

No. 86112

IN THE NEVADA SUPREME COURT

Electronically Filed
Jul 07 2023 01:26 PM
Elizabeth A. Brown
Clerk of Supreme Court

James Howard Hayes,

Appellant,

v.

State of Nevada,

Respondent.

On Appeal from the Order Denying
Motion to Correct Illegal Sentence
Eighth Judicial District, Clark County (C-16-315718-1)
Honorable Monica Trujillo, District Court Judge

**Petitioner-Appellant's Appendix
Volume 1 of 3**

Rene Valladares
Federal Public Defender,
District of Nevada
*Martin L. Novillo
Assistant Federal Public Defender
411 E. Bonneville Ave., Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Martin_Novillo@fd.org

*Counsel for James E. Hayes

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Dated July 7, 2023.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Martin L. Novillo

Martin L. Novillo
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2023, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court's electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Alexander Chen, Alexander.Chen@clarkcountynyda.com, Motions@clarkcountynyda.com.

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following people:

James H. Hayes, #1175077 Southern Desert Correctional Center P.O. Box 208 Indian Springs, NV 89070	Jaime Stilz Office of the Attorney General 555 E. Washington Ave. Las Vegas, NV 89101 jstilz@ag.nv.gov
---	--

/s/ Kaitlyn O'Hearn
An Employee of the
Federal Public Defender
District of Nevada

B
THE STATE OF TEXAS
VS.

JAMES HAYES

MISSOURI CITY, TX

SPN: 01145559
DOB: 70
DATE PREPARED: 9/8/2006

D.A. LOG NUMBER: 1200889
CJIS TRACKING NO.: 903747201X-A001
BY: RM DA NO: 001982276
AGENCY: HPD
O/R NO: 135360306
ARREST DATE: 9-7-06

NCIC CODE: 2605 44

RELATED CASES: ONE OTHER FEL

FELONY CHARGE: CREDIT/DEBIT CARD ABUSE

CAUSE NO: 1083785 1083785

HARRIS COUNTY DISTRICT COURT NO: 185

FIRST SETTING DATE:

5,000 Vol. 277 Page 53 AXOM
BAIL: 32000
PRIOR CAUSE NO:

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

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, JAMES HAYES, hereafter styled the Defendant, heretofore on or about SEPTEMBER 7, 2006, did then and there unlawfully, with intent to obtain a benefit fraudulently, use a MASTERCARD CREDIT card knowing the use was without the effective consent of the cardholder, DEAN ALAC, namely, without any consent of any kind, and knowing that the MASTERCARD card had not been issued to the Defendant.

CLERK OF DISTRICT COURT
CHARLES HADJIPANIS
District Clerk
SEP 15 2006
Harris County, Texas
By Deputy

AGAINST THE PEACE AND DIGNITY OF THE STATE.

FOREMAN

262nd

Lawrence

FOREMAN OF THE GRAND JURY

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

INDICTMENT

000030

IMAGED

APP001

182

185

01145359
g

THE STATE OF TEXAS
VS.
JAMES HAYES
MISSOURI CITY, TX

SPN: xxx 01145559
DOB: [REDACTED] 70
DATE PREPARED: 9/8/2006

D.A. LOG NUMBER: 1200889
CJIS TRACKING NO.: 903747201X-A001
BY: RM DA NO: 001982276
AGENCY: HPD
O/R NO: 135360306
ARREST DATE: 9-7-06

NCIC CODE: 2605 44 RELATED CASES: ONE OTHER FEL
FELONY CHARGE: CREDIT/DEBIT CARD ABUSE
CAUSE NO: 1083785
HARRIS COUNTY DISTRICT COURT NO: 185
FIRST SETTING DATE:

BAIL: \$2000
PRIOR CAUSE NO:

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

Before me, the undersigned Assistant District Attorney of Harris County, Texas, this day appeared the undersigned affiant, who under oath says that he has good reason to believe and does believe that in Harris County, Texas, JAMES HAYES hereafter styled the Defendant, heretofore on or about SEPTEMBER 7, 2006, did then and there unlawfully with intent to obtain a benefit fraudulently, use a MASTERCARD CREDIT card knowing the use was without the effective consent of the cardholder, DEAN ALAC, namely, without any consent of any kind, and knowing that the MASTERCARD card had not been issued to the Defendant.

F I L E D
CHARLES BACARISSE
District Clerk
SEP 08 2006
Harris County, Texas
By _____ Deputy

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Sworn to and subscribed before me on September 8, 2006

AFFIANT

ASSISTANT DISTRICT ATTORNEY
OF HARRIS COUNTY, TEXAS. BAR NO. 24007460

COMPLAINT

IMAGED

000002
000000

APP002

26/7/10

BOND: 2000

No. 108378501010

PN: 01145559

The State of Texas

vs.

HAYES, JAMES

, Defendant

In the 185th District Court

County Criminal Court at Law No. _____

Harris County, Texas

1970

, DOB

INS: COM

PFG: O

PROBABLE CAUSE FOR FURTHER DETENTION & STATUTORY WARNINGS BY MAGISTRATE

Today, the above named defendant, charged with CREDIT/DEBIT CARD ABUSE, appeared before the undersigned authority. (the Court) ☐ in person. ☒ by video teleconference.

All statements in bold should be addressed to defendant.

Do you request appointment of counsel? (check one)

☐ NO. The defendant did not request appointment of counsel.

☒ YES. The defendant requested appointment of counsel. The Court **ORDERS** the Office of Pre-Trial Services (PTS) to immediately assist defendant in preparing a request for appointment of counsel. PTS shall forward defendant's request to the judge of the court in which the case is pending within 24 hours.

If you are not a United States citizen, you may be entitled to have us notify your country's consular representative here in the United States. Do you want us to notify your country's consular officials? (check one)

☐ NO.

☐ YES. What country? _____. If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.

☐ MANDATORY NOTIFICATION. CLERK, NOTIFY _____ (Country) CONSULATE.

If you are a foreign national, please provide the following information:

Mr./Ms:

(father's name {surname}/ mother's maiden name / first name)

Date of birth (mm/dd/yy)

Place of birth

Passport number

Date of passport issuance

Place of passport issuance

This proceeding was interpreted by: _____ (Print name of interpreter)

ORDER

☐ The Court **FINDS** probable cause for further detention **DOES NOT EXIST**. Accordingly, in this case, the Court **ORDERS** the law enforcement agency/officer having custody of the defendant, to **immediately release** the defendant from custody.

☒ The Court **FINDS PROBABLE CAUSE** for further detention **EXISTS**. The Court set and/or reviewed the defendant's bond, and in clear and unambiguous language, the Court 1) advised defendant of his rights as enumerated in Article 15.17 of the Texas Code of Criminal Procedure and 2) provided him with information required by law. Accordingly, The Court **ORDERS** defendant committed to the custody of the Sheriff of Harris County, Texas. Defendant shall remain in the Sheriff's custody until he posts bail in this cause, or until further orders by the Court.

☒ Bail is set at \$ 5000 ☒ Personal Bond is: ☐ APPROVED ☐ DISAPPROVED ☒ REFERRED

09/09/2006

DATE/ TIME (Print)

H.KCV3001.P

JUDGE PRESIDING/ HEARING OFFICER

Rev. 08/24/05

IMAGED

000003

APP003

376423

CAUSE NO. 108 3786/85

STATE OF TEXAS

vs.

Hayes, James

§
§
§
§

In the 185 District Court
In the County Criminal Court at
Law No. _____
Harris County, Texas

ACKNOWLEDGMENT AND AFFIDAVIT

My name is Hayes, James. I am the defendant in the above-styled and numbered cause and am capable of making this affidavit.

I understand that the court may use the financial information I have given to Harris County Pretrial Services on 9-8-04 to determine whether I am financially able to hire counsel. I swear or affirm that all the financial information I have provided is true and correct. I also understand that if I intentionally or knowingly give false answers about my financial information to Pretrial Services, I may be prosecuted for the offense of aggravated perjury, a felony. I understand that the punishment for aggravated perjury includes imprisonment not to exceed ten (10) years and a fine not to exceed ten thousand dollars (\$10,000.00).

Signed 9-8-04 Defendant X Hayes

SUBSCRIBED AND SWORN TO BEFORE ME this day 9-8-04

g Brown
Personal Bond Office Employee
Harris County, Texas

Original: District Clerk

SEP 09 2006

000000001

APP004

Court Coordinator No. 2-A

CAUSE NO. 1083785
1083786

CHARGE

Credit Card Abuse
1854th Frank/Use/Pass ID,

THE STATE OF TEXAS

DISTRICT COURT

OF HARRIS COUNTY, TEXAS,

VS.

James Hayes
Defendant

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

Aug
(Type of Setting)

to

9/26/06
(Date)

8:30AM

Attorney for the State

X James Hayes
Defendant

(Print) Attorney for Defendant

(Signature) Attorney for Defendant

(Street Address)

(City)

(State)

(Zip)

(Phone Number)

(Bar Card/SPN Number)

FILED
CHARLES D. BARNETT
District Clerk

SEP 11 2006

Harris County, Texas

By

Hayes

APPROVED BY THE COURT

1st
Judge Presiding

9/11/06
Date

DISTRICT CLERK

000005
000001

APP005

B
THE STATE OF TEXAS
VS.

JAMES HAYES

MISSOURI CITY, TX

262nd

SPN: ~~83~~ 91145559
DOB: ~~70~~
DATE PREPARED: 9/8/2006

D.A. LOG NUMBER: 1200889
CJIS TRACKING NO.: 903747201X-A001
BY: RM DA NO: 001982276
AGENCY: HPD
O/R NO: 135360306
ARREST DATE: 9-7-06

NCIC CODE: 2605 44

RELATED CASES: ONE OTHER FEL

FELONY CHARGE: CREDIT/DEBIT CARD ABUSE

CAUSE NO: 1083705 1083785

HARRIS COUNTY DISTRICT COURT NO: 105

FIRST SETTING DATE:

5,000
BAIL: 32000
PRIOR CAUSE NO:

277 Page 53 AXCM

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

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, JAMES HAYES, hereafter styled the Defendant, heretofore on or about SEPTEMBER 7, 2006, did then and there unlawfully, with intent to obtain a benefit fraudulently, use a MASTERCARD CREDIT card knowing the use was without the effective consent of the cardholder, DEAN ALAC, namely, without any consent of any kind, and knowing that the MASTERCARD card had not been issued to the Defendant.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

FOREMAN

262nd

[Signature]

FOREMAN OF THE GRAND JURY

RECORDER'S MEMORANDUM
The instrument is of poor quality
at the time of imaging

INDICTMENT

IMAGED

000002-503

APP006

Court Coordinator No. 2-A

CAUSE NO. 1083785
1083786

THE STATE OF TEXAS

VS

James Hayes
Defendant

CHARGE

Credit Card Abuse
1854r Fraud/USQ/POSSID
inform.
DISTRICT COURT
OF HARRIS COUNTY, TEXAS.

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

MTA to 10/10/06 8:30 AM
(Type of Setting) (Date)

Kelly Blain
Attorney for the State

James Hayes
Defendant

ANDREW J LAWVIE
(Print) Attorney for Defendant

Andrew J Lawvie
(Signature) Attorney for Defendant

6232 Hwy 146
(Street Address)

Bryceown TEX 77520
(City) (State) (Zip)

281 422 9016
(Phone Number)

11937000
(Bar Card/SPN Number)

APPROVED BY THE COURT:

[Signature]
Judge

9/26/06
Date

FILED

SEP 26 2006

DISTRICT CLERK

000000007

APP007

Court Coordinator No. 2-A

CAUSE NO. 1083785
1083786

CHARGE Credit Card Abuse
1854 1/2 Frank/USE/POSS ID
DISTRICT COURT

THE STATE OF TEXAS

OF HARRIS COUNTY, TEXAS.

VS.
James Hayes
Defendant

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

plck to 10/31/06 8:30 AM
(Type of Setting) (Date)

[Signature]
Attorney for the State

X James H. Hugo
Defendant

Andrew J. Lunn
Attorney for Defendant

[Signature]
(Signature) Attorney for Defendant

6232 Hwy 146
(Street Address)

Baytown TEX
(City) (State) (Zip)

281 422-9016
(Phone Number)

11931000
(Bar Card/SPN Number)

FILED
OCT 10 2006
CLERK OF DISTRICT COURT
HARRIS COUNTY, TEXAS

APPROVED BY THE COURT:

[Signature]
Date 10/10/06

DISTRICT CLERK

000008
000004

APP008

STATE OF TEXAS VS.

NAME: HAYES, JAMES
 DCC# 185 CAUSE NO: 108378501010
 OFFENSE: CREDIT/DEBIT CARD AB FS
 FILED: 09/08/06 BAIL: 002000

(i-31-DL Δ advised of
 range of pun 15 mos 5Y
 offer Δ rejected offer

GENERAL ORDERS OF COURT

FELONY COMPLAINT FILED SEP 08 2006

Preliminary Assigned Court Appearance: SEP 11 2006

SEP 11 2006

Defendant THA appeared B/S 9/24/06 ARK
 with/without counsel
 SEP 15 2006 FELONY INDICTMENT

SEP 26 2006

Defendant Hayes appeared B/S 10/10/06 ARK
 with/without counsel Garrie

OCT 10 2006

Defendant Andrew Lannie appeared B/S 10/31/06 PTC
 with/without counsel
 OCT 31 2006

Defendant A. Lannie appeared B/S 1/26/07 CK TRL STAT
 with/without counsel

JAN 26 2007

C/O 1/29/07 TRL

JAN 29 2007

Defendant Hayes appeared B/S 1/31/07 QTR
 with/without counsel Garrie

JAN 31 2007

Defendant Hayes appeared B/S 2/5/07 TRL
 with/without counsel Garrie

FEB 05 2007

C/O

000026

GENERAL ORDERS OF THE COURT

FEB 06 2007

PLS By Computer 2/9/07

FEB 09 2007

C/O

FEB 12 2007

Defendant

~~Without counsel~~

A. L. GARDNER

appeared

PLS 2/13/07 JTR

FEB 13 2007

C/O

FEB 14 2007

C/O

FEB 15 2007

Defendant

~~Without counsel~~

A. L. GARDNER

appeared

PLS 2/19/07 JTR

AT

Defendant's name at the Courtroom door.

Defendant's name at the Courtroom door.

BAND FORFEITURE ALIAS/VIOLATION ISSUE

New Courtroom in the sum of \$ NO Bond

FEB 20 2007

PLS By Computer 2/26/07

FEB 26 2007

PLS 2/28/07 P/C

THE STATE OF TEXAS VS.

Mayes, James
1083785

185th

GENERAL ORDERS OF COURT

FEB 28 2007 Defendant Mayes, James appeared in person

with Counsel A. Starnie

Court Reporter K. Taylor appeared for the State

Judge Presiding C. Starnie

@ 10:40 am a panel of 63 prospective jurors were seated, sworn & administered as to the law. @ 11:17 am the jury was excused for a break. @ 11:30 am the state began voir dire. @ 11:50 am the defense began voir dire. @ 12:40 pm the state began. @ 1:12 pm the jury was seated & then excused for lunch. @ 2:03 pm the jury was seated & sworn.

Defendant duly arraigned according to law.
In open court pleaded Not Guilty

@ 2:07 pm the state made an opening statement. @ 2:19 pm the state began testimony. @ 2:45 pm the jury was excused ^{advised of} and asked to return 3/1/07 for 9:30 am.

