

Appendix A

Judgment and Opinion of the Texas Court of Criminal Appeals



**TEXAS COURT OF CRIMINAL APPEALS
Austin, Texas**

M A N D A T E

TRIAL COURT NO. 1591282D

COURT OF APPEALS NO. 02-21-00002-CR

THE STATE OF TEXAS,

TO THE 396TH DISTRICT COURT OF TARRANT COUNTY — GREETINGS:

Before our **COURT OF CRIMINAL APPEALS**, on **July 2, 2026**, the cause upon appeal to review, revise or reverse your Judgment between:

BEECHER MONTGOMERY

V.

THE STATE OF TEXAS

CCRA NO. PD-0581-22

was determined; and therein our said **COURT OF CRIMINAL APPEALS** made its order in these words:

"This cause came on to be heard on the **APPELLANT'S** Petition for Discretionary Review, and the same being inspected, it is **ORDERED, ADJUDGED AND DECREED** by the Court that the Petition for Discretionary Review be **GRANTED**.

The judgment of the Court of Appeals is **AFFIRMED**, in accordance with the Opinion of this Court, and that this decision be certified below for observance."

WHEREFORE, We command you to observe the order of our said **COURT OF CRIMINAL APPEALS** in this behalf and in all things to have it duly **RECOGNIZED, OBEYED AND EXECUTED**.

WITNESS, THE HONORABLE DAVID J. SCHENCK, Presiding Judge

of our said **COURT OF CRIMINAL APPEALS**,

with the Seal thereof annexed, at the City of Austin,

on this day **July 28, 2026**.

A handwritten signature in cursive script, reading 'Deana Williamson', is written over a horizontal line.

DEANA WILLIAMSON, Clerk



TEXAS COURT OF CRIMINAL APPEALS
Austin, Texas

M A N D A T E

TRIAL COURT NO. 1627542D

COURT OF APPEALS NO. 02-21-00003-CR

THE STATE OF TEXAS,

TO THE 396TH DISTRICT COURT OF TARRANT COUNTY — GREETINGS:

Before our **COURT OF CRIMINAL APPEALS**, on **July 2, 2026**, the cause upon appeal to review,
revise or reverse your Judgment between:

BEECHER MONTGOMERY

V.

THE STATE OF TEXAS

CCRA NO. PD-0582-22

was determined; and therein our said **COURT OF CRIMINAL APPEALS** made its order in these words:

"This cause came on to be heard on the **APPELLANT'S** Petition for Discretionary Review, and the same being inspected, it is **ORDERED, ADJUDGED AND DECREED** by the Court that the Petition for Discretionary Review be **GRANTED**.

The judgment of the Court of Appeals is **AFFIRMED**, in accordance with the Opinion of this Court, and that this decision be certified below for observance."

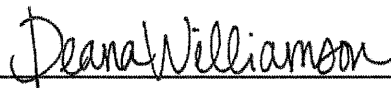
WHEREFORE, We command you to observe the order of our said **COURT OF CRIMINAL APPEALS** in this behalf and in all things to have it duly **RECOGNIZED, OBEYED AND EXECUTED**.

WITNESS, THE HONORABLE DAVID J. SCHENCK, Presiding Judge

of our said **COURT OF CRIMINAL APPEALS**,

with the Seal thereof annexed, at the City of Austin,

on this day **July 28, 2026**.



DEANA WILLIAMSON, Clerk



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. PD-0581-22 & PD-0582-22

BEECHER MONTGOMERY, Appellant

v.

THE STATE OF TEXAS, Appellee

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND COURT OF APPEALS
TARRANT COUNTY**

RICHARDSON, J., delivered the opinion of the Court in which SCHENCK, P.J., YEARY, KEEL, and PARKER, J.J joined. KEEL, J., filed a concurring opinion in which SCHENCK, P.J., YEARY, and PARKER, J.J., joined. PARKER, J., filed a concurring opinion in which SCHENCK, P.J., and KEEL, J., joined. WALKER, J., filed a dissenting opinion. FINLEY, J. filed a dissenting opinion. NEWELL and MCCLURE, J.J. dissented.

OPINION

Over Appellant's objections under the Confrontation Clause, the trial court conducted a motion to enter adjudication of guilt and revocation hearing virtually. We must decide whether Appellant was erroneously denied the right to be physically present to confront witnesses at his adjudication hearing under the Confrontation Clause. Because the Confrontation Clause does not apply to motion to enter adjudication of guilt hearings, we find no error and affirm the appellate court below.

Facts

Appellant was indicted for theft from a person and evading arrest with a vehicle in two separate cause numbers. (1 CR 7).¹ He pled guilty to both (including signing a judicial confession as part of his plea admonishments) and moved the trial court to sentence him. (1 CR 49-53). On June 30, 2020, he was placed on Deferred Adjudication for ten years for both cases. (1 CR 61). As part of the plea agreement, the State did not pursue habitual-offender enhancement. (1 CR 61).

In August of 2020, after Appellant was arrested for several new offenses, the State filed a "Petition to Proceed to Adjudication" against Appellant for violating the terms of his agreement. (1 CR 69). On October 13, 2020, the State amended its

¹ Unless otherwise specified, this opinion refers to the appellate record in PD-0581-22.

petition with additional violations after Appellant reportedly violated a protective order multiple times and admitted to using illegal drugs. (1 CR 72).

On October 14, 2020, Appellant filed a written “Objection to Virtual Proceeding” under the Equal Protection and Due Process clauses. (1 CR 79). On January 6, 2021, following several resets, a virtual Zoom hearing was held on the State’s petition. (3 RR 1). At the beginning of the hearing, Appellant re-urged his written “Objection to Virtual Proceeding.” (3 RR 8-10). On top of the written objection, Appellant again argued that the virtual setup overly burdened attorney-client communication, and that he had the right to be present in order to effectively confront witnesses. (3 RR 12-14). Appellant also pointed out the incongruity with the State’s position in another case (where the State advocated for an in-person murder trial to protect confrontation rights) while Appellant himself was being forced against his objections to a virtual hearing. (3 RR 12-14). After hearing Appellant’s arguments, the trial court overruled Appellant’s objection but granted him a running objection “throughout all of the hearings.” (3 RR 15-16). Nevertheless, Appellant renewed his objection one last time during an oral motion for a directed verdict, which the trial court denied. (3 RR 89).

The trial court then found all but one of the State's alleged violations of the community supervision agreement to be true.² (3 RR 118-19). Subsequently, Appellant was adjudicated guilty of theft from a person and evading arrest with a vehicle, and his probation was revoked. *Id.* (3 RR 195; 1 CR 101). Appellant filed notices of appeal and motions for new trial under both cause numbers, which were overruled over operation of law. (1 CR 111, 119).

On direct appeal to the Second Court of Appeals, Appellant argued that the virtual hearing violated his right to confront witnesses under the Confrontation Clause, and that he was denied Due Process under the Fourteenth Amendment when he was not allowed to be physically present at his own hearing. App. Br. to Ct. App., *Montgomery v. State*, Nos. 02-21-00002-CR & 02-21-00003-CR, 2022 WL 5240472, at *8-18 (Tex. App.—Fort Worth Aug. 21, 2024).

The Court of Appeals interpreted Appellant's Due Process claim as one that focused on the technical glitches rather than an objection to the virtual platform itself. *Id.* at *3.

His true complaint, however, appears not to be the use of Zoom in general but that there were several instances in which the virtual technology utilized was inadequate and therefore did not truly provide

² The State waived ground five which alleged that Appellant had violated a protective order (by contacting his mother on three occasions by writing her letters) because the no-contact order was ambiguously worded. (1 CR 72; 3 RR 16-17).

a vehicle in which Appellant could be *present* at this hearing and sentencing.

Id. at *3 (internal quotes omitted; emphasis in original). Finding no significant impairment in his virtual participation, the lower appellate court ruled that Appellant failed to demonstrate any violation of Due Process:

Accordingly, we conclude that the virtual hearing on the State’s petition to proceed to adjudication—though not seamless—was not so inadequate that Montgomery was not permitted to participate in the hearing on the State’s petition to proceed to adjudication.

Id. at *4.

The lower appellate court also found no violation under the Confrontation Clause. *Id.* at *5. It reasoned that “the Confrontation Clause does not apply to a revocation proceeding because that is not a stage of a criminal prosecution” for the purpose of the Sixth Amendment. *Id.* at *1 (internal citations omitted). Accordingly, the Court of Appeals affirmed the trial court below. *Id.* at *7.

On petition for discretionary review, Appellant continues his arguments that the denial of his objection to the virtual proceeding violated both his rights (1) under the Fourteenth Amendment’s Due Process Clause, and (2) under the Sixth

Amendment's Confrontation Clause. PDR, at *3. We granted review only on the Confrontation Clause claim.³

The Confrontation Clause, Criminal Prosecutions, and Probation.

