prove the case (III RR 17, 24, 26, 28, 31, 57).

64. The trial court did not ask any commitment questions of the venire panel related to the hypothetical in either voir dire.

65. The trial court's hypothetical in either voir dire was not an improper comment or improper commitment that invaded the province of the jury.

66. The trial court's hypothetical in either voir dire was not an improper comment or improper commitment that infringed on the defendant's presumption of innocence.

67. The trial court's comments that the prosecution believes the defendant committed the offense are as follows: [The State thinks] "they can prove this case to you beyond a reasonable doubt" (III RR 17). "And they gladly accept that burden of proof because we wouldn't be here if they didn't think they could prove to you that this woman is guilty of felony murder" (III RR 26).

68. The trial court's first mention of the State's belief the case can be proven is immediately followed by the sentence "And we'll find out whether they can or whether they can't" (III RR 17).

69. The court's first mention of proof is made during a lengthy explanation of how a case ends up before a jury for trial (III RR 12-22).

70. The trial court's second mention of proof is made during an explanation of the elements of felony murder and the burden of proof (III RR 26).

71. The trial court does not deny Applicant the presumption of innocence with the statements about the State's belief the case can be proven.

72. There is no prohibition on the State indicating that they believe they have the evidence required to prove the case. *Milo v. State,* 214 S.W.2d 618, 619 (Tex. Crim. App. 1948) (holding that the fact that "the district attorney, was the representative of the State of Texas and of society is common knowledge and certainly not subject to [defense counsel's] objection.").[1]

73. The trial court's comment about experiencing a road rage incident that morning, while unusual is harmless.

74. The instant case was not about road rage, and the trial court's road rage comment did not involve any commentary on the case before the jury.

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[1] Improper comments are comments that include the prosecutor's personal opinion. *See Baldwin v. State,* 499 S.W.2d 7, 9 (Tex. Crim. App. 1973) (Where the prosecutor stated in closing "I think he's guilty"); *See also Menefee v. State,* 614 S.W.2d. 167, 168 (Tex. Crim. App. 1981) (Where the prosecutor remarked in closing that a witness' testimony was the most honest he's ever heard).

75. The trial court's comments about road rage did not infringe on the defendant's rights.

76. The failure to object when there is no error does not constitute ineffective assistance of counsel *Holland v. State,* 761 S.W.2d 307, 318-319 (Tex. Crim. App. 1988) (holding that "counsel was under no obligation to do what would amount to a futile act").

77. Applicant must show that the trial judge would have committed error in overruling objections to the indictment if they were made. *See Vaughn v. State,* 931 S.W.2d 564 (Tex. Crim. App. 1996).

78. Ray writes in his affidavit that he believes he should have objected to the judge's explanation of the law of parties to preserve error. *See Applicant's Writ Exhibits at 12—Affidavit of Maverick Ray.*

79. Ray writes in his affidavit that he believes the trial court's comments about road rage were harmless and not something that required objection. *See Applicant's Writ Exhibits at 12—Affidavit of Maverick Ray.*

80. Ray writes that he did not object to any of the trial court's comments because he believed the trial court would have responded in an unpleasant manner to him *See Applicant's Writ Exhibits at 12—Affidavit of Maverick Ray.*

81. Applicant fails to show that Ray was deficient in failing to object to the trial court's hypothetical on the law of parties, because Applicant fails to show that an objection to the trial court's hypothetical would have been error if overruled.

82. Ray's belief that it would have been better to object does not automatically mean he was ineffective, because case law indicates that the trial court could have overruled the objection without inviting error.

83. Applicant does not show that Ray was deficient in failing to file a motion in liminie to the trial court's voir dire, because Applicant fails to show that the court would have committed error in overruling the motion.

84. Applicant cannot show that Ray was deficient in failing to object to the trial court's explanation of the State's burden because Applicant fails to show that the objection would have been error if overruled.

85. Applicant fails to show that an objection to the trial court's comment about her personal road rage experience that morning would have been error if overruled.

The Prosecutor's Voir Dire

86. The fact that the prosecutor represents the State or citizens is long-standing common knowledge and not objectionable. *Milo v. State,* 214 S.W.2d 618, 619 (Tex. Crim. App. 1948) (holding that the fact that "the district attorney, was the representative of the State of Texas and of society is

common knowledge and certainly not subject to [defense counsel's] objection.").[2]

87. In the instant case, the prosecutor told the venire panel that she represented the "citizens of Harris County" (III RR 83).