MAR 01 2007 Defendant Mayes, James appeared in person

with Counsel A. Starnie

Court Reporter K. Taylor appeared for the State

Judge Presiding C. Starnie

020020

GENERAL ORDERS OF THE COURT

MAR 01 2007 @ 9:58 am the jury was seated & testimony resumed. @ 11:13 am the jury was excused for a break. @ 11:37 am the jury was seated & testimony resumed. @ 12:24 pm the jury was excused for lunch. @ 2:20 pm the jury was seated & testimony resumed. @ 3:09 pm the jury was excused for a break. @ 3:35 pm the jury was seated & testimony resumed. @ 4:38 pm the state rested & the defense as well, they then closed. They then were excused & asked to return 3/21/07 for 9:30 am

MAR 02 2007 Defendant Thayls appeared in person
with Counsel A. Spence
R. Taylor appeared for the State
Court Reporter C. Shagan
Judge Presiding S. Brown

@ 9:33 am the jury was seated & the court's charge was read. @ 9:42 am the defense made their closing arguments. @ 9:55 am the state made their closing arguments. @ 10:12 am the jury was excused to begin deliberations. @ 11:00 am the jury was seated with a verdict of "GUILTY". @ 11:07 am the state made an opening statement for the punishment phase. @ 11:08 am the defense made an opening statement & @ 11:09 am

Hayes, James

1083785

185th

GENERAL ORDERS OF COURT

MAR 02 2007 state began testimony. @ 11:18 am the state & defense rested & closed. @ 11:20 am the court's charge was read. @ 11:27 am the defense made a closing statement & @ 11:28 am the state made their closing statement. @ 11:37 am the jury was excused to begin deliberations. @ 11:45 am the jury was seated & returned with a sentence of 2 yrs STT - \$10,000 fine.
Nte of Appeal Filed

000000

P306

Ex Parte

Application for Writ of Habeas Corpus

From Harris County

JAMES H. HAYES
(Name of Applicant)

185th Judicial District Court

TRIAL COURT WRIT NO. 1083786-B
CLERK'S SUMMARY SHEET

APPLICANT'S NAME: JAMES HAYES
(As reflected in judgment)

OFFENSE: FRAUDULENT USE / POSSESSION OF IDENTIFYING INFORMATION
(As reflected in judgment)

CAUSE NO.: 1083786
(As reflected in judgment)

PLEA: ☐ GUILTY ☒ NOT GUILTY ☐ NOLO CONTENDERE

SENTENCE: 2 YEARS STATE JAIL
(Terms of years reflected in final judgment)

TRIAL DATE: MARCH 2, 2007
(Date sentence was imposed)

JUDGE'S NAME: SUSAN BROWN
(Judge presiding at trial)

APPEAL NO.: 01-07-00239-CR
(If applicable)

HEARING HELD: ☐ YES ☐ NO
(Pertaining to the Application for Writ of Habeas Corpus)

FINDINGS & CONCLUSIONS FILED: ☒ YES ☐ NO
(Pertaining to the Application for Writ of Habeas Corpus)

RECOMMENDATION: ☐ GRANT ☒ DENY ☐ NONE ☐ DISMISS
(Trial court's recommendation regarding the Writ of Habeas Corpus)

JUDGE'S NAME: *Susan Brown*
(Judge presiding over habeas corpus proceeding)

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

POST CONVICTION

FROM: 185TH DISTRICT COURT

OF

HARRIS COUNTY, TEXAS

JAMES HAYES

APPLICANT

VS.

THE STATE OF TEXAS

RESPONDENT

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CAPTION

THE STATE OF TEXAS {IN THE 185th DISTRICT COURT
COUNTY OF HARRIS {OF HARRIS COUNTY, TEXAS

At a regular term of the 185th District Court of Harris County, Texas, begun and holden within and for the County of Harris and State of Texas, at Houston on the 2ND day of FEBRUARY, A.D. 2009 and which will adjourn on the 3RD day of MAY, A.D., 2009.

The Honorable SUSAN BROWN Judge thereof presiding, the following proceedings came on to be heard, to-wit:

EX-PARTE {
1083786-B {H A B E A S
vs. JAMES HAYES {C O R P U S
THE STATE OF TEXAS {

Case No. 1083786-B
(The Clerk of the convicting court will fill this line in.)

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

FILED

Loren Jackson
District Clerk

FEB 03 2009

Time: 11:07
By Harris County, Texas
Deputy

NAME: JAMES H HAYES

DATE OF BIRTH: 1970

PLACE OF CONFINEMENT: JOE KEGANS STATE JAIL

TDCJ-CID NUMBER: 537 SID NUMBER: _____

(1) This application concerns (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> a conviction | <input type="checkbox"/> parole |
| <input checked="" type="checkbox"/> a sentence | <input type="checkbox"/> mandatory supervision |
| <input type="checkbox"/> time credit | <input type="checkbox"/> out-of-time appeal or petition for discretionary review |

(2) What district court entered the judgment of the conviction you want relief from?
(Include the court number and county.)

185th District Court of Harris County, Texas

(3) What was the case number in the trial court?

1083786

(4) What was the name of the trial judge?

SUSAN BROWN

Revised: March 5, 2007

- (5) Were you represented by counsel? If yes, provide the attorney's name:

ANDREW LANNIE

- (6) What was the date that the judgment was entered?

MARCH 2, 2007

- (7) For what offense were you convicted and what was the sentence?

FRAUDULENT USE / POSSESSION OF IDENTIFYING INFORMATION; 2yrs State Jail

- (8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?

FRAUDULENT USE / POSSESSION OF IDENTIFYING INFORMATION; 2yrs. State Jail

CREDIT CARD ABUSE; 2yrs State Jail & \$10,000.00 FINE

- (9) What was the plea you entered? (Check one.)

☐ guilty-open plea

☐ guilty-plea bargain

☒ not guilty

☐ nolo contendere/no contest

If you entered different pleas to counts in a multi-count indictment, please explain:

- (10) What kind of trial did you have?

☐ no jury

☒ jury for guilt and punishment

☐ jury for guilt, judge for punishment

- (11) Did you testify at trial? If yes, at what phase of the trial did you testify?

NO

- (12) Did you appeal from the judgment of conviction?

☒ yes

☐ no

If you did appeal, answer the following questions:

(A) What court of appeals did you appeal to? First District of Texas

(B) What was the case number? 01-07-00239

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name: Sharon Slovis

(D) What was the decision and the date of the decision? Affirmed; 5-1-2008

(13) Did you file a petition for discretionary review in the Court of Criminal Appeals?

☒ yes

☐ no

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? PD-0756-08

(B) What was the decision and the date of the decision? Refused; 11-05-2008

(14) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *this conviction*?

☒ yes

☐ no

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number? WR-71,229-02

(B) What was the decision and the date of the decision? Dismissed; 12-31-08

(C) Please identify the reason that the current claims were not presented and could not have been presented on your previous application.

Defendant filed Pro Se writ and interpreted Crim. Proc. Art. 18.1
Issuance of Mandate as allowing defendant 10 days motion
for rehearing was denied to be eligible to file writ of
habeas corpus. When in fact, motion for rehearing was denied
on 11-20-2008 and writ was filed on 12-02-2008.

- _____
- _____
- (15) Do you currently have any petition or appeal pending in any other state or federal court?

☐ yes

☒ no

If you answered yes, please provide the name of the court and the case number:

- _____
- (16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)

☐ yes

☐ no

If you answered yes, answer the following questions:

(A) What date did you present the claim? _____

(B) Did you receive a decision and, if yes, what was the date of the decision?

If you answered no, please explain why you have not submitted your claim:

- _____
- _____
- _____
- _____
- (17) Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and brief summary of the facts have not been presented on the form application, the Court will not consider your grounds.*

GROUND ONE:

Denial of Effective Assistance of Counsel: 6th Amendment
& TEXAS CONST. ART. I SEC 10 & 19 Violation

FACTS SUPPORTING GROUND ONE:

COUNSEL CONCEDED GUILTY WHEN IN FACT, DEFENDANT PLEAS "NOT GUILTY"
AND TOLD COUNSEL OVER AND OVER AGAIN THAT OFFICER WEBB DID NOT
TAKE A PERCY VITAL LICENSE OFF OF DEFENDANT'S POSSESSION NOR DID
HE SEE ANYONE; COUNSEL FAILED TO THOROUGHLY INVESTIGATE THE FACTS
OF THE CASE, IN WHICH THROUGH INVESTIGATION COUNSEL WOULD HAVE
OBJECTED TO INADMISSIBLE HEARSAY FROM STATE'S WITNESSES WHERE THE
AMOUNT OF EVIDENCE THE JURY WAS IMPROPERLY ALLOWED TO CONSIDER
WAS "OVERWHELMING". IN ADDITION, FAILURE TO OBJECT TO INADMISSIBLE
EVIDENCE IS FAILURE TO PRESERVE ERROR WHICH CLEARLY PREJUDICED THE
DEFENDANT; COUNSEL FAILED TO PRESENT EVIDENCE IN DEFENDANT'S BEHALF
IN WHICH, DEFENDANT HAD RECEIPTS FROM PERSONAL CREDIT CARDS THAT
WAS TAKEN OFF OF HIS POSSESSION AT TIME OF ARREST THAT WOULD SHOW
A CLEAR ALIBI DURING THE TIME SPAN OF THE ALLEGED EVENTS TOOK PLACE;
COUNSEL FAILED TO THOROUGHLY REVIEW PROSECUTOR'S FILE AS TO STATE'S
WITNESSES AND ALLEGED EVENTS AND LOCATION OF SAID EVENTS; COUNSEL
FAILED TO FILE ANY PRE-TRIAL MOTIONS; COUNSEL FAILED TO FILE A
"BASTON MOTION" WHEN PROSECUTOR MADE PREJUDICIAL REMARKS TO THE
(CONT)

(CON'T)

GROUND: ONE

DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL: 6th

AMENDMENT: TEXAS CONST. ART. I SEC. 10:19 VIOLATION

FACTS SUPPORTING GROUND:

ENTIRE JURY POOL AND USED ALL ITS STRIKES TO ELIMINATE ALL POTENTIAL
AFRICAN-AMERICANS JURORS FROM THE POTENTIAL POOL LEAVING THE
DEFENDANT WITH A JURY MADE UP OF ALL NON-AFRICAN AMERICANS;
COUNSEL DID NOT CONDUCT AN INDEPENDENT INVESTIGATION TO ALLEGED
EVENTS SUCH AS SIGNED CHECK-IN RECEIPT FOR HOUSTON HOTEL STAY, PHONE
RECORD FROM HOUSTON HOTEL ROOM 1202, DEAN ALAC CREDIT CARD STATEMENT
BANK POLICY FOR CONFERENCE CONFERENCE CALL TO RECEIVE AN APPROVAL CODE
TO AUTHORIZE PAYMENT, WHO BESIDES DEAN ALAC HAD CONSENT TO USE
SAID CREDIT CARD, PROPERTY RECOVERED AT TIME OF ARREST AND POLICE REPORT
WHO CHECKED OUT OF HOUSTON HOTEL AND PAID FOR INCIDENTAL CHARGES AT
SAID ROOM 1202 AND PROPERTY LEFT IN ROOM, PERCY VITAL FILED POLICE
REPORT, SIGNED CHECK-IN RECEIPT AT ATLANTA, GA. HOTEL, SIGNED YES EV
RECEIPT FROM ATLANTA, GA. FOR SAID DIAMONDS; COUNSEL DID NOT
INTERVIEW STATE'S WITNESSES WHICH IS CLEARLY SHOWN THROUGH COURT
RECORD WHEN COUNSEL QUESTION TO STATE'S WITNESSES WAS "THIS
IS THE FIRST TIME ME AND YOU SPOKE"; COUNSEL FAILED TO REQUEST
BURDEN OF PROOF REGARDING EXTRANEOUS ACTS THAT ALLEGEDLY TOOK

**WHEREFORE, APPLICANT PRAYS THAT THE COURT GRANT APPLICANT
RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.**

(CON'T)

(CONT)

GROUND [REDACTED]: ONE

DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL: 6th
AMENDMENT & TEXAS CONST. ART. I SEC 10 & 19 VIOLATIONS

FACTS SUPPORTING GROUND THREE:

TRIAL IN ATLANTA, GA.; COUNSEL FAILED TO OBJECT TO VIOLATION
OF 6th AMENDMENT CONFRONTATION CLAUSE WHERE CARD HOLDER
DEAN ALAC WAS NOT PRESENT TO TESTIFY AND TESTIMONIAL
STATEMENTS WERE MADE DURING TRIAL WITH NO OPPORTUNITY
TO CROSS-EXAMINE; COUNSEL UNPROFESSIONALISM WAS NOT A
SOUND TRIAL STRATEGY BUT AN ECONOMICAL ONE.

GROUND TWO:

No Evidence or Insufficient Evidence: 14th

Amendment Violation

FACTS SUPPORTING GROUND TWO:

As stated in the 1st District of Appeals opinion page 8 & 9 "the record reflects that the complainant was not harmed by the incident and the evidence fails to prove that the appellant intended to harm the complainant". In which, intent to harm is an element to prove the crime of fraudulent use/possession of identifying info; state did not show credit card was used without effective consent of card holder, DEAN Alac when card holder was not present at trial to testify and no credit card statement or signed affidavit was ever introduced into evidence at defendant's trial; there were no voice recordings of alleged conversations between defendant and diamond.com employees Smith and Hendricks who are not voice recognition experts; No evidence that defendant possessed or obtained DEAN Alac credit card or credit card info. No wallet was introduced into evidence because there never was a wallet taken off of defendant's possession; Officer Webb did not take a Percy Vital license from defendant's possession nor did he see anyone. When in fact, he was the arresting officer who search defendant and recovered all of his property that did not contain a DEAN Alac credit card or a Percy Vital license;

(CONT)

(CON'T)

GROUND XXXX: Two

NO EVIDENCE OR INSUFFICIENT EVIDENCE:

14th Amendment Violation

FACTS SUPPORTING GROUND FOUR:

THE STATE DID NOT PRESENT ANY EVIDENCE AT TRIAL THAT DIAMONDS
WERE DELIVERED TO A HOTEL IN ATLANTA, GA. OR THAT DEAN ALAC'S
CREDIT CARD WAS CHARGED FOR SAID DIAMONDS WHEN THE CREDIT
CARD WAS DECLINE TWICE AND NO BANK IN AMERICA WILL ALLOW
YOU TO GET AN APPROVAL CODE OVER THE PHONE DURING A
CONFERENCE CALL !!; NO EVIDENCE WAS INTRODUCED AT TRIAL FOR
HOTEL STAY IN ATLANTA, GA; NO FED EX RECEIPT WAS EVER INTRODUCED
INTO EVIDENCE AT TRIAL OF SAID DELIVERY OF DIAMONDS IN
ATLANTA, GA; NO SIGNED HOTEL CHECK-IN RECEIPT FOR SAID HOUSTON
HOTEL STAY; NO TRAVELocity RECEIPT FOR SAID PAYMENT FROM DEAN
ALAC'S CREDIT CARD FOR HOUSTON HOTEL STAY; STATE WITNESS
HOMewood Suites manager Mr. Gabbert admitted that
EVIDENCE HAD BEEN PURGED; DEFENDANT NEVER PRESENTED PERCY
VITAL LICENSE TO ANYONE IN THE ALLEGED OFFENSE OR POSSED
SAID LICENSE; THE STATE'S CASE AGAINST THE DEFENDANT WAS
ALL INSE DIXIT....

GROUND THREE:

Prosecutor failed to disclose evidence favorable to the defendant:

14th Amendment Violation

FACTS SUPPORTING GROUND THREE:

State failed to turn over to defendant Percy Vitol's filed
police report made for stolen license and identity theft;
State failed to turn over to defendant card holder DEAN
Alac's credit card statement, fraud report, and interview
notes (statements); State withheld officer Webb's filed police
report ~~at~~ made on date of arrest; State failed to turn over
signed Ted Ex receipt and hotel stay from alleged events
that took place in Atlanta, Ga.; Prosecutor did not give
defense signed check-in receipt and phone records made
from room 1202 at Houston Homewood Suites Hotel; Prosecutor
did not turn ~~of~~ over to defense travelocity receipt for
Houston Hotel stay allegedly paid for by Dean Alac's
credit card, Prosecutor did not make available to defendant
interview notes (statements) of state witnesses

GROUND FOUR:

Right to Confrontation of Accuse: 6th
Amendment Violation

FACTS SUPPORTING GROUND FOUR:

Testimonial statements were
made at trial by state's witnesses to establish past events
for card holder DEAN Alac's lack of consent. When in
fact, defendant had no prior opportunity to cross-
examine card holder DEAN Alac at trial where he was
not present to testify or available for cross-examination.
In addition, DIANA Alac (wife) also was not present to testify
or available for cross-examination when in fact, through
state witnesses testimony the inference can be drawn
that more than DEAN Alac had authorization to use said
credit card....

VERIFICATION

(Complete EITHER the "oath before a notary public" OR the "inmate's declaration.")

OATH BEFORE NOTARY PUBLIC

STATE OF TEXAS, COUNTY OF _____.

_____, BEING FIRST DULY SWORN, UNDER OATH,

SAYS: THAT HE/SHE IS THE APPLICANT IN THIS ACTION AND KNOWS THE
CONTENT OF THE ABOVE APPLICATION AND ACCORDING TO APPLICANT'S
BELIEF, THE FACTS STATED IN THE APPLICATION ARE TRUE.

Signature of Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____.

Signature of Notary Public

INMATE'S DECLARATION

I, James H. Hayes, BEING PRESENTLY
INCARCERATED IN JOE KEGAN'S STATE JAIL, DECLARE UNDER
PENALTY OF PERJURY THAT, ACCORDING TO MY BELIEF, THE FACTS STATED IN
THE APPLICATION ARE TRUE AND CORRECT.