The Sixth Amendment guarantees via the Confrontation Clause that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; . . .” U.S. Const., amend VI. In accordance to the fair trial guarantee that the totality of the Sixth Amendment envisions, the right to confront witnesses necessarily includes the right to be present. However, unlike the Due Process Clause which shares many overlapping protections, the Confrontation Clause, by its explicit text, applies only to “criminal prosecutions.” *Id.*; *see also Hughes*, 691 S.W.3d at 519.⁴

The resulting question before us today is whether a motion to enter adjudication of guilt from a deferred adjudication followed by a motion to revoke probation lies within a “criminal prosecution” as understood by the Sixth Amendment. It is undeniable that these proceedings are at least related to a predicate

³ The instant case was initially held for *Hughes v. State*, 691 S.W.3d 504 (Tex. Crim. App. 2024), and *Inman v. State*, No. PD-0251-22, 2023 WL 3495573 (Tex. Crim. App. May 17, 2023), which both had similar issues. *Hughes* was resolved on Due Process grounds while *Inman* was dismissed as improvidently granted.

⁴ *Hughes*, which was decided on Due Process grounds, is inapplicable here because of the unique facts of this case.

criminal prosecution and that there is some overlap. And this includes the possibility that the defendant may lose his liberty. However, several characteristics of these proceedings lead us to conclude that such a proceeding is not a true “criminal prosecution” protected by the Sixth Amendment.

Community Supervision is not a right.

In a typical criminal prosecution, the defendant is accused of a criminal offense and stands to lose a significant liberty interest if found guilty beyond a reasonable doubt. The liberty interest in question is not an interest awarded to him by law, but one that is naturally his by constitutional default. *See Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (finding federal probation revocation is not a stage of criminal prosecution after the similarity to parole: “Revocation [of parole] deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions.” (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972))).

However, community supervision (which includes deferred adjudication) is a “privilege, not a right.” *Speth v. State*, 6 S.W.3d 530, 533 (Tex. Crim. App. 1999). “The decision whether to grant probation is wholly discretionary and nonreviewable.” *Speth*, 6 S.W.3d at 533 (citing *Flourney v. State*, 589 S.W.2d 705, 707 (Tex. Crim. App. 1979)). The trial court is essentially extending “clemency” to the

defendant when granting community supervision. *Id.* (citing *Wilson v. State*, 240 S.W.2d 774, 775 (Tex. Crim. App. 1951)); *Escoc v. Zerbst*, 295 U.S. 490, 492-93 (1935) (stating that probation is an “act of grace”). This clemency is contractually extended if the convicted person “keep[s] and perform[s] certain requirements and conditions, the violation of which will authorize the revocation of the probation.” *Speth*, 6 S.W.3d at 533. Thus, when probation is revoked, the court is only withdrawing a clemency or privilege it always had the discretion to give—and not the deprivation of a right.

Nevertheless, a hearing on the State’s motion to enter adjudication of guilt and revoke community supervision differs from typical federal probation revocation proceedings. As allowed by statute, Texas judges have discretion to withhold a finding of guilt by granting deferred adjudication. TEX. CODE CRIM. PROC., art. 42A.053; art. 42A.001.

Once the plea proceeding has concluded, however, the gravamen of any motion to enter an adjudication of guilt followed by a revocation of probation is different. The trial court focuses on whether the defendant failed to perform the terms of his agreement. If the trial court finds a violation of the terms of his agreement, the trial court decides whether to enter a finding of guilt. Unlike the protections guaranteed in a criminal case, the burden of proof is by a preponderance of the evidence. *Cobb v. State*, 851 S.W.3d 871, 873 (Tex. Crim. App. 1993).

Furthermore, that burden can be met using relaxed evidentiary rules. *See id.* (finding formal proof of probation documents not necessary in a revocation proceeding because of the hearing's administrative nature). If the judge finds any of the allegations to be true, the judge may "proceed to dispose of the case as if there had been no community supervision [such as deferred adjudication]." TEX. CODE CRIM. PROC. art. 42A.755 (a)(1). Thus, a defendant does not enjoy the same protections in a motion to enter adjudication of guilt as a defendant entering a plea of not guilty and demanding a trial.

Conclusion

We agree with the court of appeals below. The trial court did not err in overruling Appellant's objection under the Confrontation Clause because it did not apply to an adjudication of guilt and probation revocation hearing. Thus, we affirm.

Filed: July 2, 2026

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**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NOS. PD-0581-22 & PD-0582-22

BEECHER MONTGOMERY, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND COURT OF APPEALS
TARRANT COUNTY**

**PARKER, J., filed a concurring opinion in which SCHENCK, P.J.,
and KEEL, J., joined.**

CONCURRING OPINION

Does the Sixth Amendment's Confrontation Clause apply to a proceeding involving the revocation of deferred adjudication? The Court says it doesn't because it is a proceeding to revoke probation and the Confrontation Clause doesn't apply to such proceedings. The dissent says it does because the

proceedings are judicial in character and sentencing hasn't been decided. Neither answer is entirely satisfying. The Court does not grapple with the differences between deferred adjudication and regular probation, and there are differences, with the most salient one being that sentencing hasn't occurred yet. The dissent sees the sentencing distinction but assumes without critical inquiry that the Confrontation Clause applies to sentencing. But contrary to that assumption, the Supreme Court has suggested and the federal circuits have unanimously concluded that the Confrontation Clause does *not* apply to sentencing. Based mainly on that authority, I agree with the Court that the Confrontation Clause does not apply to proceedings involving the revocation of deferred adjudication.

1. The “judicial” character of the proceedings is immaterial.

One of the dissent's rationales for finding the Confrontation Clause applicable is that, in *Texas*, proceedings involving the revocation of deferred adjudication are “judicial” rather than “administrative.” While I agree that such proceedings are “judicial” in this state, so are proceedings involving the revocation of regular probation. The *Doan* case the dissent relies upon made no distinction between deferred adjudication and “regular” probation in arriving at its holding.¹

¹ See *Ex parte Doan*, 369 S.W.3d 205, 206 & *passim* (Tex. Crim. App. 2012) (referring to “community supervision” with no mention of deferred adjudication).

Yet the dissent does not appear to be arguing that we should apply the Confrontation Clause to regular probation-revocation proceedings, and in fact the dissent points to the unanimity of federal-circuit decisions that the Confrontation Clause does not apply to such proceedings. If the dissent's point is to distinguish between the two types of proceedings (revocation of regular probation versus revocation of deferred adjudication), this particular claim utterly fails to support that point.

Setting this lack-of-distinction aside, I cannot agree that Texas's decision to accord more protections to these types of proceedings under *state* law has anything to do with the application of *federal* constitutional protections. Whether federal confrontation rights apply ought to be decided by what is at stake for the defendant in a particular proceeding, not by a state's decision, as a matter of legislative grace, to provide more protections in such a proceeding. And all three of the cases relied upon by the dissent on this subject—*Doan*, *Parker*, and *Fariss*—involved constructions of protections provided by *state* law, not federal law.²

² *Doan*, 369 S.W.3d at 213 (acknowledging that the federal double-jeopardy clause did not apply and that only state-law “res judicata” protections were at issue); *Parker v. State*, 545 S.W.2d 151, 155 (Tex. Crim. App. 1977) (referring to the holding in *Fariss*, *infra* “that revocation is a ‘criminal prosecution’ within Article I, Sec. 10, Texas Constitution” and also citing the probation statute); *Fariss v. Tipps*, 463 S.W.2d 176 (Tex. 1971) (addressing the “question under the state constitutional provision . . . whether a proceeding for revocation of probation is a ‘criminal prosecution’ to which the constitutional guarantees apply”) (ellipsis inserted).

Moreover, even if we accept *Doan*'s generic pronouncement that probation-revocation proceedings "are judicial proceedings, to be governed by the rules established to govern judicial proceedings,"³ this pronouncement says nothing about the application of the Confrontation Clause if we determine that it doesn't apply to some judicial proceedings, such as pre-trial or post-trial hearings, hearings regarding the revocation of "regular" probation, or—as I will soon discuss—sentencing proceedings.

2. The Confrontation Clause does not apply to sentencing.

There are two salient characteristics of deferred adjudication that do not apply to regular probation: (1) the defendant is not formally found guilty, and (2) sentencing has not yet occurred.⁴ I will address the question of sentencing first.

Similarly, the dissent emphasizes that a deferred adjudication does not count as a conviction for purposes of state law when it comes to impeachment under the Texas Rules of Evidence. But the federal constitution does not prevent the State from treating a deferred adjudication as a conviction for that purpose if it so desired. And as explained *infra* at part 3, deferred adjudication is treated as a conviction for some purposes.

³ *Doan*, 369 S.W.3d at 212.