88. Applicant fails to show an objection to the prosecutor's voir dire would have been sustained, or would have been error if overruled.

89. Applicant fails to show that Maverick Ray was deficient in failing to make an objection to the prosecutor's voir dire. *See Holland v. State,* 761 S.W.2d 307, 318-319 (Tex. Crim. App. 1988) (holding that "counsel was under no obligation to do what would amount to a futile act").

The Trial Court's Charge on Felony Theft

90. Applicant fails to provide any legal authority to show that in order to be convicted of felony theft, that there must be evidence that the parties agreed to steal enough merchandise to constitute a felony.

91. The evidence presented at trial showed no intent that Applicant and her codefendants specifically attempted to keep their theft to a misdemeanor dollar amount.

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[2] Applicant cites *Bray v. State,* 478 S.W.2d 89 (Tex. Crim. App. 1972), where the court held that the prosecutor's statement was objectionable and harmful because he told the jury "I shall be eternally grateful that you are the people that are my employers and not the likes of him and that I am not representing this sort of thing".

92. Ray writes that he did not object to the felony theft charge because his belief is that the amount stolen could be aggregated under the law of parties. *See Applicant's Writ Exhibit 4 Affidavit of Maverick Ray at 15.*

93. Applicant fails to show that had Ray objected to the charge on felony theft, it would have been error for the trial court to overrule the objection.

94. Applicant fails to show that Ray was deficient in failing to object to the court's charge on felony theft.

95. Applicant fails to prove by a preponderance of the evidence that her counsel's representation fell below an objective standard of reasonableness. *See Mitchell v. State,* 68 S.W.3d 640, 642 (Tex. Crim. App. 2002); *Narvaiz v. State,* 840 S.W.2d 415, 434 (Tex. Crim. App. 1992) (citing *Strickland v. Washington,* 466 U.S. at 688).

96. Applicant fails to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *See Mitchell at 642.*

97. Based on the totality of the representation, and the particular circumstances of the case, trial counsel provided Applicant with reasonably effective assistance of counsel. *See Thompson v. State,* 9 S.W.3d 808, 813 (Tex. Crim. App. 1999).

Alleged Ineffective Assistance of Appellate Counsel

98. Applicant alleges that her appellate counsel, Cynthia Rayfield-Aguilar, was ineffective for

failing to raise points of error regarding the trial court's comments in voir dire, and the trial court's charge regarding felony theft. *Applicant's Writ at 12.*

99. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar possesses independent recollection of her representation of Applicant. *Affidavit of Cynthia Rayfield-Aguilar at 1.*

100. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar reviewed her notes and research to complete her affidavit. *Affidavit of Cynthia Rayfield-Aguilar at 1.*

101. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar considered raising a point of error about the trial court's hypothetical. *Affidavit of Cynthia Rayfield Aguilar at 1-2.*

102. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar did not raise a point of error about the trial court's hypothetical because it was her opinion that it was an improper point of error because trial counsel had not objected. *Affidavit of Cynthia Rayfield-Aguilar at 2.*

103. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar did not raise a point of error regarding the hypothetical or the comments under the holding in *Blue,* because it was her opinion that the trial court's hypothetical did not rise to the level of "fundamental

error of a constitutional dimension" required by *Blue. Affidavit of Cynthia Rayfield-Aguilar at 2.*

104. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar did not believe the trial court's hypothetical and comments were as extreme as the instances in the cases using *Blue. Affidavit of Cynthia Rayfield-Aguilar at 2.*

105. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar believes the trial court's hypothetical and comments did not amount to a denial of the presumption of innocence or any other fundamental right. *Affidavit of Cynthia Rayfield-Aguilar at 2*; *See Unkart v. State,* 400 S.W.3d 94 (Tex. Crim. App. 2013).

106. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar recognizes that while the law says a jury must presume a defendant innocent, there is no provision that states that the jury must believe the prosecution thinks the defendant is innocent. *Affidavit of Cynthia Rayfield-Aguilar at 3.*

107. As a result, Aguilar did not find it beneficial or necessary to raise a point of error regarding the trial court stating that the prosecution believes they will be able to prove the case. *Affidavit of Cynthia Rayfield Aguilar at 3.*

108. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar considered raising a point of error that the trial court's charge on conspiracy to commit felony theft was invalid. *Affidavit of Cynthia Rayfield-Aguilar at 3.*

109. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar did not find it beneficial or necessary to raise a point of error on the trial court's charge for conspiracy to commit felony theft because after looking at the plain language of the relevant statutes, Aguilar believed that portion of the charge was not an error. *Affidavit of Cynthia Rayfield-Aguilar at 3*.

110. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar believes that when the parties agreed to the theft, the amount stolen could be aggregated. *Affidavit of Cynthia Rayfield-Aguilar at 3-5.*

111. The court finds, based on the affidavit of Cynthia Rayfield-Aguilar, that Aguilar noted there was no evidence presented that the goal was to only commit a misdemeanor theft. *Affidavit of Cynthia Rayfield-Aguilar at 5.*

112. To prove that appellate counsel was constitutionally ineffective for failing to assert a particular point of error on appeal, it must be shown that (1) counsel's decision not to raise a particular point of error was objectively unreasonable, and (2) there is a reasonable probability that, but for counsel's failure to raise that particular issue, applicant would have prevailed on appeal. *Ex parte Santana,* 227 S.W.3d 700, 704-05 (Tex. Crim. App. 2007).

113. Applicant's legal arguments regarding her appellate counsel are substantively similar to those presented against the trial court and her trial counsel, therefore, the same legal reasoning

applies to why Applicant's proposed points of error would not have succeeded on appeal.

114. Applicant fails to show that Aguilar's decision to not raise any of the proposed points of error was objectively unreasonable.

115. Applicant fails to show that there is a reasonable probability that had Aguilar raised the proposed points of error that she would have prevailed on appeal.

116. Applicant fails to demonstrate that her Appellate counsel was ineffective and fails to meet her burden under Strickland. *Ex parte Butler,* 884 S.W.2d 782, 783 (Tex. Crim. App. 1994); *Strickland v. Washington,* 466 U.S. 668, 686 (1984).

117. Based on the totality of the representation and the particular circumstances of the case, trial counsel provided Applicant with reasonably effective assistance of appellate counsel. *See Thompson v. State,* 9 S.W.3d 808, 813 (Tex. Crim. App. 1999).

118. In all things, Applicant fails to show that her conviction was improperly obtained.

THE CLERK IS ORDERED to prepare a transcript and transmit same to the Court of Criminal Appeals as provided by TEX. CRIM. PROC. CODE art. 11.07 (West 2015). The transcript shall include certified copies of the following documents:

1. the application for writ of habeas corpus;

2. the State's answer (including any exhibits and attachments);

3. the affidavit of David Rushing;

4. the affidavit of Cynthia Rayfield-Aguilar;

5. the Court's order;

6. The appellate opinion in cause number 1465955.

THE CLERK is further ORDERED to send a copy of this order to counsel for the applicant, Randy Schaffer, 1201 Main, Suite 1440, Houston, TX 77002, and to counsel for the State, BreAnna Schwartz, 500 Jefferson Street, Suite 600, Houston, Texas 77002.

By the following signature, the Court adopts the State's Proposed Findings of Fact, Conclusions of Law and Order in Cause Number 1465955-A.

SIGNED AND ENTERED.

Signed:
12/10/2020 Chuck Silverman
JUDGE PRESIDING,
183RD DISTRICT COURT
HARRIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

The undersigned counsel certifies that I have served a copy of State's Proposed Findings of Fact, Conclusions of Law and Order to counsel for the Applicant on November 5, 2020 by e-mail as follows:

Randy Schaffer: noguilt@schafferfinn.com

/s/ BreAnna Schwartz
BreAnna Schwartz
Assistant District Attorney
Harris County, Texas
500 Jefferson Street,
Suite 600
Houston, Texas 77002
(713) 274-5990
Schwartz_BreAnna@
dao.hctx.net
Texas Bar ID #24076954

139 S.Ct. 150
Supreme Court of the United States

Ashley Mere **HOWARD**, petitioner,
V.
TEXAS.