SIGNED ON February 2, 2009.

James H. Hayes
Signature of Applicant

Signature of Attorney

Attorney Name: _____

SBOT Number: _____

Address: _____

Telephone: _____



LOREN JACKSON
HARRIS COUNTY DISTRICT CLERK

February 4, 2009

JAMES HAYES
#1418537 JOE KEGANS STATE JAIL
707 TOP STREET
HOUSTON, TEXAS 77002

RE: CAUSE #1083786-B
185th District Court

Dear Applicant:

Your post conviction application for Writ of Habeas Corpus was received and filed on 02-03-09. Article 11.07 of the Texas code of Criminal Procedure affords the State 15 days in which to answer the application after having been served with said application. After the 15 days allowed the State to answer the application, the Court has 20 days in which it may order the designation of issues to be resolved, if any. If the Court has not entered an order designating issues to be resolved within 35 days after the State having been served with the application, the application will be forwarded to the Court of Criminal Appeals for their consideration pursuant to Article 11.07, Sec. 3 (c) of the Texas Code of Criminal Procedure.

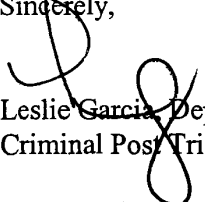
The records of the office reflect the following:

<u>CAUSE NO.</u>	<u>PETITION FOR WRIT OF HABEAS CORPUS</u>	<u>DISPOSITION</u>
------------------	---	--------------------

1083786-A	12-31-08	DISMISSED
------------------	-----------------	------------------

All future correspondence should indicate the above listed cause number.

Sincerely,


Leslie Garcia, Deputy
Criminal Post Trial

CC: District Attorney
Judge, Presiding Court

PATRICIA R. LYKOS
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

February 4, 2009

Loren Jackson, District Clerk
Harris County, Texas
1201 Franklin
Houston, Texas 77002

Re: Ex parte JAMES HAYES
No. 1083786-B in the 185th
District Court of Harris County, Texas
Filing date: 02-03-09

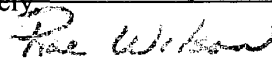
Date copy of writ delivered to District Attorney's Basket: FEB 04 2009
By: Leslie Garcia

Dear Sir:

I hereby acknowledge receipt of a copy of the above-captioned post conviction application for writ of habeas corpus, filed pursuant to Article 11.07 of the Texas Code of Criminal Procedure. Therefore, I waive service by certified mail as provided therein.

I understand that I have 15 days from the date received to answer.

Sincerely,



FEB 04 2009

Date Received

Assistant District Attorney
Harris County, Texas

1201 Franklin Street, Suite 600, Houston, Texas 77002-1923

27/998
997

00016

APP032

FILED

Loren Jackson
District Clerk

FEB 19 2009

Cause No. 1083786-B

Time: _____

EX PARTE

§

IN THE 185TH DISTRICT COURT

By _____

Harris County, Texas

§

OF

JAMES HAYES,
Applicant

§

HARRIS COUNTY, TEXAS

RESPONDENT'S ORIGINAL ANSWER

Respondent, the State of Texas, through its Assistant District Attorney for Harris County, files this, its original answer in the above-captioned cause, having been served with an application for writ of habeas corpus pursuant to Tex. Crim. Proc. Code art. 11.07 § 3 (Vernon Supp. 2007), and would show the following:

I.

Applicant was confined pursuant to the judgment and sentence of the 185th District Court of Harris County, Texas, in cause number 1083786 (the primary case), where the applicant was convicted by a jury for the felony offense of fraudulent use/possession of identifying information. The jury assessed punishment, unenhanced, at two (2) years confinement in the State Jail as well as a \$10,000 fine.

The First Court of Appeals delivered an opinion affirming Applicant's conviction in the primary case on May 1, 2008. *Hayes v. State*, 01-07-00239-CR, 2008 WL 1904057 (Tex. App. – Houston [1st Dist.] May 1, 2008, pet. ref'd) (not designated for publication).

The Court of Criminal Appeals refused Applicant's petition for discretionary review on November 5, 2008.

Applicant's previous application for writ of habeas corpus, cause number 1083786-A, was dismissed on December 31, 2008.

: 00017

APP033

II.

Respondent denies the factual allegations made in the instant application, except those supported by official court records, and offers the following additional reply:

Reply to Applicant's Grounds for Relief

The applicant alleges in several grounds for relief that he was denied the effective assistance of counsel, that there was prosecutorial misconduct, that he was denied the right to confront witnesses, and that there was insufficient evidence to support his conviction.

However, Applicant is no longer confined pursuant to his conviction in the primary case. Article 11.07 establishes the procedure to seek relief from the judgment of a final, non-death felony conviction. Confinement is a prerequisite to an application for post-conviction habeas relief. *Ex parte Renier*, 734 S.W.2d 349, 351 (Tex. Crim. App. 1987). According to the records of TDCJ-ID, the applicant is no longer confined pursuant to his conviction in the primary case, having discharged his sentence on February 11, 2009. *See State's Exhibit A, Affidavit of Donald Cohn*.

Because Applicant is no longer confined pursuant to his conviction in the primary case, the applicant has failed to invoke the proper jurisdiction of Article 11.07 and is not entitled to relief thereunder. Therefore, the grounds set forth in the instant writ application should be dismissed.

III.

Applicant raises questions of law and fact that can be resolved by the Court of Criminal Appeals upon review of official court records and without need for an evidentiary hearing.

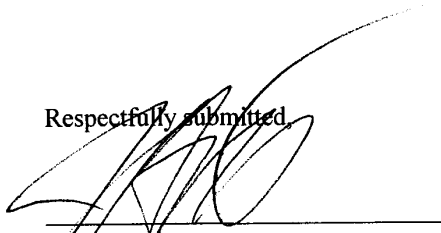
IV.

Service has been accomplished by sending a copy of this instrument to the following last known address:

Mr. James Hayes
1418537, Joe Kegans State Jail Unit
707 Top Street
Houston, TX 77002

SIGNED this 19 day of February, 2009.

Respectfully submitted,



JOSHUA HILL
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 755-6657
Texas Bar I.D. #24049201

EX PARTE

§

JAMES HAYES,
Applicant

§

§

AFFIDAVIT OF DONALD COHN

BEFORE ME, the undersigned authority, on this day, personally appeared DONALD COHN, who being duly sworn upon his oath did depose and state:

"My name is DONALD COHN. I am over eighteen years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

“I am employed as an Investigator with the Harris County District Attorney’s Office and am presently assigned to the Post-Conviction Writs Division. In my official capacity as an Investigator and at the request of the Harris County District Attorney’s Office, I researched information on the Texas Department of Criminal Justice – Institutional Division (TDCJ-ID) records of JAMES HAYES.

“According to official TDCJ-ID records, JAMES HAYES was received by the Joe Kegans State Jail Unit in connection with his sentence in cause number 1083786. Those records also show that Mr. Hayes discharged his sentence on February 11, 2009, and that Mr. Hayes is no longer confined pursuant to his conviction in cause number 1083786.”

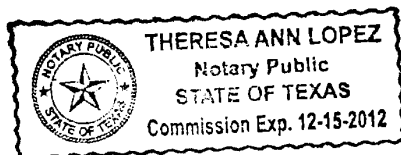
"The above affidavit is true and correct to the best of my knowledge."


Signed this 19 day of February, 2009.

Donald Cohn

Donald Cohn
Investigator
Harris County District Attorney's Office
Post-Conviction Writs Division

Sworn to and Subscribed before me on this 19TH day of FEBRUARY 2009.




NOTARY PUBLIC
STATE OF TEXAS

APP036



LOREN JACKSON
HARRIS COUNTY DISTRICT CLERK

February 19, 2009

JAMES HAYES
#1418537 JOE KEGANS STATE JAIL
707 TOP STREET
HOUSTON, TEXAS 77002

To Whom It May Concern:

Pursuant to Article 11.07 of the Texas Code of Criminal Procedure, please find enclosed copies of the documents indicated below concerning the Post Conviction Writ filed in cause number 1083786-B in the 185th District Court.

- ☒ State's Original Answer Filed February 19, 2009
- ☐ Affidavit ,
- ☐ Court Order Dated ,
- ☐ Respondent's Proposed Order Designating Issues and Order For Filing Affidavit.
- ☐ Respondent's Proposed Findings of Fact and Order ,
- ☐ Other

Sincerely,


Leslie Garcia, Deputy
Criminal Post Trial

lag

Enclosure(s) – RESPONDENT'S ORIGINAL ANSWER

FILED

Loren Jackson
District Clerk

FEB 19 2009

NO. 1083786-B

Time: _____
By: [Signature]
Deputy

EX PARTE

§

IN THE 185TH DISTRICT COURT

§

OF

JAMES HAYES,
Applicant

§

HARRIS COUNTY, TEXAS

**RESPONDENT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Court has considered the application for writ of habeas corpus, the Respondent's Answer, and official 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 relief requested be denied because:

1. The Court finds, based on the credible affidavit of Donald Cohn, that Applicant is no longer confined pursuant to his conviction in cause number 1083786, having discharged his sentence on February 11, 2009. *See Affidavit of Donald Cohn.*

2. Because Applicant is no longer confined pursuant to his conviction in the primary case, Applicant's instant habeas claims should be dismissed. *Ex parte Renier*, 734 S.W.2d 349 (Tex. Crim. App. 1987).

ORDER

THE CLERK IS ORDERED to prepare a transcript of all papers in cause number 1083786-B and transmit same to the Court of Criminal Appeals as provided by Tex. Code Crim. Proc. Ann. art. 11.07 (Vernon Supp. 2007). The transcript shall include certified copies of the following documents:

- A. the application for writ of habeas corpus;
- B. the Respondent's answer;

: 00022

APP038

- C. the Court's order;
- D. the indictment (or information), judgment and sentence, and the docket sheets in cause number 1083786;
- E. the appellate OPINION/RECORD in cause number 1083786;
- F. Respondent's Proposed Findings of Fact, Conclusions of Law and Order; and
- G. Applicant's Proposed Findings of Fact (if any).

THE CLERK is further ORDERED to send a copy of this order to the last known address of Applicant, James Hayes, #1418537, Joe Kegans State Jail Unit, 707 Top Street, Houston, TX 77002, and to counsel for Respondent, JOSHUA HILL, 1201 Franklin, Suite 600, Houston, Texas 77002.

By the following signature, the Court adopts the Respondent's Proposed Findings of Fact, Conclusions of Law and Order.

Signed on this 23 day of Feb, 2008.



JUDGE PRESIDING



LOREN JACKSON
HARRIS COUNTY DISTRICT CLERK

February 23, 2009

PATRICIA R. LYKOS
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

To Whom It May Concern:

Pursuant to Article 11.07 of the Texas Code of Criminal Procedure, please find enclosed copies of the documents indicated below concerning the Post Conviction Writ filed in cause number 1083786-B in the 185th District Court.

- ☐ State's Original Answer Filed ,
- ☐ Affidavit ,
- ☐ Court Order Dated ,
- ☐ Respondent's Proposed Order Designating Issues and Order For Filing Affidavit.
- ☒ Respondent's Proposed Findings of Fact and Order February 23, 2009
- ☐ Other

Sincerely,

Leslie Garcia, Deputy
Criminal Post Trial

lag

Enclosure(s) – RESPONDENT'S PROPOSED FINDINGS OF FACT AND ORDER



LOREN JACKSON
HARRIS COUNTY DISTRICT CLERK

February 23, 2009

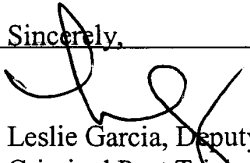
JAMES HAYES
#1418537 JOE KEGANS STATE JAIL
707 TOP STREET
HOUSTON, TEXAS 77002

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- ☐ Court Order Dated ,
- ☐ Respondent's Proposed Order Designating Issues and Order For Filing Affidavit.
- ☒ Respondent's Proposed Findings of Fact and Order February 23, 2009
- ☐ Other

Sincerely,


Leslie Garcia, Deputy
Criminal Post Trial

lag

Enclosure(s) – RESPONDENT'S PROPOSED FINDINGS OF FACT AND ORDER

ESTATE OF TEXAS VS.

NAME: HAYES, JAMES
 DCC# 185 CAUSE NO: 108378601010
 OFFENSE: FRAUD/USE/POSS ID IN FS
 FILED: 09/08/06 BAIL: 002000

GENERAL ORDERS OF COURT

FELONY COMPLAINT FILED SEP 08 2006

Preliminary Assigned Court Appearance: SEP 11 2006

SEP 11 2006 Defendant THA appeared RIS 9/26/06 ARS.
 with/without counsel
 SEP 15 2006 FELONY INDICTMENT

SEP 26 2006 Defendant Hayes, James appeared RIS 10/10/06 ARS.
 with/without counsel James

OCT 10 2006 Defendant Andrew Louisie appeared RIS 10/31/06 PRGR
 with/without counsel
 OCT 31 2006 Defendant A. Lannie appeared RIS 1/26/07 CK fac stat
 with/without counsel 1/29/07 STR

JAN 26 2007 CLC appeared RIS 1/31/07 QTR
 Defendant Hayes, James
 with/without counsel James

JAN 31 2007 Defendant Hayes, James appeared RIS 2/5/07 JTR
 with/without counsel James

FEB 05 2007 CLC

000026

APP042

GENERAL ORDERS OF THE COURT

FEB 06 2007

R/S By Computer 2/9/07

FEB 09 2007

R/S By Computer 2/9/07

FEB 12 2007

Defendant

with/without counsel

appeared

R/S 2/13/07 JTR

FEB 13 2007

C/O

FEB 14 2007

C/O

FEB 15 2007

Defendant

with/without counsel

appeared

R/S 2/19/07 JTR

At

9:00 A

m. the Bailiff called me

Defendant's name at the Courthouse door.

BRAND FORFEITED, ALIAS VIOLATION

New Bail fixed in the sum of \$

NOBOD

FEB 20 2007

R/S By Computer 2/26/07

FEB 26 2007

R/S 2/28/07 P/c

THE STATE OF TEXAS VS.

Nayes, James

10833786

18575

GENERAL ORDERS OF COURT

FEB 28 2007

Defendant Nayes appeared in person

with Counsel A. Starnie

Court Reporter K. Taylor appeared for the State

Judge Presiding S. Brown

@ 10:40 am. a panel of 63 jurors prospective were seated, welcomed, & admonished as to the law. @ 11:17 am the panel was excused for a break. @ 11:32 am the state began voir dire. @ 11:58 am the defense began voir dire. @ 12:40 pm the strike began. @ 1:12 pm the jury was seated & then excused for lunch. @ 2:03 pm the jury was seated & sworn.

Defendant duly arraigned according to law in open court pleaded Not Guilty

@ 2:07 pm the state made an opening statement. @ 2:19 pm the state began testimony. @ 2:45 pm the jury was admonished & excused & asked to return 3/1/07 per 9:30 am.

MAR 01 2007 Defendant Nayes appeared in person with Counsel A. Starnie

Court Reporter K. Taylor appeared for the State

Judge Presiding S. Brown

000028

APP044

GENERAL ORDERS OF THE COURT

MAR 01 2007 @ 9:58 am The jury was seated & testimony resumed. @ 11:13 am the jury

was excused after a break. @ 11:37 am the jury was seated & testimony resumed.

@ 12:24 pm the jury was excused for lunch. @ 2:20 pm the jury was seated &

testimony resumed. @ 3:09 pm the jury was excused after a break. @ 3:35 pm the

jury was seated & testimony resumed. @ 4:38 pm the State rested & the defense

also rested, they then closed. They then were excused and asked to return 3/2/07 for

9:30 am.

MAR 02 2007 Defendant Shirley appeared in person

with Counsel A. Pernie

Court Reporter L. Stogard appeared for the State

Judge Presiding S. Brown

@ 9:33 am the jury was seated & the court's charge was read. @ 9:42 am the

defense made their closing arguments. @ 9:55 am the State made their closing argu-

ments. @ 10:12 am the jury was excused to begin deliberations. @ 11:06 am the jury was

seated with a verdict of "GUILTY". @ 11:07 am the State made an opening statement

for the punishment phase. @ 11:08 am the defense made an opening statement & @

00029

00030

THE STATE OF TEXAS VS.