⁴ See TEX. CODE CRIM. PROC. arts. 42A.101(a) (providing that "the judge may, after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt and place the defendant on deferred adjudication community supervision"), 42A.110(a) ("After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and defendant's appeal, continue as if the adjudication of guilt had not been deferred.").

The United States Supreme Court has already held that the full protections of the Confrontation Clause do not apply to sentencing. In 1949, in *Williams v. New York*, the Court pointed to the “wide discretion” of sentencing courts and their ability to use out-of-court affidavits:

But both before and since the American colonies became a nation, courts in this country and in England practiced a policy under which a sentencing judge could exercise a wide discretion in the sources and types of evidence used to assist him in determining the kind and extent of punishment to be imposed within limits fixed by law. Out-of-court affidavits have been used frequently, and of course in the smaller communities sentencing judges naturally have in mind their knowledge of the personalities and backgrounds of convicted offenders.⁵

A decade later, the Supreme Court reaffirmed that practice, citing only due process as a limitation on the ability to consider evidence at sentencing:

[O]nce the guilt of the accused has been properly established, the sentencing judge, in determining the kind and extent of punishment to be imposed, is not restricted to evidence derived from the examination and cross-examination of witnesses in open court but may, consistently with the Due Process Clause of the Fourteenth Amendment, consider responsible unsworn or ‘out-of-court’ information relative to the circumstances of the crime and to the convicted person’s life and characteristics.⁶

The question is whether those old holdings have survived more recent

⁵ 337 U.S. 241, 246 (1949).

⁶ *Williams v. Oklahoma*, 358 U.S. 576, 584 (1959).

developments in constitutional law, especially the Court’s confrontation decision in *Crawford v. Washington*.⁷ The federal circuits have been unanimous in holding that they have, concluding that the Sixth Amendment’s Confrontation Clause does not apply to non-capital sentencing proceedings.⁸

3. Deferred-adjudication revocation proceedings do not involve any substantial issues of guilt, and so the right to confrontation does not apply.

What is left is the fact that a formal entry of guilt is not made until deferred adjudication is revoked.⁹ As the Supreme Court has indicated, the federal constitutional right to confrontation ends “once the guilt of the accused has been properly established.”¹⁰ In the deferred-adjudication setting, guilt of the defendant has been “properly established” at the time he is placed on deferred adjudication,

⁷ 541 U.S. 36 (2004).

⁸ *United States v. García-Oquendo*, 144 F.4th 66, 76 (1st Cir. 2025) (citing *United States v. Luciano*, 414 F.3d 174, 179 (1st Cir. 2005)); *United States v. Martínez*, 413 F.3d 239, 242–44 (2d Cir. 2005); *United States v. Smith*, 751 F.3d 107, 116 (3d Cir. 2014) (citing *United States v. Robinson*, 482 F.3d 244, 246 (3d Cir. 2007)); *United States v. Powell*, 650 F.3d 388, 391–94 (4th Cir. 2011); *United States v. Beydoun*, 469 F.3d 102, 108 (5th Cir. 2006); *United States v. Stone*, 432 F.3d 651, 654 (6th Cir. 2005); *United States v. Roche*, 415 F.3d 614, 618 (7th Cir. 2005); *United States v. Brown*, 430 F.3d 942, 943–44 (8th Cir. 2005); *United States v. Vera*, 893 F.3d 689, 692 (9th Cir. 2018) (citing *United States v. Littlesun*, 444 F.3d 1196, 1199–1200 (9th Cir. 2006)); *United States v. Battles*, 745 F.3d 436, 461–62 (10th Cir. 2014) (citing *United States v. Bustamante*, 454 F.3d 1200, 1202–03 (10th Cir. 2006)); *United States v. Cantellano*, 430 F.3d 1142, 1146 (11th Cir. 2005); *United States v. Bras*, 483 F.3d 103, 109 (D.C. Cir. 2007).

⁹ See *supra* at n.4.

¹⁰ *Williams*, 358 U.S. at 584.

which occurs after he pleads guilty (or *nolo contendere*) and the judge finds that the evidence “substantiates” guilt.¹¹

And when the State seeks revocation, it does so on the basis of a violation of the conditions of supervision.¹² Guilt is not an issue that is revisited during a revocation proceeding. And in fact, the original plea proceedings cannot be reviewed in an appeal from revocation, except when the original judgment was void.¹³

Moreover, though the defendant has an opportunity to prevent a conviction from appearing on his record—for *most* purposes—by successfully serving out his period of supervision, “most” is not “all,” and agreeing to deferred adjudication

¹¹ See *supra* at n. 4 (citing and quoting TEX. CODE CRIM. PROC. arts. 42A.101(a)).

¹² See TEX. CODE CRIM. PROC. art. 42A.108(a) (“On violation of a condition of deferred adjudication community supervision . . .”).

¹³ See TEX. CODE CRIM. PROC. art. 42A.108(b) (“The determination to proceed with an adjudication of guilt on the original charge is reviewable in the same manner as a revocation hearing conducted under Article 42A.751(d) in a case in which the adjudication of guilt was not deferred.”); *Nix v. State*, 65 S.W.3d 664, 667-68 (Tex. Crim. App. 2001).

Relying upon *Middleton*’s statement that deferred adjudication contemplates “a pause, as if the case were taken under advisement,” see *Middleton v. State*, 634 S.W.3d 46, 50 (Tex. Crim. App. 2021), the dissent claims that, upon a motion to adjudicate, proceedings are restarted with confrontation protections. But once a case is taken under advisement, a party no longer has the unfettered ability to withdraw his plea. *Murray v. State*, 302 S.W.3d 874, 883 (Tex. Crim. App. 2009) (But he can do so on the basis that the plea is invalid.). If the plea cannot be withdrawn at the defendant’s own discretion, then the defendant’s guilt has been established. To use the dissent’s “pause-play” analogy, the “pause” happened at the moment Appellant’s guilt was established, so that resumed proceedings occurring on pressing “play” were not covered by the right to confrontation.

has some lasting consequences: (1) for use to enhance certain sex offenses if the deferred adjudication is for an applicable sex offense, (2) for admission at the punishment stage of a subsequent offense, and (3) for consideration in obtaining or renewing certain types of licenses.¹⁴

Consequently, there is no substantial issue as to guilt in deferred-adjudication revocation proceedings. The issues are whether to revoke and punishment. Neither of those issues implicate the Sixth Amendment's guilt-centered right to confrontation.

With these comments, I join the Court's opinion.

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¹⁴ See TEX. CODE CRIM. PROC. art. 42A.111(c), (d); TEX. PENAL CODE § 12.42(g)(1).



**IN THE COURT OF CRIMINAL APPEALS
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NOS. PD-0581-22 & PD-0582-22

BEECHER MONTGOMERY, APPELLANT

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THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND COURT OF APPEALS
TARRANT COUNTY**

**KEEL, J., filed a concurring opinion in which SCHENCK, P.J., and
YEARY and PARKER, JJ., joined.**

CONCURRING OPINION

Does the Sixth Amendment's Confrontation Clause apply to adjudication hearings? No. I agree with the majority and join its opinion because an adjudication hearing is not a "criminal prosecution," regardless of its outcome, and the respondent to the motion to adjudicate is not "accused," and the witnesses at the

hearing are not “against” him. *See generally Ex parte Zubiarte*, 710 S.W.3d 724, 726-27 (Tex. Crim. App. 2025) (discussing inapplicability of Confrontation Clause to parole hearing).

The evidence at an adjudication hearing is offered to assess the defendant’s performance on probation and not to establish guilt for a charged offense, so the hearing is not a criminal trial, and the evidence is not offered “against” the defendant in the ordinary sense of the Confrontation Clause. *Cf. Cruz v. New York*, 481 U.S. 186, 190 (1987) (noting that a witness whose testimony pertains to guilt is ordinarily considered a witness “against” an accused). Furthermore, the defendant at an adjudication hearing is not “accused” of the crime for which he is on community supervision. He lost the presumption of innocence when (1) he judicially confessed to it, and (2) the trial court found that the evidence substantiated his guilt. After that, his liberty is conditional. Tex. Code Crim. Proc. art. 42A.101(a); *see McNew v. State*, 608 S.W.2d 166, 176 (Tex. Crim. App. [Panel Op.] 1978) (op. on reh’g) (concluding that deferred adjudication “is a constitutional form of ‘probation’” under Tex. Const. art. III, § 1); *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) (holding that parole revocation hearings are not criminal prosecutions because, among other things, revocation deprives the

defendant of only conditional liberty); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (extending *Morrissey*'s reasoning and holding to probation revocation hearings).