No. 17-9302.
Oct. 1, 2018.

Opinion

Petition for writ of certiorari to the Court of Appeals of Texas, First District denied.

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OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
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AUSTIN, TEXAS 78711

[SEAL]

11/15/2017 **COA No. 01-16-00120-CR**
Tr. Ct. No. 1465955
HOWARD ASHLEY MERE **PD-0939-17**

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

Deana Williamson, Clerk

1ST COURT OF APPEALS CLERK
CHRISTOPHER A. PRINE
301 FANNIN
HOUSTON, TX 77002-7006
* DELIVERED VIA E-MAIL *

527 S.W.3d 248
Court of Appeals of Texas, Houston (1st Dist.).

Ashley Mere HOWARD, Appellant
v.
The STATE of Texas, Appellee

NO. 01-16-00120-CR
|
Opinion issued April 25, 2017
|
Discretionary Review Refused November 15, 2017

On Appeal from the 183rd District Court, Harris County, Texas, Trial Court Case No. 1465955

Attorneys and Law Firms

Cynthia Rayfield-Aguilar, 401 College Street, Suite 260, Montgomery, TX 77356, for Appellant.

Kim Ogg, District Attorney—Harris County, 1201 Franklin, Suite 600, Houston, TX 77002, Eric Kugler, Assistant District Attorney; Harris County, Texas, 1201 Franklin, Suite 600, Houston, TX 77002, for Appellee.

Panel consists of Chief Justice Radack and Justices Brown and Lloyd.

OPINION

Harvey Brown, Justice

Ashley Howard and her two friends stole merchandise from a department store, fled in a getaway car, and led the police on a high-speed chase, which

came to an abrupt end when they ran a red light and crashed into a vehicle passing through the intersection, killing the driver, Rosalba Quezada. Howard was indicted for felony murder. She was convicted and sentenced to 35 years' confinement and fined $10,000. In two issues, Howard contends that the trial court erred by (1) instructing the jury to find her guilty of *felony* murder upon a predicate finding that her friends caused Quezada's death while acting in furtherance of a *misdemeanor* conspiracy and (2) denying her motion to suppress a videotape of a statement she made to an officer while at the hospital in police custody. We affirm.

Background

It was undisputed at trial that Howard and her friend, Racquel Gonzalez, agreed to steal polo shirts from a department store. They recruited another friend, Shiquinta Franklin, to help them steal the shirts by driving Howard's vehicle as the getaway car.

Howard picked up Gonzalez and Franklin, and they drove to the department store. Howard and Gonzalez entered the store while Franklin waited in the driver's seat of the car. Howard and Gonzalez proceeded to grab sixteen shirts off a clothing rack[1] and run out of the store, setting off the theft-prevention sensors. They jumped into the getaway car and told

[1] The department store security camera videotaped Howard taking six shirts and Gonzalez taking ten. The total value of the sixteen shirts was $2,200.

Franklin to go. Franklin sped out of the parking lot, and, almost immediately, the police began to pursue them.

In an attempt to evade arrest, they led the police on a dangerous, high-speed chase on and off the highway and through residential areas, during which they ran stop signs, reached speeds of over 100 miles per hour, and passed other vehicles on the inside shoulder.

They eventually came to a red light at an intersection on the feeder road. Gonzalez testified that she told Franklin to stop the car but that Howard told Franklin to "keep going" because she "had too much to lose." Franklin likewise testified that Howard told her to "go, go, go" through the red light. Franklin ran the red light at over sixty miles per hour and crashed into another vehicle passing through the intersection, killing the vehicle's driver, Rosalba Quezada, and injuring her three children, one seriously.

Howard attempted to flee the accident scene on foot but was apprehended by the police and taken to the hospital. At the hospital, she was questioned by Officer R. Klementich. Howard admitted that she, Gonzalez, and Franklin had conspired to steal the shirts and then tried to evade arrest when the police began to pursue them.

Howard was indicted for felony murder, tried, and convicted. She appeals.