Hayes, James

1083786

18545

GENERAL ORDERS OF COURT

MAR 02 2017 11:09am the state began testimony. @ 11:18am the state & defense rested & closed. @ 11:30 am the court's charge was read. @ 11:27am the defense made a closing statement & @ 11:28am the state made their closing statement. @ 11:37am the jury was excused to begin deliberations. @ 11:45am the jury was seated & returned with a sentence of 2 yrs STJ-\$10,000 fine of Appeal Filed

B
THE STATE OF TEXAS
VS.

JAMES HAYES

MISSOURI CITY, TX

SPN: **01142559**

DOB: **70**

DATE PREPARED: 9/8/2006

D.A. LOG NUMBER: **1200889**

CJIS TRACKING NO.: **903747201X-A002**

BY: RM DA NO: **001982276**

AGENCY: **HPD**

O/R NO: **135360306**

ARREST DATE: **9-7-06**

NCIC CODE: **2604 01**

262nd

RELATED CASES: **ONE OTHER FEL**

FELONY CHARGE: **FRAUDULENT USE/POSSESSION OF IDENTIFYING INFORMATION**

CAUSE NO:

1083786

1083786

HARRIS COUNTY DISTRICT COURT NO:

185

FIRST SETTING DATE:

BAIL: **62000**

PRIOR CAUSE NO:

277 53
Vol. Page **AXGM**
5000

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

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, **JAMES HAYES**, hereafter styled the Defendant, heretofore on or about **SEPTEMBER 7, 2006**, did then and there unlawfully, intentionally and knowingly OBTAINS, POSSESSES, AND USES identifying information of **PERCY VITAL**, namely, NAME, DATE OF BIRTH AND GOVERNMENT-ISSUED IDENTIFICATION NUMBER without the consent of **PERCY VITAL** and with intent to harm and defraud another.

CHARLES BACARISSE
District Clerk
SEP 15 2006
Harris County, Texas
By Deputy

AGAINST THE PEACE AND DIGNITY OF THE STATE.

FOREMAN

262nd

[Signature]
FOREMAN OF THE GRAND JURY

IMAGED

RECORDER'S MEMORANDUM
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INDICTMENT

000031

APP047



CASE NO. 1083786
INCIDENT NO./TRN: 903747201X-A002

THE STATE OF TEXAS

v.

JAMES HAYES

STATE ID NO.:TX04418157

§
§
§
§
§
§
§

IN THE 185TH DISTRICT

COURT

HARRIS COUNTY, TEXAS

p2

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: HON. SUSAN BROWN

Date Judgment Entered: 3/2/2007

Attorney for State: K. TAYLOR

Attorney for Defendant: A. LANNIE

Offense for which Defendant Convicted:

FRAUDULENT USE/POSSESSION OF IDENTIFYING INFORMATION

Charging Instrument:

INDICTMENT

Statute for Offense:

N/A

Date of Offense:

9/7/2006

Degree of Offense:

STATE JAIL FELONY

Plea to Offense:

NOT GUILTY

Verdict of Jury:

GUILTY

Findings on Deadly Weapon:

N/A

Plea to 1st Enhancement

Paragraph: N/A

Plea to 2nd Enhancement/Habitual

Paragraph: N/A

Findings on 1st Enhancement

Paragraph: N/A

Findings on 2nd

Enhancement/Habitual Paragraph: N/A

Punished Assessed by:

JURY

Date Sentence Imposed:

3/2/2007

Date Sentence to Commence:

3/2/2007

Punishment and Place of Confinement:

2 YEARS STATE JAIL DIVISION, TDCJ

THIS SENTENCE SHALL RUN CONCURRENTLY.

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

Fine:

\$ 10,000.00

Court Costs:

\$271.00

Restitution:

\$ N/A

Restitution Payable to:

☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

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

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

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

From 9/8/2006 to 9/9/2006

From 2/14/2007 to 3/2/2007

From to

Time

Credited:

From to

From to

From to

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

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 Harris County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

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

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 sworn. 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.

RECORDER'S MEMORANDUM
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Punishment Assessed by Jury / 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, State Jail 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**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

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

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

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

Furthermore, the following special findings or orders apply:

Signed and entered on March 2, 2007

x S. Brown
HON. SUSAN BROWN
JUDGE PRESIDING

Ntc Appeal Filed: MAR 02 2007 Mandate Rec'd: 12/29/2006 Affirmed

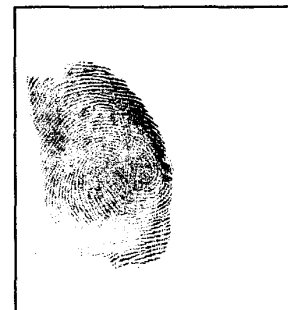
After Mandate Received, Sentence to Begin Date is: 03/02/07

Def. Received on 03/02/07 at 1155 AM PM

By: G. Blahuta #1630, Deputy Sheriff of Harris County

Clerk: chaves 1/4/999 SW
LCBT=CH

Time
Jail Credit to Remain
the SAME



Right Thumbprint



FILED

Loren Jackson
District Clerk

DEC 29 2008

Time: 4:30

By: HV

Harris County, Texas

Deputy

**Court of Appeals
First District of Texas**

MANDATE

TO THE 185TH DISTRICT COURT OF HARRIS COUNTY, GREETINGS:

Before our Court of Appeals for the First District of Texas, on May 1, 2008, the cause upon appeal to revise or reverse your judgment between

JAMES HAYES, APPELLANT

NO. 01-07-00239-CR V.

THE STATE OF TEXAS, APPELLEE

Appeal from the 185th District Court of Harris County, Texas. (Tr. Ct. No. 1083786) Panel consists of Justices Taft, Keyes, and Alcalá. Opinion delivered by Justice Alcalá.

Was determined; and therein our said Court made its order in these words:

"The cause heard today by the Court is an appeal from the judgment signed by the court below on March 2, 2007. After submitting the cause and inspecting the record of the court below, it is the opinion of this Court that there was no reversible error in the judgment. It is, therefore, **CONSIDERED, ADJUDGED, and ORDERED** that the judgment of the court below be, in all things, **affirmed**.

It is further **ORDERED** that this decision be certified below for observance.

Judgment rendered by panel consisting of Justices Taft, Keyes, and Alcalá."

RECORDER'S MEMORANDUM
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APP050

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WHEREFORE, WE COMMAND YOU to observe the order of our said Court of Appeals for the First District of Texas in this behalf, and in all things have it duly recognized, obeyed, and executed.

DEC 23 2008



M. KARINNE MCCULLOUGH
CLERK OF THE COURT

: 00035

APP051

Opinion issued May 1, 2008

FILED
THERESA CHANG
DISTRICT CLERK
HARRIS COUNTY, TEXAS
08 MAY -1 PM 4:25
BY _____
DEPUTY



In The
Court of Appeals
For The
First District of Texas

NOS. 01-07-00238-CR
01-07-00239-CR

JAMES HAYES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause Nos. 1083785, 1083786

Handwritten signature

: 00036

APP052

MEMORANDUM OPINION

Appellant, James Hayes, appeals from the trial court's judgments convicting him for credit card abuse and for fraudulent use or possession of identifying information.¹ See TEX. PEN. CODE ANN. § 32.31 (Vernon Supp. 2007) (credit card abuse); *Id.* § 32.51 (fraudulent use or possession of identifying information). The jury assessed appellant's punishment at two years in state jail and a \$10,000 fine for each case. In three issues, appellant challenges the legal and factual sufficiency of the evidence to support his convictions and the effectiveness of his trial counsel. We conclude that the evidence is legally and factually sufficient to support appellant's convictions and that appellant has not met his burden to show ineffective assistance of counsel. We affirm the trial court's judgments.

¹ The credit card abuse case is appellate cause number 01-07-00238-CR and trial court cause number 1083785. The fraudulent use of identifying information case is appellate cause number 01-07-00239-CR and trial court cause number 1083786.

Background

On August 23, 2006, appellant placed an order for a set of diamond earrings valued at \$5,031 from Diamonds.com, an online jeweler operating out of Las Vegas. Appellant purchased the earrings with a MasterCard issued to Dean Alac. Appellant requested an expedited delivery of the earrings to P. Vital, care of Diana Alac, at a hotel in Atlanta, Georgia.

Verisign, the company that screens credit card purchases for Diamonds.com, initially declined the order, informing appellant of the decision by email. When appellant called to inquire about the order, Christine Smith, a customer service representative, told him to call his bank. Smith later received another call from appellant, who said the issue was resolved. However, the card was declined a second time. Smith set up a conference call between the issuing bank, herself, and appellant to determine if the transaction could be authorized. During this call, appellant was able to provide the bank with answers to security questions, such as the last four digits of Dean's Social Security number and Dean's mother's maiden name. During his conversations with Smith, appellant mentioned that the earrings were a gift for his wife who was visiting P. Vital, a relative. Smith, knowing that most people sending gifts do not want an invoice to arrive with the gift purchase, mailed the invoice to the billing address for Dean's credit card in California, not to the Atlanta address.

Five days after the order was placed, appellant telephoned Diamonds.com and spoke to Smith, who recognized his voice. Appellant told Smith that his wife was happy with the gift, stating that he wanted to place another order. Appellant ordered a single platinum and diamond earring for \$4,487, which he requested to be shipped to Dean Alac in Houston, Texas.

Two days later, Diamonds.com received a call from a woman who identified herself as Diana Alac. She stated that she received the invoice for the set of diamond earrings and that neither she nor her husband, Dean Alac, had placed the order. Dean called Diamonds.com later that day and spoke to Sherri Hendricks, the vice-president of operations. He told Hendricks that he had not placed any orders with the company and had not ever heard of it before. When Hendricks asked him if he had placed a second order for an earring, Dean replied that he had never placed an order with the company. Hendricks advised him to report the incident as fraud. As a result of the communications with Dean and his wife, Hendricks advised the company's New York office not to ship the single platinum and diamond earring.

Hendricks contacted the Atlanta hotel to which the first order had been shipped. Hendricks learned that someone using the name Percy Vital had stayed there but had since checked out. Hendricks contacted the Atlanta police, who advised her to contact the Houston police because the second order was to be shipped to Houston.

Hendricks complied by contacting the Houston police.

Hendricks agreed to assist the police in setting up a sting operation to attempt to arrest the person who had made the orders. During that time, Hendricks spoke to appellant on the telephone at least five times and also communicated with him through several emails. At one point, appellant directed Hendricks to ship his order to Houston "attn: p. vital houlahans restaurant." Hendricks informed appellant that the order would be shipped on September 6, 2006, via overnight FedEx delivery, to the Hilton Homewood Suites on Sage Road in Houston.

On September 7, 2006, an undercover Houston police officer who was assigned to the financial crimes unit went to the Homewood Suites on Sage Road. The officer, who was wearing a FedEx uniform and carrying a FedEx box, entered the hotel lobby. When the manager saw the undercover officer, he told him that a client was waiting for him around the corner, wearing a linen suit.

As appellant stopped him, the officer asked if appellant was Dean Alac. Appellant acknowledged that he was the recipient of the package and signed a receipt for delivery of the package by signing Percy Vital's name. The officer identified himself as a Houston police officer and arrested appellant.

After arresting appellant, the officer inventoried the contents of appellant's wallet. In appellant's wallet was a Texas driver's license issued to Percy Vital. A

driver's license check revealed that the license had been reported stolen by Vital, who reported identity theft in 2005. Vital stated that he did not know appellant and that appellant did not have permission to be in possession of his license.

Sufficiency of the Evidence

In his first two issues in each of the cases, appellant challenges the legal and factual sufficiency of the evidence to support his convictions.

A. Standard of Review

1. Legal Sufficiency

In a legal sufficiency review, we consider the entire trial record to determine whether, viewing the evidence in the light most favorable to the verdict, a rational jury could have found the accused guilty of all essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89 (1979); *Vodochodsky v. State*, 158 S.W.3d 502, 509 (Tex. Crim. App. 2005). In conducting our review of the legal sufficiency of the evidence, we do not reevaluate the weight and credibility of the evidence; rather, we ensure only that the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993).

2. Factual Sufficiency

When conducting a factual-sufficiency review, we view all of the evidence in a neutral light. *Ladd v. State*, 3 S.W.3d 547, 557 (Tex. Crim. App. 1999). We will set the verdict aside only if (1) the evidence is so weak that the verdict is clearly wrong and manifestly unjust or (2) the verdict is against the great weight and preponderance of the evidence. *Johnson v. State*, 23 S.W.3d 1, 10–11 (Tex. Crim. App. 2000). Under the first prong of *Johnson*, we cannot conclude that a conviction is “clearly wrong” or “manifestly unjust” simply because, on the quantum of evidence admitted, we would have voted to acquit had we been on the jury. *Watson v. State*, 204 S.W.3d 404, 417 (Tex. Crim. App. 2006). Under the second prong of *Johnson*, we cannot declare that a conflict in the evidence justifies a new trial simply because we disagree with the jury’s resolution of that conflict. *Id.* Before finding that evidence is factually insufficient to support a verdict under the second prong of *Johnson*, we must be able to say, with some objective basis in the record, that the great weight and preponderance of the evidence contradicts the jury’s verdict. *Id.* In conducting a factual-sufficiency review, we must also discuss the evidence that, according to the appellant, most undermines the jury’s verdict. *See Sims v. State*, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003).

We may not re-weigh the evidence and substitute our judgment for that of the

fact-finder. *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000). The fact-finder alone determines what weight to place on contradictory testimonial evidence because that determination depends on the fact-finder's evaluation of credibility and demeanor. *Cain v. State*, 958 S.W.2d 404, 408–09 (Tex. Crim. App. 1997). As the determiner of the credibility of the witnesses, the fact-finder may choose to believe all, some, or none of the testimony presented. *Id.* at 407 n.5.

B. Credit Card Abuse

In the appeal of the conviction for credit card abuse, appellant contends that the evidence is legally and factually insufficient to support the conviction. Appellant asserts that (1) Dean did not “testify that the appellant did not have his consent to use MasterCard”; (2) there were no recordings of the impostor Dean Alac’s voice; and (3) the email address used in connection with the orders from Diamonds.com was registered to Melinda Cook, not appellant.

The elements of credit card abuse are that a person (1) with intent to obtain a benefit fraudulently, (2) presents or uses a credit card, (3) with knowledge that the card has not been issued to him, and (4) without the effective consent of the cardholder. *See* TEX. PEN. CODE ANN. § 32.31(b)(1)(A). Credit card abuse “includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.” *Id.* § 32.31(a)(2), (4).

A person acts with intent when it is his conscious objective or desire to engage in the conduct or cause the result. *Id.* § 6.03(a) (Vernon 2003). Intent is most often proven through the circumstantial evidence surrounding the crime, rather than through direct evidence. *Hernandez v. State*, 819 S.W.2d 806, 810 (Tex. Crim. App. 1991). A jury may infer intent from any facts that tend to prove its existence, such as the acts, words, and conduct of the defendant. *Id.* Likewise, a cardholder's lack of effective consent may be proven solely by circumstantial evidence. *Lee v. State*, 962 S.W.2d 171, 174 (Tex. App.—Houston [1st Dist.] 1998, pet. ref'd, untimely filed).

At the outset, we note that neither intent to harm the complainant nor actual harm to complainant are elements of credit card abuse. *See* TEX. PEN. CODE ANN. § 32.31(b)(1)(A). We therefore reject appellant's challenges to the sufficiency of the evidence on the grounds that "[t]he record further reflects that the complainant was not harmed by the incident and the evidence fails to prove that the appellant intended to harm the complainant."

1. Legal Sufficiency

Viewing the evidence in a light most favorable to the trial court's judgment, the record established appellant's identity as the person who committed the credit card abuse. Smith and Hendricks each identified appellant's voice as that of the man who

claimed to be Dean Alac when the order was placed for the diamond and platinum earring and the subsequent communications with Diamonds.com. Also, appellant presented the information for Dean's MasterCard to pay for the earring. Further, appellant identified himself to the undercover officer as Dean Alac, but signed for the package using the name of Percy Vital, for whom he had a driver's license.

Viewing the evidence in a light most favorable to the trial court's judgment, the record also establishes appellant's lack of consent to use the credit card. Hendricks testified that appellant had no consent to use the card, based on information obtained from Dean Alac.

A rational jury could have found beyond a reasonable doubt that appellant placed the order for the diamond and platinum earring using Dean's credit card without effective consent, knowing that it had not been issued to appellant, and with an intent to obtain a benefit fraudulently. We hold the evidence is legally sufficient to support the conviction for credit card abuse. We overrule appellant's first issue in the credit card abuse case.

2. Factual Sufficiency

In his second issue in the appeal from the conviction for credit card abuse, appellant asserts that the evidence is factually insufficient for the same reasons that he contends it is legally insufficient.