Moreover, *Ex parte Doan* is irrelevant. It says nothing about the applicability of the Confrontation Clause to adjudication hearings. *See Ex parte Doan*, 369 S.W.3d 205, 212 (Tex. Crim. App. 2012). It asked whether *res judicata*—a Fifth Amendment concept—barred “a prosecution for a criminal offense in [Travis] county after a prosecutor in [Brazos]- county” tried but failed to revoke the defendant’s community supervision for commission of the Travis County crime. *Id.* at 205–06. It decided the issue on state law grounds rather than federal constitutional considerations. *Id.* at 212–13. Its conceptual underpinnings were unclear. *See id.* at 221–23 (Keller, P.J., dissenting). But whatever they were, *Doan* had nothing to say about confrontation.

The singular issue here is the applicability of the Confrontation Clause to adjudication hearings. It does not apply. And the hearing’s outcome—whether revocation of community supervision or something else—is immaterial to the analysis.

Filed: July 2, 2026

Publish



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0581-22 & PD-0582-22

BEECHER MONTGOMERY, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND COURT OF APPEALS
TARRANT COUNTY**

WALKER, J., filed a dissenting opinion.

DISSENTING OPINION

The Court's opinion today retreads old ground. It is well-settled that regular probation revocation hearings are not criminal prosecutions. *See Hill v. State*, 480 S.W.2d 200, 202 (Tex. Crim. App. 1971). Nevertheless, the Court considers the "question before us today [of] whether" a hearing on "a motion to enter adjudication of guilt from a deferred adjudication followed by a motion to revoke probation lies

within a ‘criminal prosecution’ as understood by the Sixth Amendment or not.” Majority opinion at 6. And the Court answers, finding no error in this case “[b]ecause the Confrontation Clause does not apply to probation revocation and adjudication of guilt hearings,” *id.* at 2, and concluding that “[t]he trial court did not err . . . because [the Confrontation Clause] did not apply to an adjudication of guilt and probation revocation hearing.” *Id.* at 8.

But probation revocation hearings are not the issue. If probation revocation hearings are what this case is about, we would not have granted Appellant’s petition for discretionary review. The reason why we granted this petition is because this case involves a hearing on a motion to adjudicate, as well as a hearing on a motion to revoke probation.¹

Instead of focusing on the significance of deferred adjudication on its own terms, the Court’s analysis revolves primarily around regular probation. To the extent it mentions deferred adjudication, the Court off-handedly tosses deferred in the

¹ We granted Appellant’s second issue raised in his petition, which argued that:

The Second Court of Appeals decided an important question of federal law that conflicts with Court of Criminal Appeals decisions when it held that Appellant’s Sixth Amendment right to confront witnesses was not violated by having a virtual *hearing on a motion to adjudicate guilt* and subsequent sentencing hearing despite his request to be physically present before and during the proceedings.

(emphasis added).

probation box, *see* majority op. at 7 (“community supervision (which includes deferred adjudication)”), and notes that a trial judge may withhold a finding of guilt and grant deferred adjudication to a defendant. *Id.* at 7–8.

Of course, deferred adjudication and probation have similarities. Both involve community supervision, where a person is released for a period of time and is required to abide by certain conditions. If he successfully does so, then he remains free, and if he does not, he is subject to being jailed or imprisoned.

But the two are also different. There is an argument that, unlike a hearing on a motion to revoke probation, a hearing on a motion to adjudicate is an integral part of the criminal prosecution against the defendant. Deferred adjudication occurs *before* the conviction and sentence. The defendant, although having pleaded guilty, remains unconvicted and unsentenced. The criminal prosecution itself is not over yet. TEX. CODE CRIM. PROC. Ann. art. 42A.101(a) (further proceedings are deferred). It is still ongoing and paused while the defendant goes on deferred adjudication community supervision. *Middleton v. State*, 634 S.W.3d 46, 50 (Tex. Crim. App. 2021) (characterizing deferred adjudication as a pause in the proceedings). The criminal prosecution *can* resume as if there had been no deferred adjudication, if the court finds that the defendant violated a condition of his deferred adjudication community

supervision. TEX. CODE CRIM. PROC. Ann. arts. 42A.108, 42A.110. Or the criminal prosecution does not resume, if the trial court concludes that there was no violation. Or the criminal prosecution gets dismissed entirely, if the defendant successfully completes the term of community supervision. *Id.* art. 42A.111(a). A hearing on a motion to adjudicate could have a direct impact on whether the defendant is convicted, what sentence he might receive, and even the possibility of probation. *Id.* art. 42A.110. The result of the criminal prosecution depends upon the result of the deferred adjudication proceeding.

In contrast, with regular probation the judgment of conviction has already been entered, and the sentence has already been pronounced. The criminal prosecution has already concluded, and probation and any probation revocation hearing occur *afterward*. The facts of conviction and sentence do not change, no matter what procedural protections are, or are not, afforded to the defendant in a hearing on a motion to revoke regular probation.

Deferred is different from regular probation. That is why this case mattered.

It is questionable whether the Court even addresses the actual issue before us of whether the Confrontation Clause of the Sixth Amendment applies in hearings on motions to adjudicate. Instead, the Court reiterates that a hearing on a motion to

revoke probation is not a criminal prosecution, and simply notes in passing that deferred adjudication is probation.

This Court should squarely address whether the right to be present under the Confrontation Clause of the Sixth Amendment applies in a hearing on a motion to adjudicate because it is, or is not, *part of the criminal prosecution*.² That is the point of Appellant's case, not regular probation.

I respectfully dissent.

Filed: July 2, 2026
Publish

² I do want to acknowledge that Judge Keel, Judge Finley, and Judge Parker offer their own opinions on that question.



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NOs. PD-0581-22 & PD-0582-22

BEECHER MONTGOMERY, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND COURT OF APPEALS
TARRANT COUNTY**

FINLEY, J., filed a dissenting opinion.

DISSENTING OPINION

Appellant pleaded guilty to evading arrest and theft and pleaded true to a prior felony conviction. The trial court deferred guilt and placed Appellant on ten years' deferred adjudication community supervision. The State later filed a motion to proceed with Appellant's adjudication. Appellant objected to proceeding with the

adjudication hearing via Zoom, arguing that the Zoom adjudication hearing would violate his Sixth Amendment right to confront witnesses. The trial court overruled his objections. At the Zoom hearing, the State called four witnesses. The trial court found the State's allegations true, adjudicated guilt, and sentenced Appellant to twenty years' confinement for each offense.

The question before the Court is whether Appellant enjoyed a Sixth Amendment right to confront witnesses when the trial court held a virtual hearing on the State's motion to adjudicate. The court of appeals below concluded that the "Confrontation Clause is inapplicable to a revocation proceeding." *Montgomery v. State*, No. 02-21-00002-CR, 2022 WL 5240472, at *6 (Tex. App.—Fort Worth Oct. 6, 2022) (mem. op., not designated for publication). We granted Appellant's petition for discretionary review to resolve a split of authority in the lower courts of this State.

"The Confrontation Clause of the Sixth Amendment provides that '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . .'" *Woodall v. State*, 336 S.W.3d 634, 641 (Tex. Crim. App. 2011) (quoting U.S. CONST. amend. VI). Barring some exceptions, the admission of testimonial, out-of-court statements from a non-testifying witness violates the Confrontation Clause. *Davis v. Washington*, 547 U.S. 813, 821 (2006); *Crawford v. Washington*, 541 U.S. 36, 68 (2004).

In 1971, this Court held that “[a] probation revocation hearing is not an adversarial proceeding, a civil action, or a criminal prosecution[;] instead, it is administrative in nature, a means of protecting society and rehabilitating lawbreakers.” *Hill v. State*, 480 S.W.2d 200, 202–03 (Tex. Crim. App. 1971) (op. on reh’g) (citations omitted). In 1972, in *Morrissey v. Brewer*, 408 U.S. 471 (1972), the Supreme Court of the United States held that the revocation of parole in the federal sphere is not a stage in a criminal prosecution, reasoning that “[p]arole arises after the end of the criminal prosecution, including imposition of sentence. . . . Revocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions.” *Morrissey*, 408 U.S. at 480. The next year, in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), the Supreme Court held that federal probation revocation, “like parole revocation, is not a stage of a criminal prosecution,” emphasizing “that revocation of probation where sentence has been imposed previously is constitutionally indistinguishable from the revocation of parole.” *Id.* at 782 & n.4 (citing Van Dyke, *Parole Revocation Hearings in California: The Right to Counsel*, 59 CALIF. L. REV. 1215, 1241–43 (1971)).

But the revocation of probation is noticeably different than a defendant's status on deferred adjudication. As we explained in *Middleton v. State*, 634 S.W.3d 46 (Tex. Crim. App. 2021):

To be placed on deferred adjudication, a defendant pleads guilty, but the trial court does not make a finding of guilt; rather the trial court finds that the “evidence . . . substantiates the defendant’s guilt [and] defers further proceedings without entering an adjudication of guilt.” The wording of the statute seems to contemplate a pause, as if the case were taken under advisement. During this pause, the defendant is given the opportunity to complete a probationary period in compliance with conditions, and if he succeeds, then the charges will be dismissed. If he fails, and the trial judge later finds a violation of probation and decides to adjudicate guilt, the proceedings continue where they left off: “After an adjudication of guilt, all proceedings, including the assessment of punishment, pronouncement of sentence, granting of community supervision, and defendant’s appeal continue as if the adjudication of guilt had not been deferred.” For most purposes, a deferred adjudication does not count as a conviction.