Charge Error

In her first issue, Howard contends that the trial court instructed the jury to convict under an erroneous theory of liability. The charge's second application paragraph instructed the jury to find Howard guilty of felony murder upon a predicate finding that Franklin caused Quezada's death while acting in furtherance of a conspiracy with Howard to commit state jail felony theft. Howard argues that a conviction for felony murder cannot be based on a conspiracy to commit state jail felony theft because such a conspiracy is not itself a felony but rather a misdemeanor. The State responds that a conviction for felony murder can be based on a conspiracy to commit a state jail felony under Section 7.02(b) of the Penal Code, which establishes a conspiracy theory of party liability. According to the State, under this statute, Howard may be convicted for Franklin's felony murder of Quezada because Franklin committed the felony murder while driving the getaway car in furtherance of her and Howard's conspiracy to commit felony theft.

A. Applicable law and standard of review

Under the Code of Criminal Procedure, the trial court must "deliver to the jury . . . a written charge distinctly setting forth the law applicable to the case. . . ." Tex. Code Crim. Proc. art. 36.14. "The purpose of the jury charge is to inform the jury of the applicable law and guide them in its application to the case. . . ." *Hutch v. State*, 922 S.W.2d 166, 170 (Tex. Crim. App.

1996). In reviewing a jury-charge issue, we determine whether error exists and, if so, whether sufficient harm resulted from the error to compel reversal. *Ngo v. State*, 175 S.W.3d 738, 743 (Tex. Crim. App. 2005); *Ryser v. State*, 453 S.W.3d 17, 27 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd).

B. The charge correctly applied the law to the facts

Howard was prosecuted for felony murder. Section 19.02(b)(3) of the Penal Code sets forth the offense of felony murder. It provides that a person commits felony murder if he "commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual." Tex. Penal Code § 19.02(b)(3).

The State's theory of liability, however, was not based on Section 19.02(b)(3). Instead, it was based on Section 7.02(b), which establishes a conspiracy theory of party liability. *Id.* § 7.02(b). Section 7.02(b) provides that "[i]f, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the

conspiracy." *Id*.; *see Leal v. State*, No. 01-14-00972-CR, 2016 WL 796950, at *6 (Tex. App.—Houston [1st Dist.] Mar. 1, 2016, pet. ref'd) (mem. op., not designated for publication) ("Under Section 7.02(b), all the conspirators intending to commit one felony may be convicted for any other felony actually committed in furtherance of the intended felony if such felony was one that should have been anticipated in the attempt to carry out the intended felony.").

The conspiracy here was a conspiracy to commit state jail felony theft. Section 31.03(a) of the Penal Code defines "theft" as the unlawful appropriation of property with the intent to deprive the owner of the property. Tex. Penal Code § 31.03(a). At the time that Howard and Franklin conspired to steal the shirts, the offense of theft was a state jail felony if the value of the property was $1,500 or more but less than $30,000.[2] The value of the shirts they conspired to steal was $2,200. Therefore, their conspiracy was a conspiracy to commit state jail felony theft.[3]

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[2] *See* Act of June 20, 2015, 84th Leg., R.S., ch. 1251, § 10, 2015 Tex. Sess. Law Serv. 1251 (codified at Tex. Penal Code § 31.03(e)(4)(A)). Theft is now a state jail felony if "the value of the property stole is $2,500 or more but less than $30,000. . . ." Tex. Penal Code § 31.03(e)(4)(A).

[3] The offense of conspiracy to commit state jail felony theft would be a Class A misdemeanor. *See id.* § 15.02(d) (offense of criminal conspiracy "is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a state jail felony, the offense is a Class A misdemeanor").

Franklin is guilty of felony murder because she caused Quezada's death by committing an act clearly dangerous to human life while in immediate flight from the commission of felony theft. *Id.* § 19.02(b)(3). Because Howard conspired to commit state jail felony theft with Franklin, and Franklin committed felony murder while acting in furtherance of the theft conspiracy, and Franklin's felony murder should have been anticipated by Howard as a result of carrying out of the conspiracy, Howard, as Franklin's co-conspirator, is guilty of the felony murder of Quezada as well. *Id.* § 7.02(b); *see Lee v. State*, No. 01-07-00992-CR, 2009 WL 1562861, at *4 (Tex. App.—Houston [1st Dist.] June 4, 2009, pet. ref'd) (mem. op., not designated for publication) (holding that, "under the law of parties, appellant became criminally responsible for the offense of felony murder by conspiring to rob the complainant knowing that his friend was carrying a firearm.").