Concerning the evidence that establishes his identity as the credit card abuser, appellant accurately notes that no voice recordings exist and the email address used in connection with the orders from Diamonds.com was registered to Melinda Cook, not appellant. Although the email address does not connect appellant, the contents of the emails do. The contents of the emails were consistent with the telephone conversations that Hendricks and Smith had with appellant. Also, one of the emails requested that the earring be shipped to Houston "attn: p. vital houlahans restaurant". That email's reference to Vital matches the information on the driver's license for Vital that was found in appellant's possession.

Appellant accurately notes that Dean Alac did not testify about the lack of consent. However, appellant's lack of consent was established by Hendricks, who conveyed that Dean stated that he did not place any orders with Diamonds.com. Appellant also suggests that the evidence supports the inference, which should be drawn from the absence of testimony from Dean or his wife, that Dean did not want to explain the diamond purchases to his wife. Although appellant suggests this theory, the jury implicitly rejected it as not credible by its determination that appellant fraudulently used the card. Appellant's intent to obtain a benefit fraudulently and his knowledge that the card had not been issued to him are shown by the same evidence showing that he used the MasterCard issued to Dean Alac to order the diamond and

platinum earring. Additionally, the possession of the driver's license for Percy Vital and appellant's use of that name when signing for the package indicate that he wished to conceal his true identity.

Viewing the above evidence neutrally, we cannot conclude that the evidence is so weak that the verdict is clearly wrong and manifestly unjust or that the verdict is against the great weight and preponderance of the evidence. We hold the evidence is factually sufficient to support the conviction for credit card abuse. We overrule appellant's second issue in the credit card abuse case.

C. Fraudulent Use or Possession of Identifying Information

In the first two issues of the appeal in the fraudulent use of identifying information case, appellant contends that the evidence is legally and factually insufficient because "the record fails to show that the appellant intended to harm or defraud another, beyond a reasonable doubt." One of the elements of fraudulent use of identifying information is that the defendant acted with intent to harm or defraud another. *See* TEX. PEN. CODE ANN. § 32.51(b)(1). This is the only element challenged by appellant.

Viewing the evidence in the light most favorable to the jury's verdict, appellant's intent to harm or defraud another is shown by his possession of a driver's license that was reported stolen, coupled with the use of the name on the license to

purchase a diamond earring purchased with a MasterCard issued in another name. Appellant at one point sought to have the earring shipped to "p. vital." Appellant signed for the package delivered by the undercover officer using the name Percy Vital. A rational jury could have found beyond a reasonable doubt that appellant was attempting to conceal his true identity in an attempt to avoid paying for the earring. We hold the evidence is legally sufficient to sustain the conviction for the fraudulent use of identifying information. We overrule appellant's first issue in the fraudulent use case.

In his second issue in the fraudulent use case, appellant contends that the evidence is factually insufficient to show that he intended to harm or defraud another, asserting the same reason as in his legal sufficiency challenge. Although the email address used in connection with the order for the jewelry did not contain appellant's name, the contents of the emails were consistent with the telephone conversations that appellant had with Hendricks, as detailed above. Appellant's intent to defraud or harm another is shown by evidence that he was in possession of a driver's license that had been reported stolen, and he used the name on the license to sign for a package that had been fraudulently ordered using another person's credit card.

Appellant repeats his suggestion that Dean was concealing the purchase of the diamond jewelry from his wife. As we have explained above, the jury implicitly

rejected this theory in finding appellant guilty.

Viewing the above evidence neutrally, we cannot conclude that the evidence is so weak that the verdict is clearly wrong and manifestly unjust or that the verdict is against the great weight and preponderance of the evidence. We hold that the evidence is factually sufficient to support the conviction for fraudulent use of identifying information. We overrule appellant's second issue in the fraudulent use of identifying information case.

Ineffective Assistance of Trial Counsel

In his third issue in both appeals, appellant contends that he received ineffective assistance of counsel because his trial counsel "failed to object to inadmissible hearsay throughout the trial and failed to object to violation of the Sixth Amendment right to confrontation where the complainant was not present to testify at trial."

In evaluating contentions of ineffective assistance of counsel, we review the totality of the representation. *Wright v. State*, 223 S.W.3d 36, 42 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd). To prevail on a claim of ineffective assistance of trial counsel, the defendant must objectively show that (1) trial counsel's performance was deficient and (2) a reasonable probability exists that the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687,

104 S. Ct. 2052, 2064 (1984). The first prong of the *Strickland* test requires the defendant to show that counsel's performance fell below an objective standard of reasonableness. *Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999). Thus, the defendant must prove objectively, by a preponderance of the evidence, that trial counsel's representation fell below professional standards. *Mitchell v. State*, 68 S.W.3d 640, 642 (Tex. Crim. App. 2002). The second prong requires the defendant to show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *See Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068; *Thompson*, 9 S.W.3d at 812. The "benchmark" for evaluating a challenge of ineffective assistance of counsel is whether counsel's conduct "so undermined the proper functioning of the adversarial process" that one cannot rely on the trial "as having produced a just result." *See Ex parte Chandler*, 182 S.W.3d 350, 353 (Tex. Crim. App. 2005). Only in that relatively rare instance may the defendant obtain a new trial on the grounds that his attorney provided constitutionally deficient assistance. *Id.* at 353–54. The constitutional right to counsel ensures the right to reasonably effective counsel, not "errorless counsel whose competency or accuracy of representation is . . . judged by hindsight." *Mercado v. State*, 615 S.W.2d 225, 228 (Tex. Crim. App. 1981).

The reviewing court must, however, indulge a strong presumption that

counsel's conduct falls within the wide range of reasonable professional assistance, and the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065. This rule even extends to situations in which the appellate court may "have trouble understanding why" trial counsel may have acted as he did before the trial court. *Ex parte Varelas*, 45 S.W.3d 627, 632 (Tex. Crim. App. 2001). A *Strickland* challenge must, therefore, be "firmly founded" in a record that "affirmatively demonstrate[s]" the meritorious nature of the claim. *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005). When counsel's reasons for failing to do what the defendant contends should have been done do not appear in the record—as, for example, when trial counsel has not been afforded an opportunity to explain his actions—we should not find deficient performance unless the challenged conduct was "so outrageous that no competent attorney would have engaged in it." *Id.* Unless contentions of ineffective assistance are clearly demonstrated of record, we normally will not speculate to find trial counsel ineffective when the record is silent on his reasoning or strategy. *See Henderson v. State*, 29 S.W.3d 616, 624 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd); *Gamble v. State*, 916 S.W.2d 92, 93 (Tex. App.—Houston [1st Dist.] 1996, no pet.).

Under normal circumstances, the record on direct appeal will not be sufficient

to demonstrate that counsel's representation was so deficient and so lacking in tactical or strategic decision-making as to overcome the presumption that counsel's conduct was reasonable and professional. *See Thompson*, 9 S.W.3d at 813–14. When the record on direct appeal is sufficient to prove that counsel's performance was deficient, however, an appellate court "should obviously address the claim" *Robinson v. State*, 16 S.W.3d 808, 813 n.7 (Tex. Crim. App. 2000).

In this case, there was no motion for new trial and, thus, we do not have a record that reveals trial counsel's reasoning for not objecting to the hearsay statements. We must therefore presume that trial counsel had a valid reason for not objecting. *See Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065; *Ex parte Varelas*, 45 S.W.3d at 632; *see also McKinny v. State*, 76 S.W.3d 463, 473 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (noting, in context of ineffective assistance claim, that "advocates must be free to choose not to make [objections] even if they have a legal basis for doing so").

Although appellant contends that his trial counsel failed to object to inadmissible hearsay concerning Dean Alac's statements about appellant's lack of consent to use of the credit card, the record does not show the reasons for that conduct by counsel, and we cannot conclude that there could be no plausible reason for opting not to object to that testimony. *See Ortiz v. State*, 93 S.W.3d 79, 95 (Tex.

Crim. App. 2002) (“Defense counsel might have believed that such direct evidence would have a more powerful and adverse effect on the jury than the [hearsay] evidence the State was content to offer.”). Because the record is silent regarding trial counsel’s reasoning for not objecting to the introduction of the hearsay statements, we may not speculate to find counsel’s performance deficient. *See Perez v. State*, 56 S.W.3d 727, 731–32 (Tex. App.—Houston [14th Dist.] 2001, pet. ref’d) (overruling ineffective assistance claim where trial counsel failed to object to inadmissible statement but record was silent concerning reason for counsel’s action).

With respect to his conviction for fraudulent use or possession of identifying information, appellant also contends that his appointed trial counsel was ineffective because “no mention was made of the fraudulent use or possession of identification case, Cause Number 1083786, in the closing argument made by the Defense.” However, the record shows that in closing argument before the jury, appellant’s trial counsel stated,

I fear that in connection with the second case that my client obtained, possessed or used identifying information of another without consent, I fear there’s no evidence to contradict that in this case and that you -- it’s incumbent upon you to find him guilty of that charge.

Counsel may choose to argue a client is guilty as part of a trial strategy. For example, in this case, the uncontradicted evidence was that appellant possessed the driver’s

license belonging to Percy Vital and signed for a package “P. Vital.” By conceding guilt on this undisputed evidence, counsel could have been hoping that he would gain credibility before the jury in arguing the credit card abuse case or in the punishment phase. *See Florida v. Nixon*, 543 U.S. 175, 190–93, 125 S. Ct. 551, 562–63 (2004) (holding defense counsel’s strategy of conceding guilt at guilt-innocence stage of capital trial does not automatically render counsel’s performance deficient). As noted above, we may not speculate concerning appointed counsel’s reasoning in an ineffective assistance claim. *See Goodspeed*, 187 S.W.3d at 394; *Henderson*, 29 S.W.3d at 624; *Gamble*, 916 S.W.2d at 93. We hold that the record does not affirmatively demonstrate that appellant’s appointed counsel rendered constitutionally ineffective assistance.

We overrule appellant’s third issue in both of the appeals.

Conclusion

We affirm the trial court’s judgments.

Elsa Alcala
Justice

Panel consists of Justices Taft, Keyes, and Alcala.

Do not publish. *See* TEX. R. APP. P. 47.2(b).

CLERK'S RECORD

VOLUME I of I

Trial Court Cause No. 1083786

In the County Criminal Court at Law # _____ of Harris County, Texas

In the 185TH District Court of Harris County, Texas

Honorable SUSAN BROWN, Judge Presiding

JAMES HAYES, APPELLANT

VS

THE STATE OF TEXAS

Appealed to the Court of Appeals for the First District of Texas, at Houston, Texas

Attorney for Appellant(s)

SHARON SLOPIS

ATTORNEY OF RECORD

P. O. BOX 980803

HOUSTON TEXAS 77098

Telephone No: (713) 529-0771

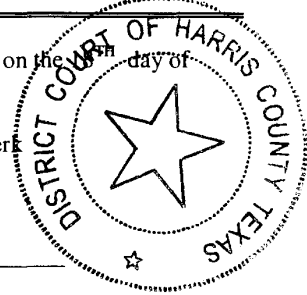
SBOT No: 18511300

F
CHARLES BACARISSE
District Clerk
APR 18 2007
Time: _____
By: _____
Harris County, Texas
Deputy

Delivered to the Court of Appeals for the First District of Texas, at Houston, Texas on the _____ day of _____ April, 2007.

CHARLES BACARISSE, District Clerk
Harris County, Texas

By: _____
C. Scott, Deputy



(Court of Appeals) Cause No. _____
Filed in the (Supreme Court of Texas at Austin, Texas,
Or Court of Criminal Appeals of Texas at Austin, Texas,
Or Court of Appeals for the _____ District of Texas, at _____, Texas)
This _____ day of _____,
_____, Clerk
By _____, Deputy

00055

APP071

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 $\{$ $\{$

TRIAL COURT CAUSE NO. 1083786

{ IN THE 185th JUDICIAL DISTRICT COURT

{ HARRIS COUNTY, TEXAS

{ HARRIS COUNTY, TEXAS

APP074

2082 12.15
pend

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J

THE STATE OF TEXAS
VS.

JAMES HAYES
MISSOURI CITY, TX

SPN: 01145559
DOB: [REDACTED] 70
DATE PREPARED: 9/8/2006

D.A. LOG NUMBER: 1200889
CJIS TRACKING NO.: 903747201X-A002
BY: RM DA NO: 001982276
AGENCY: HPD
O/R NO: 135360306
ARREST DATE: 9-7-06

NCIC CODE: 2604 01

RELATED CASES: ONE OTHER FEL

FELONY CHARGE: FRAUDULENT USE/POSSESSION OF IDENTIFYING INFORMATION

CAUSE NO: 1083786

HARRIS COUNTY DISTRICT COURT NO: 185

FIRST SETTING DATE:

BAIL: \$2000

PRIOR CAUSE NO:

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

Before me, the undersigned Assistant District Attorney of Harris County, Texas, this day appeared the undersigned affiant, who under oath says that he has good reason to believe and does believe that in Harris County, Texas, JAMES HAYES hereafter styled the Defendant, heretofore on or about SEPTEMBER 7, 2006, did then and there unlawfully intentionally and knowingly OBTAINS, POSSESSES, AND USES identifying information of PERCY VITAL, namely, NAME, DATE OF BIRTH AND GOVERNMENT-ISSUED IDENTIFICATION NUMBER without the consent of PERCY VITAL and with intent to harm and defraud another.

FILED
CHARLES BACARISSE
District Clerk
SEP 08 2006
Harris County, Texas
By _____ Deputy

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Sworn to and subscribed before me on September 8, 2006

[Signature]
AFFIANT

[Signature] 24007460
ASSISTANT DISTRICT ATTORNEY BAR NO.
OF HARRIS COUNTY, TEXAS.

IMAGED

COMPLAINT

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APP075

46/14 10
BOND: 2000

No. 108378601010

PIN: 01145559

The State of Texas

vs.

In the 185th District Court

County Criminal Court at Law No. _____

Harris County, Texas

HAYES, JAMES

, Defendant

1970

, DOB

INS: COM

PFG: O

PROBABLE CAUSE FOR FURTHER DETENTION & STATUTORY WARNINGS BY MAGISTRATE

Today, the above named defendant, charged with FRAUD/USE/POSS ID INFO, appeared before the undersigned authority. (the Court) ☐ in person. ☒ by video teleconference.

All statements in bold should be addressed to defendant.

Do you request appointment of counsel? (check one)

☐ NO. The defendant did not request appointment of counsel.

☒ YES. The defendant requested appointment of counsel. The Court **ORDERS** the Office of Pre-Trial Services (PTS) to immediately assist defendant in preparing a request for appointment of counsel. PTS shall forward defendant's request to the judge of the court in which the case is pending within 24 hours.

If you are not a United States citizen, you may be entitled to have us notify your country's consular representative here in the United States. Do you want us to notify your country's consular officials? (check one)

☐ NO.

☐ YES. What country? _____. If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.

☐ MANDATORY NOTIFICATION. CLERK, NOTIFY _____ (Country) CONSULATE.

If you are a foreign national, please provide the following information:

Mr./Ms:

(father's name {surname}/ mother's maiden name / first name)

Date of birth (mm/dd/yy)

Place of birth

Passport number

Date of passport issuance

Place of passport issuance

This proceeding was interpreted by: _____ (Print name of interpreter)

ORDER

☐ The Court **FINDS** probable cause for further detention **DOES NOT EXIST**. Accordingly, in this case, the Court **ORDERS** the law enforcement agency/officer having custody of the defendant, to **immediately release** the defendant from custody.

☒ The Court **FINDS PROBABLE CAUSE** for further detention **EXISTS**. The Court set and/or reviewed the defendant's bond, and in clear and unambiguous language, the Court 1) advised defendant of his rights as enumerated in Article 15.17 of the Texas Code of Criminal Procedure and 2) provided him with information required by law. Accordingly, The Court **ORDERS** defendant committed to the custody of the Sheriff of Harris County, Texas. Defendant shall remain in the Sheriff's custody until he posts bail in this cause, or until further orders by the Court.

☒ Bail is set at \$ 5000 ☒ Personal Bond is: ☐ APPROVED ☐ DISAPPROVED ☒ REFERRED

09/09/2006

DATE/ TIME (Print)

H. RCV3001.P

Frank A. Smith
JUDGE PRESIDING/ HEARING OFFICER

Rev. 08/24/05

IMAGED

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APP076

576423

CAUSE NO. 108 3786/85

STATE OF TEXAS § In the 185 District Court
vs. § In the County Criminal Court at
Hayes, James § Law No. _____
 § Harris County, Texas

ACKNOWLEDGMENT AND AFFIDAVIT

My name is Hayes, James. I am the defendant in the above-styled and numbered cause and am capable of making this affidavit.