Id. at 50 (internal footnotes omitted). No conviction—or sentence—is imposed in a deferred adjudication case. As we noted in *Middleton*, deferred adjudication simply serves as a “pause” in proceedings. 634 S.W.3d at 50. Charges are dismissed if deferred adjudication is successfully completed. *Id.*; *see also* TEX. CODE CRIM. PROC. art. 42A.111. Necessarily, hearings to adjudicate guilt are a continuation of the criminal proceedings that preceded them. Unless and until guilt is adjudicated and a sentence is imposed, a defendant continues to enjoy the full panoply of rights provided by the United States Constitution.

In any event, reliance on federal case law is misplaced.¹ This is not a federal case. This is Texas. The seminal Texas case on point is *Ex parte Doan*, 369 S.W.3d 205 (Tex. Crim. App. 2012).² In *Doan*, the “issue [was] whether the doctrine of *res judicata* applie[d] to bar a prosecution for a criminal offense in one county after a prosecutor in another county unsuccessfully attempted to revoke the defendant’s community supervision on the ground that he committed the same offense.” *Id.* at 205–06.

Obviously, this is not a *res judicata* case. *Cf. ante* at 3 (KEEL, J., concurring) (“Moreover, *Ex parte Doan* is irrelevant. It says nothing about the applicability of the Confrontation Clause to adjudication hearings.”). But *Doan*’s discussion of Texas revocation proceedings is important to today’s case. This Court observed the following about *Hill*:

¹ Faithfully applying *Scarpelli*, every federal circuit court of appeals has held that the Sixth Amendment does not apply in hearings for the revocation of federal supervised release, probation, or parole. *See, e.g., United States v. Rondeau*, 430 F.3d 44, 47 (1st Cir. 2005); *United States v. Peguero*, 34 F.4th 143, 154 (2d Cir. 2022); *United States v. Lloyd*, 566 F.3d 341, 343 (3d Cir. 2009); *United States v. Kissi*, 543 F. App’x 293, 295 (4th Cir. 2013); *United States v. Grandlund*, 71 F.3d 507, 510 (5th Cir. 1996); *United States v. Kirby*, 418 F.3d 621, 627–28 (6th Cir. 2005); *United States v. Perez*, 99 F.4th 972, 976 (7th Cir. 2024); *United States v. Ray*, 530 F.3d 666, 668 (8th Cir. 2008); *Valdivia v. Schwarzenegger*, 599 F.3d 984, 989 (9th Cir. 2010); *United States v. Williams*, 106 F.4th 1040, 1045 (10th Cir. 2024); *United States v. Reese*, 775 F.3d 1327, 1329 (11th Cir. 2015); *Ash v. Reilly*, 431 F.3d 826, 829–30 (D.C. Cir. 2005).

² The Court does not address *Doan*, even while recognizing that “a hearing on the State’s motion to enter adjudication of guilt and revoke community supervision differs from typical federal probation revocation proceedings.” *Ante* at 7 (Court’s Op.).

We have stated more than once that revocation proceedings are “administrative in nature.” We began using the label as a result of confusion about federal law, and we have expanded on that confusion over the years. Using the word “administrative” became a way of stating that defendants in revocation hearings do not enjoy the same panoply of procedural rights as defendants in criminal trials. This is true, as far as it goes, but our characterization of a judicial proceeding as an administrative proceeding is, on its face, inaccurate. Moreover, we have used the “administrative” label to imply that we would not strictly enforce procedural rules at revocation hearings, which was an injudicious and inaccurate implication.

Id. at 208 (internal footnote omitted). This Court compared Texas proceedings with the federal proceedings in *Scarpelli*. In *Scarpelli*, the Supreme Court of the United States observed that a federal probation-revocation hearing is unlike

[a] criminal trial, [in which] the State is represented by a prosecutor; formal rules of evidence are in force; a defendant enjoys a number of procedural rights. . . . In short, a criminal trial under our system is an adversary proceeding with its own unique characteristics. In a revocation hearing, on the other hand, the State is represented, not by a prosecutor, but by a parole officer with the orientation [toward rehabilitation]; formal procedures and rules of evidence are not employed; and the members of the hearing body are familiar with the problems and practice of probation or parole.

411 U.S. at 789. But in Texas, procedures are far different:

[T]he State is represented by a prosecutor, the defendant does have a right to counsel, the hearing is before the judge, formal rules of evidence do apply, and there may be appeal directly to a court of appeals. They are conducted entirely within the judicial branch. The Rules of Evidence and the exclusionary rule to bar illegally seized evidence apply fully in a Texas probation revocation hearing. Indeed, aside from the burden of proof required to prove a community-supervision violation

(preponderance of the evidence, which is lower than the burden of proof beyond a reasonable doubt that is required to prove a new criminal offense), there are few procedural differences between a Texas criminal trial and a Texas community-supervision revocation proceeding.

Doan, 369 S.W.3d at 210 (internal footnotes omitted). Consequently, we concluded:

A Texas community-supervision revocation proceeding involves the application of law to past facts that remain static. It is conducted according to judicial rules before a trial judge, not an administrative agency. Applying administrative law—the law that governs the decision-making processes of administrative agencies—to revocation hearings has no basis in the Code of Criminal Procedure. *Community-supervision revocation proceedings are not administrative hearings; they are judicial proceedings, to be governed by the rules established to govern judicial proceedings.*

Id. at 212 (emphasis added).

JUDGE KEEL posits that the Confrontation Clause does not apply because “the respondent to the motion to adjudicate is not ‘accused[.]’” *Ante* at 1–2 (KEEL, J., concurring). But contrary to JUDGE KEEL’s assertion, a defendant placed on deferred adjudication remains “accused” because they are not yet convicted. Two months ago, this Court recognized in *State v. McDonald* that the Sixth Amendment right to counsel terminates upon the dismissal of a defendant’s charges. — S.W.3d —, 2026 WL 1025753, at *6 (Tex. Crim. App. Apr. 16, 2026). This was so because the dismissal of charges terminates the “adversarial process.” *Id.* at *4. But in the context of deferred adjudication probation, the “adversarial process” is not

terminated. The defendant is not yet convicted and the State most definitely remains “adversarial” to the defendant.

Nor does *Ex parte Zubiato* change the analysis. *See ante* at 2 (KEEL, J., concurring) (citing 710 S.W.3d 724, 726–27 (Tex. Crim. App. 2025)). *Zubiato* was a parole revocation case, a proceeding markedly different from deferred adjudication. Moreover, the Supreme Court of the United States has already foreclosed the applicability of the Confrontation Clause to parole revocation hearings. *Morrissey*, 408 U.S. at 480; *see also Zubiato*, 710 S.W.3d at 728 (NEWELL, J., concurring). As such, *Zubiato* is inapplicable to this case.

JUDGE KEEL also argues that because “[t]he evidence at an adjudication hearing is offered to assess the defendant’s performance on probation and not to establish guilt for a charged offense, so the hearing is not a criminal trial, and the evidence is not offered ‘against’ the defendant in the ordinary sense of the Confrontation Clause.” *Id.* at 2 (citing *Cruz v. New York*, 481 U.S. 186, 190 (1987)). But this is simply incorrect. Evidence at an adjudication hearing *is* offered to secure a conviction because the trial court *can*, should it find violations of community supervision, convict the defendant of the offense for which the defendant was placed on deferred adjudication. *See* TEX. CODE CRIM. PROC. arts. 42A.108(b), 42A.110.