Conviction under Section 7.02(b) only requires a conspiracy to commit a felony; it does not also require that the conspiracy itself constitute a felony. *See* Tex. Penal Code § 7.02(b). Thus, Howard may be guilty of felony murder even though the conspiracy itself, had she been charged with that offense, would have been a misdemeanor. *See id.* § 15.02(d) (conspiracy to commit state jail felony theft is misdemeanor).

The charge's second application paragraph tracked the language of Section 7.02(b), instructing the jury to find Howard guilty upon finding that Franklin caused Quezada's death while acting in furtherance

of a conspiracy to commit felony theft.[4] Specifically, the application paragraph instructed the jury to find Howard guilty of felony murder upon predicate findings that:

- Howard and Franklin conspired to commit felony theft;
- Howard and Franklin carried out their conspiracy to commit felony theft;
- while in the course of committing the felony theft, Franklin committed an act clearly dangerous to human life that caused the death of Rosalba Quezada—i.e., she ran a red light while attempting to evade arrest and crashed her vehicle into the vehicle driven by Quezada, causing Quezada's death; and

[4] The second application paragraph stated: "If you find from the evidence beyond a reasonable doubt that the defendant, Ashley Mere Howard, and Racquel Gonzalez and/or Shiquinta Franklin entered into an agreement to commit the felony offense of theft of property owned by Leon Bauer, and pursuant to that agreement, if any, they did carry out their conspiracy and that in Harris County, Texas, on or about the 23rd day of May, 2013, while in the course of committing such theft of property owned by Leon Bauer, Racquel Gonzalez and/or Shiquinta Franklin committed an act clearly dangerous to human life that caused the death of Rosalba Quezada by running a red light while evading arrest or detention and causing her motor vehicle to strike the motor vehicle driven by Rosalba Quezada, and that the felony murder of Rosalba Quezada was committed in furtherance of the conspiracy and was an offense that should have been anticipated by the defendant as a result of carrying out the conspiracy . . . then you will find the defendant guilty of felony murder, as charged in the indictment."

- Franklin's felony murder of Quezada was committed in furtherance of the conspiracy to commit felony theft and should have been anticipated by Howard as a result of carrying out the conspiracy.[5]

Thus, the second application paragraph did not permit a misdemeanor conspiracy to serve as the underlying offense for convicting Howard of felony murder under the felony murder statute. Rather, it permitted a felony murder committed by Howard's co-conspirator, Franklin, to serve as the basis for convicting Howard of felony murder under the conspiracy-liability statute. Therefore, the second application paragraph correctly applied the law to the facts. Accordingly, we overrule Howard's first issue.

Motion to Suppress

In her second issue, Howard contends that the trial court erred by denying her motion to suppress a videotape of the statement she made to Officer Klementich while at the hospital in police custody. It is undisputed that Klementich did not begin the interview by reading Howard her *Miranda* warnings. Instead, he began with several minutes of questioning. Then he paused, warned her, obtained a waiver, and

[5] The abstract portion of the charge instructed the jury that "[a] person commits the offense of felony murder if she commits a felony, other than manslaughter, and in the course of and in the furtherance of the commission, or in immediate flight from the commission, she commits an act clearly dangerous to human life that causes the death of an individual."

continued questioning. The videotape presented to the jury started at the point in the interview when Klementich began to read Howard her *Miranda* warnings; it did not include her pre-warning statements.

Howard argues that the videotape was inadmissible because Klementich deliberately employed a two-step "question first, warn later" interrogation strategy without taking any "curative measures" before Howard made her post-warning statements. The State responds that the videotape was admissible because Klementich's pre-warning questioning was inadvertent and Howard knowingly and voluntarily waived her rights before making her post-warning statements, which were the only statements included as evidence.

A. Applicable law and standard of review

Under Texas criminal law, a statement made by a defendant during a custodial interrogation is inadmissible unless two elements are satisfied. *Joseph v. State*, 309 S.W.3d 20, 24 (Tex. Crim. App. 2010). First, before beginning the interrogation, the police must give the defendant the proper *Miranda* warnings. Tex. Code Crim. Proc. art. 38.22 § 2(a); *see Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966). Second, after receiving the warnings, the defendant must "knowingly, intelligently, and voluntarily" waive her rights. Tex. Code Crim. Proc. art. 38.22 § 2(b); *see Miranda*, 384 U.S. at 444, 86 S.Ct. at 1612.