I understand that the court may use the financial information I have given to Harris County Pretrial Services on 9-8-06 to determine whether I am financially able to hire counsel. I swear or affirm that all the financial information I have provided is true and correct. I also understand that if I intentionally or knowingly give false answers about my financial information to Pretrial Services, I may be prosecuted for the offense of aggravated perjury, a felony. I understand that the punishment for aggravated perjury includes imprisonment not to exceed ten (10) years and a fine not to exceed ten thousand dollars (\$10,000.00).

Signed 9-8-06 Defendant X James

SUBSCRIBED AND SWORN TO BEFORE ME this day 9-8-06
G Brown
Personal Bond Office Employee
Harris County, Texas

Original: District Clerk

SEP 09 2006
Harris County, Texas
Deputy

000004
000001
APP077

Court Coordinator No. 2-A

CAUSE NO. 1083785 CHARGE Credit Card Abuse
1083786 185th Frank/Use/Pass ID.
THE STATE OF TEXAS DISTRICT COURT
OF HARRIS COUNTY, TEXAS.

VS.
James Hayes
Defendant

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

Arrg to 9/26/06 8:30 AM
(Type of Setting) (Date)
Brown X James Hayes
Attorney for the State Defendant

(Print) Attorney for Defendant

(Signature) Attorney for Defendant

(Street Address)

(City)

(State)

(Zip)

(Phone Number)

(Bar Card/SPN Number)

FILED
CHARLES MALABRETT
District Clerk

SEP 11 2006

Harris County, Texas

By _____
Deputy

APPROVED BY THE COURT

1st
Judge Presiding

9/11/06
Date

DISTRICT CLERK

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APP078

B
THE STATE OF TEXAS
VS.

JAMES HAYES

MISSOURI CITY, TX

SPN: 01145539
DOB: 70
DATE PREPARED: 9/8/2006

D.A. LOG NUMBER: 1200889
CJIS TRACKING NO.: 903747201X-A002
BY: RM DA NO: 001982276
AGENCY: HPD
O/R NO: 135360306
ARREST DATE: 9-7-06

NCIC CODE: 2604 01

RELATED CASES: ONE OTHER FEL

FELONY CHARGE: FRAUDULENT USE/POSSESSION OF IDENTIFYING INFORMATION

CAUSE NO: 1003786 1083786

HARRIS COUNTY DISTRICT COURT NO: 185

FIRST SETTING DATE:

277 53
Vol. Page AXGM
BAIL: \$2000 5000
PRIOR CAUSE NO:

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

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, JAMES HAYES, hereafter styled the Defendant, heretofore on or about SEPTEMBER 7, 2006, did then and there unlawfully, intentionally and knowingly OBTAINS, POSSESSES, AND USES identifying information of PERCY VITAL, namely, NAME, DATE OF BIRTH AND GOVERNMENT-ISSUED IDENTIFICATION NUMBER without the consent of PERCY VITAL and with intent to harm and defraud another.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

FOREMAN

262nd

FOREMAN OF THE GRAND JURY

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

INDICTMENT

000006
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APP079

IMAGED

SEP 15 2006
Harris County, Texas
By: _____

Court Coordinator No. 2-A

CAUSE NO. 1083783
1083786

THE STATE OF TEXAS

VS

James Hayes
Defendant

CHARGE

Credit Card Abuse
185th Fraud/USQ/ASSID
inform.

DISTRICT COURT

OF HARRIS COUNTY, TEXAS.

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

trial to 10/10/06 8:30AM
(Type of Setting) (Date)

Kelly Blake
Attorney for the State

James Hayes
Defendant

Andrew J Lawrie
(Bar) Attorney for Defendant

Andrew J Lawrie
(Signature) Attorney for Defendant

6232 Hwy 146
(Street Address)

Baytown TEX 77520
(City) (State) (Zip)

281 472 9016
(Phone Number)

11937000
(Bar Card/SPN Number)

APPROVED BY THE COURT:

[Signature]
Judge Presiding
Date 9/26/06

FILED

SEP 26 2006

Harris County, Texas

By _____

DISTRICT CLERK

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APP080

Court Coordinator No. 2-A

CAUSE NO. 1083785 CHARGE Credit Card Abuse
1083786 1854 Frank/USC/POSS ID
THE STATE OF TEXAS DISTRICT COURT
OF HARRIS COUNTY, TEXAS.

vs.
James Hayes
Defendant

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

plea to 10/31/06 8:30 AM
(Type of Setting) (Date)

[Signature]
Attorney for the State

x James H. Hugo
Defendant

Andrew J. Lunnitz
Attorney for Defendant

[Signature]
(Signature) Attorney for Defendant

6232 Hwy 146
(Street Address)

Baytown TEX
(City) (State) (Zip)

281 422-9016
(Phone Number)

14931000
(Bar Card/SPN Number)

FILED
HARRIS COUNTY
OCT 10 2006
HARRIS COUNTY CLERK
BY

APPROVED BY THE COURT:

[Signature]
Judge Presiding
10/10/06
Date

DISTRICT CLERK

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APP081

ORIGINAL

CASE NO. 1083786

THE STATE OF TEXAS

vs.

JAMES H. HAYES, JR.

§ IN THE DISTRICT COURT
§
§ HARRIS COUNTY, TEXAS
§
§ 185TH JUDICIAL DISTRICT

14-9985W

MOTION FOR WITHDRAWAL OF COUNSEL

This Motion for Withdrawal of Counsel is brought by ANDREW J. LANNIE, Movant, who is attorney of record for Defendant, JAMES H. HAYES, JR. In support, Movant shows that:

Good cause exists for withdrawal of Movant as counsel for the following reasons:

Defendant has failed to communicate with Movant in order that a defense may be prepared in his case.

Defendant has failed to pay his fees as agreed.

~~Pending settings and deadlines are: October 31, 2006~~

Movant prays the Court grant the Motion for Withdrawal of Counsel.

Respectfully submitted,



ANDREW J. LANNIE
6232 Hwy 146
Baytown, Texas 77520
Telephone:(281)303-9700
Facsimile:(281)303-8286
Texas Bar Number:11937000

FILED
OCT 16 2006
Harris County - Texas
By _____
Deputy

000009
000000

APP082

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing has been served on the Attorney for the State, by hand delivering same to the Attorney for the State assigned by the above Court, on this 16 day of October 2006, in accordance with the Texas Rules of Civil Procedure.



ANDREW J. LANNIE

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00001

APP083

CASE NO. 1083786

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
JAMES H. HAYES, JR.	§	185 TH JUDICIAL DISTRICT

ORDER ON WITHDRAWAL OF COUNSEL

On this _____ day of _____, 2006, this Motion and Order of Withdrawal was presented to the Court.

And the Court having considered said Motion is of the opinion the same should be Granted.

IT IS ACCORDINGLY ORDERED that ANDREW J. LANNIE be and is hereby permitted to withdraw as Attorney of Record for JAMES H. HAYES, JR., Defendant herein.

~~IT IS FURTHER ORDERED that the Clerk of this court and all parties notice future~~
correspondence to JAMES H. HAYES, JR., [REDACTED] Missouri City, Texas
77489.

JUDGE PRESIDING

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: 000008

APP084

Court Coordinator No. 2-A

CAUSE NO. 1083784
1083785 CHARGE Credit Ca & Abuse

THE STATE OF TEXAS

185th DISTRICT COURT

OF HARRIS COUNTY, TEXAS.

vs.
James Hayes
Defendant

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

J. Tel to 1-29-07 8:30 AM
(Type of Setting) (Date)
CK Tel status 1-26-07
OBurns James Hayes
Attorney for the State Defendant

Andrew J. Lammie
(Print Name for Defendant)
Andrew J. Lammie
(Signature) Attorney for Defendant
6232 Hwy 146
(Street Address)
Baytown TX 77520
(City) (State) (Zip)
281 422 9016
(Phone Number)
11937000
(Bar Card/SPN Number)

FILED
CHARLES BALABANE
District Clerk
OCT 31 2006
Harris County Texas

APPROVED BY THE COURT:

11/31/06
Date

DISTRICT CLERK

: 00000012

APP085

ANDREW J. LANNIE
ATTORNEY AT LAW
6232 HWY 146
BAYTOWN, TEXAS 77520

TELEPHONE (281) 303-9700

FACSIMILE (281) 303-8286

November 1, 2006

Via Regular Mail

James Howard Hayes, Jr.

Missouri City, Texas 77589

Re: Cause No. 1083785/1083786; The State of Texas vs James Hayes, Jr.; In the
185th Judicial District Court of Harris County, Texas

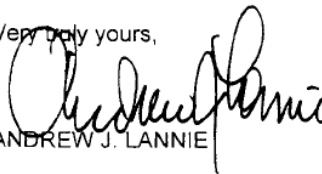
Dear Mr. Hayes:

Please be advised that the above-referenced cause has been reset for pre-trial
hearing on **January 26, 2007** at 8:30 a.m. and for jury trial on **January 29, 2007** at 8:30
a.m. in the 184th Judicial District Court of Harris County, Texas.

Please contact this office three (3) days before the hearing to confirm.

If you have any questions please notify this office.

Very truly yours,


ANDREW J. LANNIE

AJL/jb

000013
00078

APP086

ANDREW J. LANNIE
ATTORNEY AT LAW
6232 HWY 146
BAYTOWN, TEXAS 77520

TELEPHONE (281) 303-9700

FACSIMILE (281) 303-8286

January 22, 2007

Via Certified Mail No. 70022030000586994009
& Regular Mail

James Howard Hayes, Jr.
[REDACTED]
Missouri City, Texas 77589

Re: Cause No. 1083785/1083786; The State of Texas vs James Hayes, Jr.; In the
185th Judicial District Court of Harris County, Texas

Dear Mr. Hayes:

This letter is to advise that I received a fax today from the Harris County District
Attorney's Office that they intend to enter a copy of your criminal record of prior
convictions and extraneous offenses for which you have previously been convicted in
the trial of the above cases.

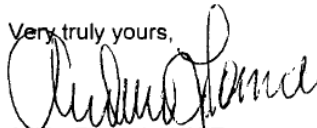
Based upon this evidence I suspect you will have zero credibility with a jury
selected in your case (See Exhibit "A") Friday, January 26, 2007. The case is set for
jury trial on Monday, January 29, 2007.

Unfortunately, I suspect the Court will not permit my withdrawal from your case at
this point in time.

Your failure to communicate with this office and assist in your defense in this
case will likely be your undoing.

You cannot have it both ways. What do you expect?

Very truly yours,


ANDREW J. LANNIE

AJL/mar

Regular Mail

000000014

APP087

CAUSE NO. 1083785

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 185 JUDICIAL DISTRICT
James Hayes § HARRIS COUNTY, TEXAS

Notice of Intention to Use Evidence of Prior Convictions and Extraneous Offense

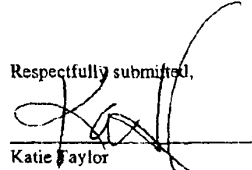
COMES NOW, the undersigned Assistant District Attorney, Katie Taylor, and files this Notice of Intention to Use Evidence of Prior Convictions and Extraneous Offenses and would show the Court the following:

1. Cause No. 1083785 is presently pending in this Court and is set for jury trial for the week of January 29, 2007.
2. The prior convictions/extraneous offense(s) which the state intends to introduce at trial are as follows:

OFFENSE	CAUSE NO.	COUNTY	COURT	DATE OF CONVICTION
Theft	9545077	Harris	County Court #13	December 14, 1995
Possession of Marijuana	9258574	Harris	5	December 29, 1992
Credit Card Abuse	0591917	Harris	176th District Court	December 13, 1995

3. Pursuant to Rules 404(b) and 609 of the Texas Rules of Criminal Evidence and section 37.07 of the Texas Rules of Criminal Procedure, the undersigned Assistant District Attorney hereby gives notice to the Defendant, his Counsel, and the Court that the State intends to offer evidence of Prior Convictions and Extraneous Offenses of this Defendant to impeach the testimony and/or enhance the range of punishment of the Defendant as such become admissible. Such evidence may further be admissible for purposes of proving motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Respectfully submitted,


Katie Taylor
Assistant District Attorney

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APP088

CAUSE NO. 1083785

THE STATE OF TEXAS

VS.

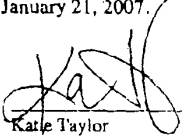
James Hayes

§ IN THE DISTRICT COURT
§
§ 185 JUDICIAL DISTRICT
§
§ HARRIS COUNTY, TEXAS

e/k

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the above foregoing motion was FAX to Defense Counsel Andrew J Lannie on January 21, 2007.


Katie Taylor
Assistant District Attorney
Harris County, Texas
1201 Franklin
Houston, Texas 77002
(713) 755-6158
FAX: (713) 755-7752

: 00000016
APP089

CAUSE NO. 1083785

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	185 JUDICIAL DISTRICT
	§	
James Hayes	§	HARRIS COUNTY, TEXAS

STATE'S NOTICE OF EXPERT WITNESSES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE STATE OF TEXAS, by and through the undersigned Assistant District Attorney, and provides the following Notice of Expert Witnesses, in accordance with TEX. CODE CRIM. PROC., Art 39.14 (b):

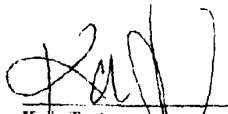
J. F. Webb #088997

D. Johnson

Sgt. D. Mussey

Sgt. R. Ousley

Respectfully Submitted



Katie Taylor
Assistant District Attorney
Harris County, Texas
1201 Franklin
Houston, Texas 77002
(713) 755-6158
FAX: (713) 755 7752

000017
000017

APP090



CHARLES A. ROSENTHAL, JR.
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS
1201 Franklin, Suite 600, Houston, TX 77002
FAX COVER SHEET

TO: Andrew J Lannie
REGARDING: State v. James Hayes
FAX NUMBER: 281/303-8286
FROM: Katie Taylor
TELEPHONE: 713.755.6158
FAX NUMBER: 713.755.7752
NUMBER OF PAGES
(including cover sheet): 4
Date and Time Sent: January 21, 2007
Remarks:

Notice
- experts
- 104/609
Prvrs/ Bad acts.

CONFIDENTIALITY NOTICE

If you have received this facsimile transmission in error, please note these documents may contain confidential information that cannot be disclosed without violating the criminal provisions of the Texas Open Records Act or Texas Penal Code 39.03. If you have received these documents in error, please call the sender at the number listed below to arrange for the return of the documents.

If you have requested this office to issue a grand jury subpoena, please note the following:

We have prepared the subpoena and sent it to the person/company that you needed records from. This is a copy of the subpoena for your records.

It is a violation of Art. 20.02 of the Texas Code of Criminal Procedure to divulge to any person, other than the prosecuting attorney, the grand jury, or another law enforcement agency that is assisting in this investigation, the content of any records or information that is gathered from this subpoena. Any persons violating this statute are subject to being held in contempt of court.

If there are any problems receiving this transmission please call: 713.7556158

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APP091

Court Coordinator No. 2-A

CAUSE NO. 1083785
1083786

CHARGE Credit Card Abuse
1854th Hand use posted
DISTRICT COURT

THE STATE OF TEXAS

OF HARRIS COUNTY, TEXAS.

VS.

James Hayes
Defendant

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

J. Tol to 1-31-07
(Type of Setting) (Date) 8:30AM

[Signature]
Attorney for the State

[Signature]
Defendant

ANDREW J LAWRIE
(Print) Attorney for Defendant

Andrew J Lawrie
(Signature) Attorney for Defendant

6232 Hwy 1416
(Street Address)

Bucktown TEX 7726
(City) (State) (Zip)

281 422 9016
(Phone Number)

11937000
(Bar Card/SPN Number)

APPROVED BY THE COURT:

[Signature]
Judge Presiding
1-29-07
Date

FILED
CHARLES MACARINS
District Clerk

JAN 29 2007

Harris County, Texas

By _____ County

DISTRICT CLERK

: 0001000019

APP092

Court Coordinator No. 2-A

CAUSE NO. 1083785 CHARGE Credit Card Abuse
1083786 185th Fraud Use / Pass ID
THE STATE OF TEXAS DISTRICT COURT
OF HARRIS COUNTY, TEXAS.