Moreover, to the extent that JUDGE KEEL and JUDGE PARKER equate adjudication hearings—where the defendant has not yet been convicted—with “sentencing,” this distinction affects other facets of the law. *See ante* at 2 (KEEL, J., concurring) (“[t]he defendant at an adjudication hearing is not ‘accused’ of the crime . . . [h]e lost the presumption of innocence when (1) he judicially confessed to it, and (2) the trial court found that the evidence substantiated his guilt. After that, his liberty is conditional.”); *see also ante* at 4 (PARKER, J., concurring). Consider, for example, a defendant’s right to cross-examine a witness about prior convictions. Under Texas Rule of Evidence 609(c), “when the probationary term has expired [or probation was satisfactorily completed] and the witness has not been subsequently convicted of a felony or crime involving moral turpitude, the prior conviction is not admissible for impeachment purposes.” *Ex parte Menchaca*, 854 S.W.2d 128, 131 (Tex. Crim. App. 1993) (citing TEX. R. EVID. 609(c)). But Rule of Evidence 609 does not permit—nor has this Court ever recognized—cross-examination of a witness’s satisfactorily completed deferred adjudication probation. In fact, when it comes to deferred adjudication probation, a witness can only be cross-examined about their deferred adjudication status if the proponent can show a logical connection between the witness’s testimony and the witness’s probationary status. *Irby v. State*, 327 S.W.3d 138, 146, 154 (Tex. Crim. App. 2010). If indeed defendants

on deferred adjudication who are not yet adjudicated stand on the same footing as convicted defendants in revocation proceedings (or, as JUDGE PARKER argues, convicted defendants simply being sentenced), then it might follow that cross-examination for deferred status—past and present—is permissible. So long as the distinction on cross-examination between probation statuses remains the same, the solution to this implicit tension is to recognize that there is a distinction between deferred status in an adjudication hearing and revocation or sentencing: When a defendant is not yet convicted, as in the “pause” of deferred adjudication, the full panoply of constitutional rights applies.

One final point: In *Middleton*, this Court described deferred adjudication as a “pause” in proceedings. 634 S.W.3d at 50. If that is the case, when and where is the “play” button? The Court and my colleagues with concurring opinions certainly seem not to believe that the adjudication hearing is the “play” button. But once a defendant is adjudicated and sentenced, proceedings are over. It would seem as though the “pause,” if the Court were to be right, was not a “pause” at all but rather a stop sign. But we know that premise cannot be true. Rather, the simple solution is to recognize that the State’s motion to adjudicate serves as the “play” button, restarting adversarial proceedings that carry with them Confrontation Clause protections.

Doan's mandate is clear: "Community-supervision revocation proceedings . . . are judicial proceedings, to be governed by the rules established to govern judicial proceedings." 369 S.W.3d at 212. And there is no meaningful distinction between the term "criminal prosecutions" as it appears in the Sixth Amendment, *see* U.S. CONST. amend. VI, and *Doan*'s use of the term "judicial proceedings," 369 S.W.3d at 212. For example, this Court has recognized that the Sixth Amendment right to counsel applies to adjudication hearings. *Parker v. State*, 545 S.W.2d 151, 155 (Tex. Crim. App. 1977). This was so because "revocation proceedings cannot be isolated from the context of the criminal process." *Id.* In fact, this Court in *Parker* cited to *Fariss v. Tipps*, 463 S.W.2d 176 (Tex. 1971), which held that revocation is a "criminal prosecution" within Article I, Section 10, of the Texas Constitution. 545 S.W.2d at 155 (first citing *Fariss*; then citing *Ex parte Williams*, 414 S.W.2d 472 (Tex. Crim. App. 1967)).

In sum, the Sixth Amendment's Confrontation Clause applies to deferred adjudication probation hearings for two reasons. First, deferred adjudication is unlike probation revocation because a sentence has not yet been imposed at the time of the adjudication hearing. *See Middleton*, 634 S.W.3d at 50. Second, as we explained in *Doan*, Texas "[c]ommunity-supervision revocation proceedings . . . are judicial proceedings, to be governed by the rules established to govern judicial proceedings."

369 S.W.3d at 212. I would reverse the judgment of the court of appeals and remand for consideration of the merits of Appellant's Confrontation Clause claim. I respectfully dissent.

Filed: July 2, 2026
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Appendix B

Judgments and Sentences of the 396th
Judicial District Court of Tarrant County,
Texas



CASE No. 1591282D COUNT No. ONE
INCIDENT No./TRN: 9279776606

THE STATE OF TEXAS

v.

BEECHER MONTGOMERY

STATE ID No.: TX07215407

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IN THE 396TH DISTRICT COURT

TARRANT COUNTY, TEXAS

JUDGMENT ADJUDICATING GUILT

Judge Presiding:	HON. GEORGE GALLAGHER	Date Sentence Imposed:	1/6/2021
Attorney for State:	SHAREN WILSON DAVYE J ESTES 24045846 KYLE RUSSO 24100192	Attorney for Defendant:	J. WARREN ST. JOHN 18986300

Date of Original Community Supervision Order:	Statute for Offense:
6/24/2020	38.04(B)(2)(A) PC

Offense for which Defendant Convicted:

EVADING ARREST DETENTION WITH VEHICLE

Date of Offense:	Degree of Offense:
4/11/2019	3RD DEGREE FELONY

Plea to Motion to Adjudicate:

Not True

N/A

Terms of Plea Bargain: (if any): or ☐ Terms of Plea Bargain are attached and incorporated herein by this reference

NO PLEA BARGAIN AGREEMENT

Punishment and Place of Confinement: 20 YEARS Institutional Division, TDCJ

Date Sentence Commences: (Date does not apply to confinement served as a condition of community supervision.)
1/6/2021

THIS SENTENCE SHALL RUN CONCURRENTLY.

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

Fines:	Restitution:	Restitution Payable to:
\$0.00	\$0.00	(See special finding or order of restitution which is incorporated herein by this reference.)
Court Costs:	Reimbursement Fees:	
\$269.57	\$60.43	

☐ Defendant is required to register as sex offender in accordance with Chapter 62, Tex. Code Crim. Proc.

(For sex offender registration purposes only) The age of the victim at the time of the offense was N/A

Time Credited: 245 Days
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

Was the victim impact statement returned to the attorney representing the State? N/A

(FOR STATE JAIL FELONY OFFENSES ONLY) Is Defendant presumptively entitled to diligent participation credit in accordance with Article 42A.559, Tex. Code Crim. Proc.? N/A

The Court previously deferred adjudication of guilt in this case. Subsequently, the State filed a motion to adjudicate guilt.

The case was called for hearing. The State appeared by her District Attorney as named above.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with counsel.

☐ Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

After hearing and considering the evidence presented by both sides, the Court FINDS THE FOLLOWING: (1) The Court previously found Defendant qualified for deferred adjudication community supervision; (2) The Court deferred further proceedings, made no finding of guilt, and rendered no judgment; (3) The Court issued an order placing Defendant on deferred adjudication community supervision for a period of 10 Years; (4) The Court assessed a fine of \$0.00; (5) While on deferred adjudication community supervision, Defendant violated the conditions of community supervision, as set out in the State's AMENDED Motion to Adjudicate Guilt, as follows:

PARAGRAPHS ONE, TWO, THREE, FOUR AND SIX

Accordingly, the Court GRANTS the State's Motion to Adjudicate. FINDING that the Defendant committed the offense indicated above, the Court ADJUDGES Defendant GUILTY of the offense. The Court FINDS that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court ORDERS Defendant punished as indicated above. After having conducted an inquiry into Defendant's ability to pay, the Court ORDERS Defendant to pay the fines, court costs, reimbursement fees, 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 County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court ORDERS Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions in this paragraph. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Defendant shall be confined in the county jail for the period indicated above. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **County Jail—State Jail Felony Conviction.** Pursuant to §12.44(a), Tex. Penal Code, the Court FINDS that the ends of justice are best served by imposing confinement permissible as punishment for a Class A misdemeanor instead of a state jail felony. Accordingly, Defendant will serve punishment in the county jail as indicated above. The Court ORDERS Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay the fine, court costs, reimbursement fees, and restitution ordered by the Court in this cause.

☐ **Confinement as a Condition of Community Supervision.** The Court ORDERS Defendant confined N/A Days in N/A as a condition of community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Fines Imposed Include (check each fine and enter each amount as pronounced by the court):

- ☐ General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, Transp. Code, or other Code) \$0.00 (not to exceed \$10,000)
- ☐ Add'l Monthly Fine for Sex Offenders (Art. 42A.653, Code Crim. Proc.) \$ 0.00 (\$5.00/per month of community supervision)
- ☐ Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) \$0.00 (\$100)
- ☐ EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) \$0.00 (\$100)
- ☐ Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) \$ 0.00 (\$100)
- ☐ Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) \$0.00 (\$50)
- ☐ State Traffic Fine (§ 542.4031, Transp. Code) \$0.00 (\$50)
- ☐ Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) \$ 0.00 (not to exceed \$50)
- ☐ Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) \$ 0.00 (To Be Determined by the Court)
- ☐ Repayment of Reward Fine - as Cond of CS (Art. 42A.301 (b) (20), Code Crim. Proc.) \$ 0.00 (not to exceed \$50)
- ☐ DWI Traffic Fine (a/k/a Misc. Traffic Fines) (§ 709.001, Transp. Code) \$0.00 (not to exceed \$6,000)

Execution of Sentence

☒ The Court ORDERS Defendant's sentence EXECUTED. The Court FINDS that Defendant is entitled to the jail time credit indicated above. The attorney for the state, attorney for the defendant, the County Sheriff, and any other person having or who had custody of Defendant shall assist the clerk, or person responsible for completing this judgment, in calculating Defendant's credit for time served. All supporting documentation, if any, concerning Defendant's credit for time served is incorporated herein by this reference.