"MidstreamMiranda warnings are not permissible." *Ervin v. State*, 333 S.W.3d 187, 212 (Tex. App.—

Houston [1st Dist.] 2010, pet. ref d). The officer may not begin by questioning the defendant, elicit inculpatory statements, and then provide the warnings, obtain a waiver, and continue questioning. *Id.* If the officer does so, the defendant's post-warning statements, including those voluntarily made, may be held inadmissible.

To determine whether statements made after midstream warnings are admissible, the trial court must first determine whether the officer's pre-warning questioning was inadvertent or deliberate. *Carter v. State*, 309 S.W.3d 31, 32 (Tex. Crim. App. 2010). If the officer's pre-warning questioning was inadvertent, the defendant's post-warning statements are admissible as long as they were knowingly and voluntarily made. *Id.*; *Ervin*, 333 S.W.3d at 213. But if the officer's pre-warning questioning was deliberate and employed as part of a two-step "question first, warn later" interrogation strategy, the officer must take "curative measures" beyond the formal *Miranda* warnings before any post-warning statement is made for that statement to be admissible. *Martinez v. State*, 272 S.W.3d 615, 626 (Tex. Crim. App. 2008); *Ervin*, 333 S.W.3d at 212-13. The curative measures "should be designed to ensure that a reasonable person in the suspect's situation would understand the import and effect of the *Miranda* warning and of the *Miranda* waiver." *Martinez*, 272 S.W.3d at 626 (quoting *Missouri v. Seibert*, 542 U.S. 600, 622,124 S.Ct. 2601, 2616, 159 L.Ed.2d 643 (2004) (Kennedy, J., concurring)).

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *Ervin*, 333

S.W.3d at 202. We review the trial court's factual findings for clear error, affording almost total deference to the trial court's rulings on questions of historical fact and mixed questions of law and fact that turn on an evaluation of credibility and demeanor. *Carter*, 309 S.W.3d at 39-40; *Warren v. State*, 377 S.W.3d 9, 15 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd). We review de novo the trial court's rulings on questions of law and mixed questions of law and fact that do not turn on evaluation of credibility and demeanor. *Ervin*, 333 S.W.3d at 202.

B. The videotape of Howard's post-warning statement was admissible

At the hearing on Howard's motion to suppress, the trial court heard Officer Klementich's testimony and watched a videotape of his interview of Howard. Unlike the videotape presented to the jury, the videotape presented at the suppression hearing included Officer Klementich's pre-warning questioning and Howard's pre-warning statements.

Klementich testified that he had been assigned to investigate fatality crashes and intoxicated driving offenses for the Houston Police Department's Vehicular Crime Division. On the day of the accident, he was called to the scene and photographed the crash. His supervisor then asked him to go to the hospital and interview the three occupants of the vehicle that had caused the accident.

Klementich arrived at the hospital, identified Franklin, Howard, and Gonzalez as the three occupants of the vehicle, and proceeded to interview them one at a time to gain an "understanding of what had occurred." As his job focused on fatality crashes and intoxicated driving offenses, his "primary" concern was to determine whether Franklin had been driving while intoxicated.

After he obtained Franklin's consent to draw a blood sample, Klementich interviewed Howard. Although Howard was in the custody of the Humble Police Department, Klementich did not begin the interview by reading her the *Miranda* warnings. Instead, he began with a little over four-and-a-half minutes of general, open-ended questioning about the theft, during which time Howard made several inculpatory statements. Specifically, Howard told Klementich that she and Gonzalez had taken the shirts from the department store and that Franklin had driven the getaway car.

Klementich then paused for a moment, stopped the questioning, and told Howard that he had "kind of messed up." He told Howard that she had certain rights and that he had to read them to her. Klementich then proceeded to read Howard her *Miranda* warnings. After receiving her warnings, Howard waived her rights and continued to provide her videotaped statement.