V.S.
James Hayes
Defendant

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

J. Trial to 2/5/07
(Type of Setting) (Date) 8:30 AM

[Signature]
Attorney for the State

[Signature]
Defendant

Andrew Lannic
(Print) Attorney for Defendant

[Signature]
(Signature) Attorney for Defendant

146
(Street Address)
Baytown Tx 77022
(City) (State) (Zip)

281 303 9700
(Phone Number)

24004151 / 01728550
(Bar Card/SPN Number)

APPROVED BY THE COURT:

[Signature]
Judge Presiding
1/31/07
Date

FILED
CHARLES MACARINI
District Clerk

JAN 31 2007

HARRIS COUNTY, TEXAS

By _____
Deputy

000020
000017

APP093

ANDREW J. LANNIE
ATTORNEY AT LAW
6232 HWY 146
BAYTOWN, TEXAS 77520

TELEPHONE (281) 303-9700

FACSIMILE (281) 303-8286

February 6, 2007

Via Regular Mail

James Howard Hayes, Jr.
[REDACTED]
Missouri City, Texas 77589

Re: Cause No. 1083785/1083786; The State of Texas vs James Hayes, Jr.; In the
185th Judicial District Court of Harris County, Texas

Dear Mr. Hayes:

I wish to advise you again that we are on a four (4) hour call for the trial of your case.

In addition, last evening my telephone recorded picked up on your call in which
~~you requested that you named your witness list as follows.~~

1. Mario Eli, former Rocket Basketball Player
2. Robert Ory, currently playing with the San Antonio Spurs
3. Grady Prestige, County Commissioner
4. Sam Cassel, currently with the San Antonio Clippers

On the courthouse porch, I asked you the context of their testimony. You stated that they were friends of yours who would testify as to your truthfulness. I explained it is the policy of the Court that all personal subpoenas have to be filed ten (10) days in advance of trial and would not be timely filed.

A dispute arose at that time, and I advised that if you were dissatisfied with my representation you should hire other counsel. I walked to the garage two and a half (2 ½) blocks where I parked and observed that you were standing near the gate at the location you had no reason to be waiting for me to depart. I consider your conduct in this regard a personal threat to my personal safety.

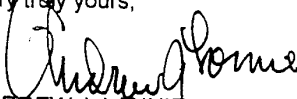
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APP094

February 6, 2007
Page 2

Please do not persist in this type of conduct again. Otherwise, I will make my position known to the Court and request that you be placed in detention during the remainder of the trial of the case.

Very truly yours,



ANDREW J. LANNIE

AJL/mar

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APP095

Court Coordinator No. 2-A

CAUSE NO. 1083785
1083786

CHARGE

Credit Card Abuse
185th Grand Use/Poss. ID

THE STATE OF TEXAS

DISTRICT COURT

VS.

OF HARRIS COUNTY, TEXAS.

James Hayes
Defendant

AGREED SETTING

The undersigned Counsel hereby agrees this case is reset for

J. Trel to 2/13/07 8:30AM
(Type of Setting) (Date)

[Signature]
Attorney for the State

X James Hayes
Defendant

Andrew J. Lawrie
(Print) Attorney for Defendant

Andrew Lawrie
(Signature) Attorney for Defendant

6232 Deer 146
(Street Address)

Baytown TEX
(City) (State) (Zip)

281 422 9016
(Phone Number)

11937000
(Bar Card/SP# Number)

APPROVED BY THE COURT:

[Signature]
Judge Presiding
2/12/07
Date

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000000

APP096

1083785
1083786
CAUSE NO. _____

141 997
942 SW

THE STATE OF TEXAS

IN THE 185th DISTRICT COURT

VS.

~~COUNTY CRIMINAL COURT AT~~

James Hayes
(Name of Defendant)

LAW NO.

AKA _____

OF HARRIS COUNTY, TEXAS

DEFENSE MOTION AT TIME OF ENTERING PLEA OF NOT GUILTY

Comes now the Defendant, at the time of entering a plea of Not Guilty in open Court, and requests that the Jury assess the punishment herein in the event a verdict of guilty is returned by the Jury.

James Hayes
Defendant

Charles Baughn
Attorney for Defendant

FILED
CHARLES BAUGHN
District Clerk

FEB 28 2007

Harris County, Texas

By _____ Deputy

ANDREW J. LANNIE
ATTORNEY AT LAW
6232 HWY 146
BAYTOWN, TEXAS 77520

TELEPHONE (281) 303-9700

FACSIMILE (281) 303-8286

January 22, 2007

Via Certified Mail No. 70022030000586994009
& Regular Mail

James Howard Hayes, Jr.
[REDACTED]
Missouri City, Texas 77589

Re: Cause No. 1083785/1083786; The State of Texas vs James Hayes, Jr.; In the
185th Judicial District Court of Harris County, Texas

Dear Mr. Hayes:

This letter is to advise that I received a fax today from the Harris County District
Attorney's Office that they intend to enter a copy of your criminal record of prior
convictions and extraneous offenses for which you have previously been convicted in
~~the trial of the above cases.~~

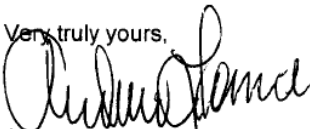
Based upon this evidence I suspect you will have zero credibility with a jury
selected in your case (See Exhibit "A") Friday, January 26, 2007. The case is set for
jury trial on Monday, January 29, 2007.

Unfortunately, I suspect the Court will not permit my withdrawal from your case at
this point in time.

Your failure to communicate with this office and assist in your defense in this
case will likely be your undoing.

You cannot have it both ways. What do you expect?

Very truly yours,


ANDREW J. LANNIE

AJL/mar

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APP098

CAUSE NO. 1083785

THE STATE OF TEXAS

VS.

James Hayes

§
§
§
§
§

IN THE DISTRICT COURT

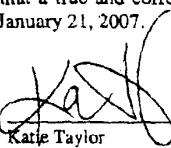
185 JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

File

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the above foregoing motion was FAX to Defense Counsel Andrew J Lannie on January 21, 2007.


Katie Taylor
Assistant District Attorney
Harris County, Texas
1201 Franklin
Houston, Texas 77002
(713) 755-6158
FAX: (713) 755-7752

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APP099

ANDREW J. LANNIE
ATTORNEY AT LAW
6232 HWY 146
BAYTOWN, TEXAS 77520

COPY

TELEPHONE (281) 303-9700

FACSIMILE (281) 303-8286

September 27, 2006

Via Regular Mail

James Howard Hayes, Jr.
[REDACTED]
Missouri City, Texas 77489

Re: Cause No. 1083785 / 1083786; The State of Texas vs James Hayes, Jr.; In the
185th Judicial District Court of Harris County, Texas

Dear Mr. Hayes:

Please be advised that the above-referenced cause has been reset for hearing
on **October 10, 2006** at 8:30 a.m. in the 185th Judicial District Court of Harris County,
Texas

Please contact this office three (3) days before the hearing to confirm.

If you have any questions please notify this office.

Very truly yours,

Andrew J. Lannie
ANDREW J. LANNIE

AJL/cp

You owe me AUG 11 10/6/09
1:40 P.M. James Hayes
left message
on recorder
Re: Payment / Court
date.
/cp
10.6.09

000027

APP100

ANDREW J. LANNIE
ATTORNEY AT LAW
6232 HWY 146
BAYTOWN, TEXAS 77520

COPY,

TELEPHONE (281) 303-9700

FACSIMILE (281) 303-8286

October 11, 2006

Via Regular Mail

James Howard Hayes, Jr.

Missouri City, Texas 77489

Re: Cause No. 1083785 / 1083786; The State of Texas vs. James Hayes, Jr.; In the
185th Judicial District Court of Harris County, Texas


Dear Mr. Hayes:

Please be advised that the above-referenced cause has been reset for hearing
on **October 31, 2006** at 8:30 a.m. in the 185th Judicial District Court of Harris County,
Texas

Please contact this office three (3) days before the hearing to confirm.

If you have any questions please notify this office.

Very truly yours,


ANDREW J. LANNIE

AJL/cp

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: 000028

APP101

ANDREW J. LANNIE
ATTORNEY AT LAW
6232 HWY 146
BAYTOWN, TEXAS 77520

ORIGINAL

TELEPHONE (281) 303-9700

FACSIMILE (281) 303-8286

October 18, 2006

Via Regular Mail

James Howard Hayes, Jr.
[REDACTED]
Missouri City, Texas 77489

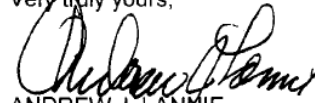
Re: Cause No.1083785 / 1083786; The State of Texas vs James Hayes, Jr.; In the
185th Judicial District Court of Harris County, Texas

Dear Mr. Hayes:

In keeping with our recent conversation, enclosed herewith is a Motion to
Withdraw as your counsel. You will notice these cases were currently set for October
31, 2006.

I suggest you employ other counsel prior to your court date.

Very truly yours,


ANDREW J. LANNIE

AJL/jrb

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APP102

CASE NO. 1083785

THE STATE OF TEXAS

vs.

JAMES H. HAYES, JR.

§ IN THE DISTRICT COURT
§
§ HARRIS COUNTY, TEXAS
§
§ 185TH JUDICIAL DISTRICT

MOTION FOR WITHDRAWAL OF COUNSEL

This Motion for Withdrawal of Counsel is brought by ANDREW J. LANNIE, Movant, who is attorney of record for Defendant, JAMES H. HAYES, JR. In support, Movant shows that:

Good cause exists for withdrawal of Movant as counsel for the following reasons:

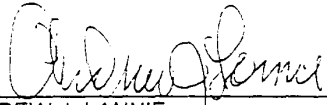
Defendant has failed to communicate with Movant in order that a defense may be prepared in his case.

Defendant has failed to pay his fees as agreed.

Pending settings and deadlines are: October 31, 2006

Movant prays the Court grant the Motion for Withdrawal of Counsel.

Respectfully submitted,



ANDREW J. LANNIE
6232 Hwy 146
Baytown, Texas 77520
Telephone: (281) 303-9700
Facsimile: (281) 303-8286
Texas Bar Number: 11937000

ORIGINAL RECEIVED IN
DISTRICT CLERK'S OFFICE

OCT 16 2006

DAY

CLERK

0000030

APP103

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing has been served on the Attorney for the State, by hand delivering same to the Attorney for the State assigned by the above Court, on this 16 day of October 2006, in accordance with the Texas Rules of Civil Procedure.



ANDREW J. LANNIE

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APP104

CASE NO. 1083785

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
vs.	§	
	§	HARRIS COUNTY, TEXAS
	§	
JAMES H. HAYES, JR.	§	185 TH JUDICIAL DISTRICT

ORDER ON WITHDRAWAL OF COUNSEL

On this _____ day of _____, 2006, this Motion and Order of Withdrawal was presented to the Court.

And the Court having considered said Motion is of the opinion the same should be Granted.

IT IS ACCORDINGLY ORDERED that ANDREW J. LANNIE be and is hereby permitted to withdraw as Attorney of Record for JAMES H. HAYES, JR., Defendant herein.

~~IT IS FURTHER ORDERED that the Clerk of this court and all parties notice future~~
correspondence to JAMES H. HAYES, JR., [REDACTED] Missouri City, Texas
77489.

JUDGE PRESIDING

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: 00089

APP105

CASE NO. 1083786

THE STATE OF TEXAS § IN THE DISTRICT COURT
vs. §
JAMES H. HAYES, JR. § HARRIS COUNTY, TEXAS
 §
 § 185TH JUDICIAL DISTRICT

MOTION FOR WITHDRAWAL OF COUNSEL

This Motion for Withdrawal of Counsel is brought by ANDREW J. LANNIE, Movant, who is attorney of record for Defendant, JAMES H. HAYES, JR. In support, Movant shows that:

Good cause exists for withdrawal of Movant as counsel for the following reasons:

Defendant has failed to communicate with Movant in order that a defense may be prepared in his case.

Defendant has failed to pay his fees as agreed.

Pending settings and deadlines are: October 31, 2006

Movant prays the Court grant the Motion for Withdrawal of Counsel.

Respectfully submitted,



ANDREW J. LANNIE
6232 Hwy 146
Baytown, Texas 77520
Telephone: (281) 303-9700
Facsimile: (281) 303-8286
Texas Bar Number: 11937000

ORIGINAL RECEIVED IN
DISTRICT CLERK'S OFFICE
OCT 16 2006

DATE

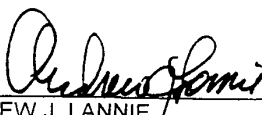
DEPUTY

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APP106

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing has been served on the Attorney for the State, by hand delivering same to the Attorney for the State assigned by the above Court, on this 16 day of October 2006, in accordance with the Texas Rules of Civil Procedure.



ANDREW J. LANNIE

: 000000034

APP107

CASE NO. 1083786

THE STATE OF TEXAS

vs.

JAMES H. HAYES, JR.

§ IN THE DISTRICT COURT
§
§ HARRIS COUNTY, TEXAS
§
§ 185TH JUDICIAL DISTRICT

ORDER ON WITHDRAWAL OF COUNSEL

On this _____ day of _____, 2006, this Motion and Order of Withdrawal was presented to the Court.

And the Court having considered said Motion is of the opinion the same should be Granted.

IT IS ACCORDINGLY ORDERED that ANDREW J. LANNIE be and is hereby permitted to withdraw as Attorney of Record for JAMES H. HAYES, JR., Defendant herein.

IT IS FURTHER ORDERED that the Clerk of this court and all parties notice future correspondence to JAMES H. HAYES, JR., [REDACTED] Missouri City, Texas 77489.

JUDGE PRESIDING

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APP108

STRIKE LIST

CASE NO. 1083785 & 1083786 IN THE
 "STATES JURY LIST" COUNTY CRIMINAL COURT AT LAW NO. ____
 THE STATE OF TEXAS 185th DISTRICT COURT
 VS NO. _____ OF HARRIS COUNTY, TEXAS

NAME	JUROR NUMBER
1) 64. SHAEFER, JAMES ROBERT	2447A
2) 65. CRAWFORD, SUE	2448
3) 66. VILLARREAL, NOEL	2449
4) 67. TAYLOR, WILLIAM MINOR	2457A
5) 68. MONKS, MARY HODAKIEVIO	2464 State
6) 69. REDWORTH, GLENDA ELAINE	2467A
7) 70. FETTY, MICHAEL ANN	2476A
8) 71. MARTINEZ, BLANCA LYDIA	2478A State
9) 72. BOYD, PERRY LEROY	2484
10) 73. PROFFITT, JOANNA CHRISTINE	2486
11) 74. LARSEN, ANN TRITT	2488B
12) 75. LIGHTFOOT, CARL	2491A
13) 76. STIGLER, MARILYN MCKIBBIN	2491B State
14) 77. HIGHTOWER, MICAKALLA V	2498A
15) 78. RAPPAPORT, DEBORAH FINN	2506A
16) 79. KERBOW, KYLE LANE	2507A
17) 80. CHEN, STEPHENY L	2507B
18) 81. GOLINKIN, WEBSTER FOWLER	2510A
19) 82. BERHANU, DEBESE	2513A
20) 83. DOTSON, SHERRI THOMAS	2516 State
21) 84. BRAUN, DOROTHY DROEGE	2519

STRIKE LIST

NAME	JUROR NUMBER
22) 85. CHISM, JILL BURTON	2528A <i>State</i>
23) 86. ALI, FAISAL M	2529A <i>State</i>
24) 87. MIDDLETON, JAMES J	2531 <i>State</i>
25) 88. POOLE, MICHAEL LYNN	2536A
26) 89. CHRISTIANSEN, GENE EDWARD	2537A
27) 90. CHEN, SHARON CHIA	2539
28) 91. RUSHING, ANNA MARIE	2540
29) 92. BLANCO, NELDA ANN	2540A
30) 93. CARRION, DANIEL	2540B <i>State</i>
31) 94. CASTRO, MARIA CONCEPCION	2543A
32) 95. MONEY, ARTHUR LEE	2544
33) 96. JOHNSON, DONALD RAY	2545B
34) 97. LOPEZ, RUBEN	2547
35) 98. BEELER, LEONA KIHN	2549A
36) 99. LAY, VIRGINIA SLAWINSKI	2549B
37) 00. RICHARDSON, VICTORIA LEIGH	2550
38) 01. ARNETT, WILLIAM MICHAEL	2554A <i>State</i>
39) 02. ROWLAND, DIANA BARNETT	2555
40) 03. GRAY, DAVID O	2560
41) 04. ZEDAKER, ROBERT WILLIAM	2561A
42) 05. EARNEST, STEPHEN TALLEY	2568A
43) 06. SMITH, JAMES M	2572
44) 07. ANAKALEA, RANDYGLEN KALEO	2572A
45) 08. CHAPPELL, CONNIE HANCHEY	2573A