Furthermore, the following special findings or orders apply:

REPARATIONS IN THE AMOUNT OF \$440.00

REMAINING COURT COST IN THE AMOUNT OF \$269.57 AND REMAINING REIMBURSEMENT FEES IN THE AMOUNT OF \$60.43 TO BE CREDITED FOR TIME SERVED

COURT RECOMMENDS DEFENDANT BE HOUSED AT SKYVIEW UNIT IN RUSK, TEXAS.

HABITUAL OFFENDER NOTICE - WAIVED ON JUNE 24, 2020 AS TO CAUSE 1318614D

REPETITION ALLEGATION - FOUND TRUE FOR ONE PRIOR FELONY CONVICTION IN CAUSE #1468754W ON JUNE 24, 2020

Date Judgment Entered: 1/8/2021

X George Gallagher

Notice of Appeal Filed: January 7, 2021
Clerk: LDC

JUDGE PRESIDING

CASE No. 1591282D COUNT ONE
INCIDENT NO./TRN: 9279776606

THE STATE OF TEXAS

v.

BEECHER MONTGOMERY

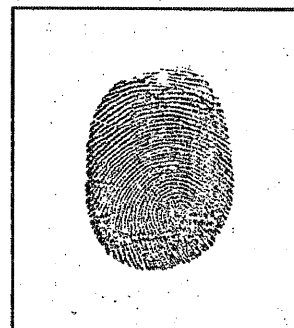
STATE ID No.: TX07215407

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IN THE 396TH DISTRICT COURT

TARRANT COUNTY, TEXAS

Date: 1/6/2021



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PERSON TAKING PRINT

JUDGMENT AND SENTENCE
FINGERPRINT PAGE

Clerk

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CASE No. 1627542D COUNT No. ONE
INCIDENT NO./TRN: 9289141069

THE STATE OF TEXAS

v.

BEECHER MONTGOMERY

STATE ID No.: TX07215407

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IN THE 396TH DISTRICT COURT

TARRANT COUNTY, TEXAS

JUDGMENT ADJUDICATING GUILT

Judge Presiding:	HON. GEORGE GALLAGHER	Date Sentence Imposed:	1/6/2021
Attorney for State:	SHAREN WILSON DAVYE J ESTES 24045846 KYLE RUSSO 24100192	Attorney for Defendant:	J. WARREN ST. JOHN 18986300

Date of Original Community Supervision Order:	Statute for Offense:
6/24/2020	31.03(E)(4B) PC

Offense for which Defendant Convicted:

THEFT FROM PERSON

Date of Offense:	Degree of Offense:
1/14/2020	STATE JAIL FELONY

Plea to Motion to Adjudicate:	Findings on Deadly Weapon:
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Not True N/A

Terms of Plea Bargain: (if any): or ☐ Terms of Plea Bargain are attached and incorporated herein by this reference

NO PLEA BARGAIN AGREEMENT

Punishment and Place of Confinement: 20 YEARS Institutional Division, TDCJ

Date Sentence Commences: (Date does not apply to confinement served as a condition of community supervision.)
1/6/2021

THIS SENTENCE SHALL RUN CONCURRENTLY.

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

Fines:	Restitution:	Restitution Payable to:
\$0.00	\$0.00	(See special finding or order of restitution which is incorporated herein by this reference.)

Court Costs:	Reimbursement Fees:
\$290.00	\$65.00

☐ Defendant is required to register as sex offender in accordance with Chapter 62, Tex. Code Crim. Proc.

(For sex offender registration purposes only) The age of the victim at the time of the offense was N/A

Time Credited: 224 Days
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

Was the victim impact statement returned to the attorney representing the State? N/A

(FOR STATE JAIL FELONY OFFENSES ONLY) Is Defendant presumptively entitled to diligent participation credit in accordance with Article 42A.559, Tex. Code Crim. Proc.? N/A

The Court previously deferred adjudication of guilt in this case. Subsequently, the State filed a motion to adjudicate guilt.

The case was called for hearing. The State appeared by her District Attorney as named above.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with counsel.

☐ Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

After hearing and considering the evidence presented by both sides, the Court FINDS THE FOLLOWING: (1) The Court previously found Defendant qualified for deferred adjudication community supervision; (2) The Court deferred further proceedings, made no finding of guilt, and rendered no judgment; (3) The Court issued an order placing Defendant on deferred adjudication community supervision for a period of 10 Years; (4) The Court assessed a fine of \$0.00; (5) While on deferred adjudication community supervision, Defendant violated the conditions of community supervision, as set out in the State's ORIGINAL Motion to Adjudicate Guilt, as follows:

PARAGRAPHS ONE, TWO, THREE, FOUR AND SIX

Accordingly, the Court GRANTS the State's Motion to Adjudicate. FINDING that the Defendant committed the offense indicated above, the Court ADJUDGES Defendant GUILTY of the offense. The Court FINDS that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court ORDERS Defendant punished as indicated above. After having conducted an inquiry into Defendant's ability to pay, the Court ORDERS Defendant to pay the fines, court costs, reimbursement fees, 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 County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court ORDERS Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions in this paragraph. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Defendant shall be confined in the county jail for the period indicated above. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **County Jail—State Jail Felony Conviction.** Pursuant to §12.44(a), Tex. Penal Code, the Court FINDS that the ends of justice are best served by imposing confinement permissible as punishment for a Class A misdemeanor instead of a state jail felony. Accordingly, Defendant will serve punishment in the county jail as indicated above. The Court ORDERS Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay the fine, court costs, reimbursement fees, and restitution ordered by the Court in this cause.

☐ **Confinement as a Condition of Community Supervision.** The Court ORDERS Defendant confined N/A Days in N/A as a condition of community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Fines Imposed Include (check each fine and enter each amount as pronounced by the court):

- ☐ General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, Transp. Code, or other Code) \$0.00 (not to exceed \$10,000)
- ☐ Add'l Monthly Fine for Sex Offenders (Art. 42A.653, Code Crim. Proc.) \$ 0.00 (\$5.00/per month of community supervision)
- ☐ Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) \$0.00 (\$100)
- ☐ EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) \$0.00 (\$100)
- ☐ Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) \$ 0.00 (\$100)
- ☐ Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) \$0.00 (\$50)
- ☐ State Traffic Fine (§ 542.4031, Transp. Code) \$0.00 (\$50)
- ☐ Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) \$ 0.00 (not to exceed \$50)
- ☐ Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) \$ 0.00 (To Be Determined by the Court)
- ☐ Repayment of Reward Fine - as Cond of CS (Art. 42A.301 (b) (20), Code Crim. Proc.) \$ 0.00 (not to exceed \$50)
- ☐ DWI Traffic Fine (a/k/a Misc. Traffic Fines) (§ 709.001, Transp. Code) \$0.00 (not to exceed \$8,000)

Execution of Sentence

☒ The Court ORDERS Defendant's sentence EXECUTED. The Court FINDS that Defendant is entitled to the jail time credit indicated above. The attorney for the state, attorney for the defendant, the County Sheriff, and any other person having or who had custody of Defendant shall assist the clerk, or person responsible for completing this judgment, in calculating Defendant's credit for time served. All supporting documentation, if any, concerning Defendant's credit for time served is incorporated herein by this reference.

Furthermore, the following special findings or orders apply:

STATE JAIL FELONY ENHANCEMENT - 2ND DEGREE FELONY NOTICE - FOUND TRUE JUNE 24, 2020

REMAINING COURT COST IN THE AMOUNT OF \$290.00 AND REMAINING REIMBURSEMENT FEES IN THE AMOUNT OF \$65.00 TO BE CREDITED FOR TIME SERVED

REPARATIONS IN THE AMOUNT OF \$20.00

Date Judgment Entered: 1/8/2021

X George Gallagher

JUDGE PRESIDING

NOTICE OF APPEAL FILED: JANUARY 7, 2021
Clerk: LDC

CASE NO. 1627542D COUNT ONE
INCIDENT NO./TRN: 9289141069

THE STATE OF TEXAS

v.

BEECHER MONTGOMERY

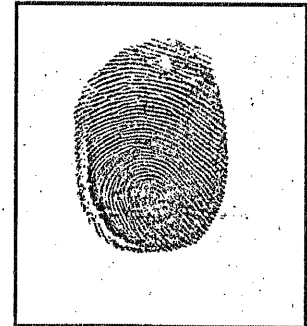
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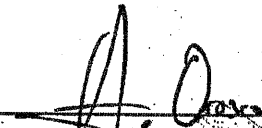
IN THE 396TH DISTRICT COURT

TARRANT COUNTY, TEXAS

Date: 1/6/2021

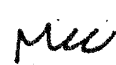


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JUDGMENT AND SENTENCE
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Clerk

	
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Appendix C

Oral Orders denying Petitioner's
objections to conduct hearing to
adjudicate guilt virtually.