When asked why he waited over four minutes to read Howard her *Miranda* warnings, Klementich provided the following response:

> Well, to be quite frank with you, I had a mental lapse. I realized that even though I was not asking Ms. Howard questions regarding the fatality crash, she still was in custody. She was not free to leave. So, I believed that it was prudent to Mirandize her since she was in custody.

Viewed in the light most favorable to the trial court's ruling, this evidence does not show that Klementich deliberately employed a two-step "question first, warn later" interrogation strategy. Rather, it shows that he accidently began the interview with questioning, realized he had forgotten to read Howard her *Miranda* warnings when she started making inculpatory statements, then provided her the warnings, obtained a valid waiver, and continued the interview. Affording almost total deference to the trial court's factual findings, we hold that the trial court did not commit clear error in finding that Klementich's pre-warning questioning was inadvertent and that Howard's post-warning statements were knowingly and voluntarily made. *Carter*, 309 S.W.3d at 39-40; *Warren*, 377 S.W.3d at 15.

Having concluded that the trial court did not err in finding that the pre-warning questioning was inadvertent, we do not reach the second step of the analysis to determine whether proper curative measures were taken. We overrule Howard's second issue.

Conclusion

We affirm the trial court's judgment.

[SEAL] **CASE NO. 146595501010**
INCIDENT NO./TRN: 9168825315D003

THE STATE OF TEXAS	§	**IN THE 183RD DISTRICT**
	§	
v.	§	**COURT**
	§	
HOWARD, ASHLEY MERE	§	**HARRISCOUNTY, TEXAS**
	§	
STATE ID NO.: TX50225466	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: **HON. VANESSA VELASQUEZ**	Date Judgement Entered: **02/04/2016**
Attorney for State: **KRISTIN ASSAAD & ALYCIA HARVEY**	Attorney for Defendant: **RAY, MAVERICK JOHN**
Offense for which Defendant Convicted: **FELONY MURDER**	
Charging Instrument **INDICTMENT**	Statute for Offense: **N/A**
Date of Offense: **05/23/2013**	
Degree of Offense: **1ST DEGREE FELONY**	Plea to Offense: **NOT GUILTY**
Verdict of Jury: **GUILTY**	Findings on Deadly Weapon: **N/A**
Plea to 1st Enhancement Paragraph: **TRUE**	Plea to 2nd Enhancement/ Habitual Paragraph: **N/A**

Findings on 1st Enhancement Paragraph: **TRUE**	Findings on 2nd Enhancement/ Habitual Paragraph: **N/A**

Punished Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:
JURY	**02/04/2016**	**02/04/2016**

Punishment and Place of Confinement: **35 YEARS INSTITUTIONAL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN CONCURRENTLY.

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

Fine:	Court Costs:	Restitution	Restitution Payable to:
$**10,000**	**As Assessed**	$ **N/A**	☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

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

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

Time Credited:	From 05/23/2010 to 05/25/2013	From 01/14/2015 to 01/15/2015
	From 07/12/2013 to 08/12/2013	From 02/04/2015 to 02/04/2016
	From 10/25/2013 to 07/19/2014	From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: **N/A**

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 **Sabine** 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.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and swore. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

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 **Director, Institutional Division, TDCJ**. 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.

The Court **Orders** that Defendant is given credit noted above on this sentence for the time spent incarcerated. The Court further **ORDERS** that if the defendant is convicted of two or more offences in a single criminal action, that each cost or fee amount must be assessed using the highest category of offense. Tex. Code Crimp. P. art. 102.073.

Furthermore, the following
special findings or orders apply:

Signed and entered on 02/04/2016

X Vanessa Velasquez
VANESSA VELASQUEZ
JUDGE PRESIDING

Notice of Appeal Filed: FEB 05 2016

Mandate Received: 12/22/20107
Type of Mandate: AFFIRMANCE

After Mandate Received, Sentence to Begin Date is: ~~02/05/2016~~ 2/4/2016 [/s/ [Illegible]]

Jail Credit TO REMAIN THE SAME
Def Received on at ☐ AM ☐ PM
By Deputy Sheriff of Harris County

Clerk A MELENDEZ
Case Number
Defendant HOWARD, ASHLEY MERE
IN/KR04 999 LCBI /s/ [Illegible] I CBU ✓ LN/KR18 999

[Right Thumbprint Omitted]