14:14

1 right now.

2 THE COURT: Okay.

3 MR. RUSSO: So don't admit him, I'll just
4 send an email right now that says stand by.

14:15

5 THE COURT: Okay.

6 MR. RAY: That's about all I have, Judge.
7 I don't know if you're waiting on me.

8 THE COURT: I'm waiting on Mr. Russo to
9 finish notifying the witness.

14:15

10 MR. RUSSO: Stand by. Okay. I emailed
11 him, Judge.

12 THE COURT: All right. Mr. Ray, I want the
13 record to reflect that as each witness has come in, the
14 witness has been visible on the computer screens for all
14:16 15 of the people who are presently on the screen. There are
16 at least six -- there are six on there right now: The
17 witness Ms. Montgomery, myself, Mr. Russo, the defendant,
18 and Ms. Morton, my court reporter. And as each person
19 logs on and logs off, their camera comes in and out. I'm
14:16 20 able to see them clearly.

21 I recognize that you have a number of
22 reasons that you've stated in your motion, but those
23 objections will be overruled. You may have a running
24 objection throughout all of the hearings so that you do
14:17 25 not have to restate it or worry about it being waived for

14:17 1 the hearing to continue.

2 MR. RAY: Thank you.

3 THE COURT: Okay. All right.

4 Mr. Montgomery, the State's First Amended Petitions to
14:17 5 Proceed to Adjudication say that on June 24th of last
6 year you came to court and pled guilty to the offenses of
7 evading arrest with a vehicle and theft from person. And
8 I deferred entering a finding of guilt in each case and
9 placed you on probation for ten years. Is all of that
14:17 10 true?

11 THE DEFENDANT: Yes, Your Honor, it's true.

12 THE COURT: All right. Mr. Ray, there are
13 six alleged violations in each petition. Do you wish for
14 me to read them individually or do you wish to enter a
14:17 15 plea of not true to all six allegations?

16 MR. RAY: Judge, I think the State's
17 petition, unless I'm looking at one that was amended on
18 the theft from person case, I'll waive it. I've gone over
19 it with Mr. Montgomery, but I may have -- I may need to --
14:18 20 I just need to check something if I could.

21 THE COURT: Okay.

22 MR. RAY: In the theft from person -- go
23 ahead, I'm sorry.

24 MR. RUSSO: It was filed October 13th. I
14:18 25 just printed the one from 1591282. And, Judge, the State

Appendix D

Written Objection to Virtual Proceeding

NO. 1591282

THE STATE OF TEXAS	)	IN THE 396 th DISTRICT
	)	
VS.	)	COURT OF
	)	
BEECHER MONTGOMERY	)	TARRANT COUNTY, TEXAS

OBJECTION TO VIRTUAL PROCEEDING

COMES NOW, the Defendant, by and through counsel, and notifies the Court that the Defendant objects to a virtual hearing, regardless of the custody status of the Defendant, as such a hearing is: (1) Not specifically approved; (2) Violates constitutional protections of effective assistance of counsel and confrontation; (3) Violates statutory protections of confrontation for the Defendant, and the Victim; and (4) Is contrary to the positions taken by the Tarrant County Criminal District Attorney in other cases. In support thereof, the Defendant would show as follows:

1. This case is set for hearing on October 23, 2020 or October 26, 2020. (The variance of the setting has to do with the custody status of the Defendant and Court's schedule. This variance is not part of the subject and legal arguments of this motion. Either setting is being objected to.) There is no specific approval for this proceeding.
2. A virtual trial would require the defendant to be physically separated from his defense counsel during the trial. This separation would undoubtedly infringe on the defendant's right to effective assistance of counsel, particularly the right to confer

with counsel. The United States Supreme Court has recognized that the right to confer and converse with counsel during trial is incorporated into the Sixth Amendment right to counsel. See *Perry v. Leeke*, 488 U.S. 272 (1989). A virtual trial would not allow the defendant and his counsel to converse during trial in the same manner they would be able to if seated together at counsel table. Effective counsel will likely raise objections to the proceedings, how witnesses are handled, the presentation of physical evidence, how the defendant is "present" during the trial, the judge's ability to focus on the trial, and a number of other issues not raised in this Objection. The myriad of legitimate objections will cause delay in the proceedings.

3. Even if defense counsel and the defendant were in the same room during the trial, current social distancing mandates would require them to be separated by at least six feet or more, according to social distancing rules, available at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last visited July 14, 2020). The defendant and counsel's ability to confer is equally diminished if they are not able to sit next to each other.

4. The defendant's right to confront witnesses would also be diminished by a virtual trial. A defendant has a constitutional right to confront witnesses. See *Maryland v. Craig*, 497 U.S. 836, 845 (1990). The Confrontation Clause encompasses four key elements: (1) physical presence of the witness, (2) oath, (3)

cross-examination, and (4) observation of demeanor by the trier of fact. See *Maryland v. Craig*, 497 U.S. 836, 845 (1990). While face-to-face confrontation is not an absolute requirement of the Confrontation Clause, if either the witnesses or the defendant are only "present" via video, a key element of the "core of the [Clause's] values" is missing. *Craig*, 497 U.S. at 847. Importantly, the judge would not be able to fully observe the witness's demeanor via a virtual trial and also raises the logistical concerns regarding the presentation of evidence.

If the witness, were to testify from their own home, the Court would have no way to ensure that the witness is alone while testifying and not subject to undue influence of others. If the Defendant was in a remote location, the State would have the same objection to both the Defendant and any defense witness. The State would no doubt have a complaint in some cases that the Defendant was intimidating the witness via social media or otherwise, at the very time of their testimony. If a witness uses their own computer devices, they could open and review websites, documents, or other applications to assist in their testimony without the knowledge of the court. (If a witness is conducting such an inquiry, the Defendant submits they probably would not admit such an impropriety.) Further, the witness may not have adequate technology to facilitate testifying via video conference (no computer, no/poor internet, etc.).

If the witness is to appear at the Tim Curry Criminal Justice Center and testify from a location outside of the courtroom, the logistics of this would need to be quickly determined. At a minimum, a deputy sheriff would be needed to monitor the witness as she testifies to ensure that the witness is alone and only accessing the trial court video conference while testifying. That would be necessary for the Defendant as well. This second option poses a similar COVID-19 exposure risk that the virtual trial aims to diminish.

5. Admitting evidence through the use of remote witnesses could also present issues. For example, the Texas Rules of Evidence require the authentication or identification of evidence as a condition precedent to the admissibility of evidence. See TEX. R. EVID. 901(a). If a witness is needed to authentic a piece of evidence, the witness may not be able to properly view and identify the exhibit through a video conference. Further, publication of the physical evidence to the jury or a judge would be difficult via video conference.

6. In addition to the defendant's constitutional rights, a victim's statutory rights would also be diminished by a virtual trial. Victims of crime have a statutory right to "appear in person to present to the court and to make a statement to the defendant of the person's views about the offense, the defendant, and the effect of the offense on the victim." See TEX. CODE CRIM. PROC. art. 42.03 § 1(b). This statement is to

occur at the conclusion of sentencing. Victims will likely want to appear in court to present their statement, opposed to presenting the statement at a virtual trial.

7. The State has filed a similar motions in other cases objecting to a virtual procedure, specifically including the rights of a defendant and the rights of a victim. While these motions object to a jury trial, all but one objection concerns non jury matters.

8. If the Courts are going to try cases, before a jury or not, the protections concerning Covid-19 are present in both a jury and a non-jury setting. These cases are not going away, and at some point, the backlog will have to be addressed. The Defendant's concern is he should not be singled out, rather the cases, all of them, should be set and tried, in the order prescribed for disposition of cases, both civil and criminal. Neither the State, the Defendant, or the courts should be permitted to accelerate the disposition without regard to the logical progression and disposition of cases.

These are unprecedented times. However, the constitutional concerns with a binding virtual criminal trial are too steep to allow such a trial in the present case to proceed. It appears that a live hearing can be conducted, at least that process been approved of and in compliance with Supreme Court Guidelines.

The Defendant has no objections to a live hearing and can be ready on the date

scheduled, provided the Court begins hearings in all cases and not just the Defendant's.

The postponement of any hearing, which now have the protections necessarily addressed, is a violation of the Sixth Amendment right to a speedy and public trial. If the Court can progress with a jury trial in person, it ought to be able to conduct a probation revocation. If a Court can progress with one case, it can progress with them all. It violates the equal protection clause and the due process clause to pick and choose the order of cases in a totally random fashion.

PRAYER

Premises considered, the Defendant Prays that the Court cancel a virtual hearing.

RESPECTFULLY SUBMITTED,

/S/ WILLIAM H. "BILL" RAY
WILLIAM H. "BILL" RAY
BAR NO. 16608700
ATTORNEY FOR DEFENDANT

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