STRIKE LIST

NAME	JUROR NUMBER
46) 109. SANDUSKY, CYNTHIA LOU	2579
47) 110. SHUPTRINE, MATHEW LEE	2582
48) 111. PHILLIPS, JODY L	2585A
49) 112. BATTEN, DONDE BURKHALTER	2592A
50) 113. SCHEXNAIDER, DAVID H	2597A
51) 114. LOPEZ, ISELA RINCON	2600A
52) 115. WINFREY, ROSALIND FAYE	2611
53) 116. PENNEY, MICHAEL J	2616A
54) 117. FLETCHER, STACEY DAWN	2626
55) 118. QUIROZ, ROBERT	2627
56) 119. IREY, CHARLENE ANNE	2647A
57) 120. YIN, DA HSIUNG	2652
58) 121. KEYES, SHIRLEY ANN	2652A
59) 122. PULLINGS, SHILINDA M	2664
60) 123. ARCY, DANIEL PATRICK	2664A
61) 124. PSENCIK, LARRY DEAN	2670
62) 125. ZUCHA, BRYANNE NOEL	2671
63) 126. GOSS, JOHN BENJAMIN	2673A

STRIKE LIST

CASE NO. 1083785 & 1083786 IN THE
 "DEFENDANT'S JURY LIST" COUNTY CRIMINAL COURT AT LAW NO. ____
 THE STATE OF TEXAS 185 DISTRICT COURT
 VS NO. _____ OF HARRIS COUNTY, TEXAS

NAME	JUROR NUMBER
1) 64. SHAEFER, JAMES ROBERT	2447A
2) 65. CRAWFORD, SUE	2448
3) 66. VILLARREAL, NOEL	2449
4) 67. TAYLOR, WILLIAM MINOR	2457A
5) 68. MONKS, MARY HODAKIEVIC	2464
6) 69. REDWORTH, GLENDA EDNAE	2467A
7) 70. FETTY, MICHAEL ANN	2476A
8) 71. MARTINEZ, BLANCA LYDIA	2478A
9) 72. BOYD, PERRY LEROY	2484
10) 73. PROFFITT, JOANNA CHRISTINE	2486
11) 74. LARSEN, ANN TRITT	2488B
12) 75. LIGHTFOOT, CARL	2491A
13) 76. SIGLER, MARILYN MCKIBBIN	2491B
14) 77. HIGHTOWER, MICAKALLA V	2498A
15) 78. RAPPAPORT, DEBORAH FINN	2506A
16) 79. KERBOW, KYLE LANE	2507A
17) 80. CHEN, STEPHENY L	2507B
18) 81. GOLINKIN, WEBSTER FOWLER	2510A
19) 82. BERHANU, DEBEDE	2519A
20) 83. DOTSON, SHERRI THOMAS	2516
21) 84. BRAUN, DOROTHY DROEGE	2519

*strike
 Defense List.
 Andrew Ponce*

STRIKE LIST

NAME	JUROR NUMBER
22) 85. CHISM, JILL BURTON	2528A
23) 86. ALI, FAISAL M	2529A
24) 87. MIDDLETON, JAMES J	2531
25) 88. POOLE, MICHAEL LYNN	2536A
26) 89. CHRISTIANSEN, GENE EDWARD	2537A
27) 90. CHEN, SHARON CHIA	2539
28) 91. RUSHING, ANNA MARIE	2540
29) 92. BLANGO, NELDA ANN	2540A
30) 93. CARRION, DANIEL	2540B
31) 94. CASTRO, MARIA CONCEPCION	2543A
32) 95. MONEY, ARTHUR LEE	2544
33) 96. JOHNSON, DONALD RAY	2545B
34) 97. LOPEZ, RUBEN	2547
35) 98. BEELER, LEONA KIMM	2549A
36) 99. LAY, VIRGINIA SLAWINSKI	2549B
37) 100. RICHARDSON, VICTORIA LEIGH	2550
38) 01. ARNETT, WILLIAM MICHAEL	2554A
39) 02. ROWLAND, DIANA BARNETT OK	2555
40) 03. GRAY, DAVID O	2560
41) 04. ZEDAKER, ROBERT WILLIAM	2561A
42) 05. EARNEST, STEPHEN TALLEY	2568A
43) 06. SMITH, JAMES M	2572
44) 07. ANAKALEA, RANDYGLEN KALEO	2572A
45) 08. CHAPPELL, CONNIE HANCHEY	2573A

STRIKE LIST

NAME	JUROR NUMBER
46) 109. SANDUSKY, CYNTHIA LOU	2579
47) 110. SHUPTRINE, MATHEW LEE	2582
48) 111. PHILLIPS, JOBY L	2583A
49) 112. BATTEN, DONDE BURKHALTER	2592A
50) 113. SCHEXNAIDER, DAVID H	2597A
51) 114. LOPEZ, ISELA RINCON	2600A
52) 115. WINFREY, ROSALIND FAYE	2611
53) 116. PENNEY, MICHAEL J	2616A
54) 117. FLETCHER, STACEY DAWN	2626
55) 118. QUIROZ, ROBERT	2627
56) 119. IREY, CHARLENE ANNE	2647A
57) 120. YIN, DA HSIUNG	2652
58) 121. KEYES, SHIRLEY ANN	2652A
59) 122. POLLINGS, SHILINDA M	2664
60) 123. ARCY, DANIEL PATRICK	2664A
61) 124. PSENCIK, LARRY DEAN	2670
62) 125. ZUCHA, BRYANNE NOEL	2671
63) 126. GOSS, JOHN BENJAMIN	2673A

CAUSE NO. 1083786

THE STATE OF TEXAS § IN THE 185TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
JAMES HAYES § FEBRUARY TERM, A. D., 2007

Members of the Jury:

The defendant, James Hayes, stands charged by indictment with the offense of fraudulent use or possession of identifying information, alleged to have been committed on or about the 7th day of September, 2006, in Harris County, Texas. The defendant has pleaded not guilty.

Our law provides that a person commits the offense of fraudulent use or possession of identifying information if the person obtains, possesses, or uses identifying information of another person without the other person's consent and with intent to harm or defraud another.

"Identifying information" means information that alone or in conjunction with other information identifies an individual, including an individual's name, social security number, date of birth, and government-issued identification number.

"Consent" means assent in fact, whether express or apparent.

The term "harm" as used herein means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective or desire to engage in the conduct.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 7th day of September, 2006, in Harris County, Texas, the defendant, James Hayes, did then and there

: 0000000042

APP115

unlawfully, intentionally or knowingly obtains, possesses, or uses identifying information of Percy Vital, namely, name, date of birth and government-issued identification number without the consent of Percy Vital and with intent to harm or defraud another, then you will find the defendant guilty as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

: 00100 000043

APP116

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a right accorded a defendant, and in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

In this case, the defendant has elected not to testify and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

You are further instructed that if there is any evidence before you in this case regarding the defendant's committing an alleged offense or offenses other than the offense alleged against him in the indictment in this case, you cannot consider such evidence for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offense or offenses, if any, and even then you may only consider the same in determining the motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of the defendant, if any, in connection with the offense, if any, alleged against him in the indictment and for no other purpose.

: 001000045

APP118

A Grand Jury indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the question of guilt of the defendant. The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his trial. The law does not require a defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The prosecution has the burden of proving the defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the defendant.

It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all reasonable doubt concerning the defendant's guilt.

In the event you have a reasonable doubt as to the defendant's guilt after considering all the evidence before you, and these instructions, you will acquit him and say by your verdict "Not Guilty."

You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony, but the law you shall receive in these written instructions, and you must be governed thereby.

After you retire to the jury room, you should select one of your members as your Foreman. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by

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00103

APP119

using the appropriate form attached hereto and signing the same as Foreman.

During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreman and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.

S. Brown
Susan Brown, Judge
185th District Court
Harris County, TEXAS

1-20-07
2007
CPK

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00104

APP120

CAUSE NO. 1083786

THE STATE OF TEXAS § IN THE 185TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
JAMES HAYES § FEBRUARY TERM, A. D., 2007

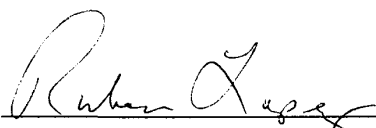
V E R D I C T

"We, the Jury, find the defendant, James Hayes, not guilty."

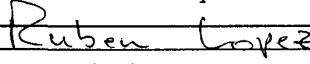
Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, James Hayes, guilty of
fraudulent use or possession of identifying information, as
charged in the indictment."



Foreman of the Jury



(Please Print) Foreman

1083-1-2007


000048

APP121

CAUSE NO. 1083786

THE STATE OF TEXAS § IN THE 185TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
JAMES HAYES § FEBRUARY TERM, A. D., 2007

Members of the Jury:

Having found the defendant, James Hayes, guilty of fraudulent use or possession of identifying information, it now becomes your duty to assess the punishment in this case.

Our statutes provide that the punishment for fraudulent use or possession of identifying information shall be by confinement in a state jail for not less than 180 days nor more than two years. In addition to confinement, a fine not to exceed \$10,000.00 may be assessed.

Therefore, you will assess the punishment of the defendant upon said finding of guilt at confinement in a state jail for any term of not less than 180 days nor more than two years. In addition to imprisonment, the jury in its discretion may, if it chooses, assess a fine in any amount not to exceed \$10,000.00.

: 0000049

APP122

You are instructed that the defendant may testify in his own behalf if he chooses to do so, but if he elects not to do so, that fact cannot be taken by you as a circumstance against him nor prejudice him in any way. The defendant has elected not to testify in this punishment phase of trial, and you are instructed that you cannot and must not refer to or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

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00107

APP123

The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

You are further instructed that in fixing the defendant's punishment, which you will show in your verdict, you may take into consideration all the facts shown by the evidence admitted before you in the full trial of this case and the law as submitted to you in this charge.

Your verdict must be by a unanimous vote of all members of the jury. In arriving at the amount of punishment to be assessed, it will not be proper for you to fix the same by lot, chance, any system of averages, or any other method than by a full, fair, and free exercise of the opinion of the individual jurors, and you must not refer to nor discuss any matter not in evidence before you.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given their testimony, but you are bound to receive the law from the court, which has been given you.

No one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence. After you have reached a unanimous verdict, the Foreman will certify thereto by using the appropriate form attached to this charge and signing the same as Foreman.

Following the arguments of counsel, you will retire to deliberate your verdict.

MAR 02 2007

CH

S. Brown

Susan Brown, Judge
185th District Court
Harris County, TEXAS

000051
001008

APP124

CAUSE NO. 1083786

THE STATE OF TEXAS § IN THE 185TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
JAMES HAYES § FEBRUARY TERM, A. D., 2007

CHOOSE ONE

"We, the Jury, having found the defendant, James Hayes,
guilty of fraudulent use or possession of identifying
information, assess his punishment at confinement in a state jail
for _____ year(s)."

Foreman of the Jury

"We, the Jury, having found the defendant, James Hayes,
guilty of fraudulent use or possession of identifying
information, assess his punishment at confinement in a state jail
for Two (2) year(s) and assess a fine in the
amount of \$ 10,000.00."

Ruben Lopez
Foreman of the Jury

"We, the Jury, having found the defendant, James Hayes,
guilty of fraudulent use or possession of identifying
information, assess his punishment at confinement in a state jail
for _____ days."

Foreman of the Jury

"We, the Jury, having found the defendant, James Hayes,
guilty of fraudulent use or possession of identifying
information, assess his punishment at confinement in a state jail
for _____ days and assess a fine in the amount
of \$ _____."

Foreman of the Jury

FILED
CLERK OF DISTRICT COURT
HARRIS COUNTY, TEXAS

MAR 02 2007

CLERK OF DISTRICT COURT
HARRIS COUNTY, TEXAS
CH

: 00000052

APP125



CASE No. 1083786
INCIDENT NO./TRN: 903747201X-A002

THE STATE OF TEXAS § IN THE 185TH DISTRICT
v. § COURT
JAMES HAYES § HARRIS COUNTY, TEXAS
STATE ID No.:TX04418157 §

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: HON. SUSAN BROWN Date Judgment Entered: 3/2/2007
Attorney for State: K. TAYLOR Attorney for Defendant: A. LANNIE

Offense for which Defendant Convicted:

FRAUDULENT USE/POSSESSION OF IDENTIFYING INFORMATION

Charging Instrument: Statute for Offense:
INDICTMENT N/A

Date of Offense:
9/7/2006

Degree of Offense: Plea to Offense:
STATE JAIL FELONY NOT GUILTY

Verdict of Jury: Findings on Deadly Weapon:
GUILTY N/A

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

Punished Assessed by: JURY Date Sentence Imposed: 3/2/2007 Date Sentence to Commence: 3/2/2007

Punishment and Place of Confinement: 2 YEARS STATE JAIL DIVISION, TDCJ

THIS SENTENCE SHALL RUN CONCURRENTLY.

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

Fine: \$ 10,000.00 Court Costs: \$ 271.00 Restitution: \$ N/A Restitution Payable to: ☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

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

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

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

Time Credited: From 9/8/2006 to 9/9/2006 From 2/14/2007 to 3/2/2007 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 Harris County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

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

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 sworn. 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.

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

IMAGED

001000053

APP126

Hayes
1083786

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, State Jail 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**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

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

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

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

Furthermore, the following special findings or orders apply:

Signed and entered on March 2, 2007

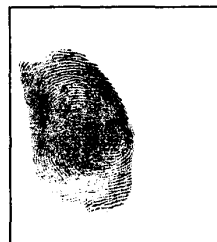
x *S. Brown*
HON. SUSAN BROWN
JUDGE PRESIDING

Ntc Appeal Filed: MAR 02 2007 Mandate Rec'd: _____

After Mandate Received, Sentence to Begin Date is: _____

Def. Received on 03/02/07 at 1155 AM PM
By: A. Blahut # 1630 Deputy Sheriff of Harris County

Clerk: chaves 1/4/09 SW
LCBT=CM



Right Thumbprint



V.

A/K/A/

Harris County, Texas

APP128

THE STATE OF TEXAS VS.

Nayes, James

1083786

18515

GENERAL ORDERS OF COURT

FEB 28 2007 Defendant Nayes appeared in person
with Counsel A. Harnie
K. Taylor appeared for the State
Court Reporter C. Logan
Judge Presiding S. Brown

@ 10:40 am. a panel of 6 ^{prospective} jurors were sworn & administered as to the law. @ 11:17 am the court excused for a break. @ 11:32 am the state began voir dire the defense began voir dire. @ 12:40 pm the court excused. @ 1:12 pm the jury was seated & then excused. @ 2:03 pm the jury was seated & sworn.

Defendant duly arraigned according to law
in open court pleaded Not Guilty

@ 2:07 pm the state made an opening statement. State began testimony. @ 2:45 pm the jury was excused & asked to return 3/1/07 for 9:30 am.

MAR 01 2007 Defendant Nayes appeared in person
with Counsel A. Harnie
K. Taylor appeared for the State
Court Reporter C. Logan
Judge Presiding S. Brown

GENERAL ORDERS OF THE COURT

MAR 01 2007 @ 9:58 am The jury was seated & testimony resumed. @ 11:37 am the jury was excused for a break. @ 11:37 am the jury was seated & testimony resumed. @ 12:24 pm the jury was excused for lunch. @ 2:20 pm the jury was seated & testimony resumed. @ 3:09 pm the jury was excused for a break. @ 4:38 pm the State rested as well, they then closed. They then were excused and asked to return @ 9:30 am.

MAR 02 2007 Defendant Hayes appeared in person
with Counsel A. Gannic
K. Taylor appeared for the State
Court Reporter C. Logan
Judge Presiding S. Brown

@ 9:33 am the jury was seated & the court's charge was read. @ 9:55 am the defense made their closing arguments. @ 9:55 am the State made their closing arguments. @ 10:12 am the jury was excused to begin deliberations. @ 11:06 am the jury was seated with a verdict of "GUILTY". @ 11:07 am the State made an opening for the punishment phase. @ 11:08 am the defense made an opening.

E STAT. OF TEXAS VS.

NAME: HAYES, JAMES

DCC# 185 CAUSE NO: 108378601010

OFFENSE: FRAUD/USE/POSS ID IN FS

FILED: 09/08/06

BAIL: 002000

GENERAL ORDERS OF COURT

FELONY COMPLAINT FILED SEP 08 2006

Preliminary Assigned Court Appearance: SEP 11 2006

SEP 11 2006

Defendant

appeared

with/without counsel

THP

RLS

9/26

SEP 15 2006

FELONY INDICTMENT

SEP 26 2006

Defendant

Hayes

appeared

with/without counsel

Lannie

RLS 10/10/06

OCT 10 2006

Defendant

appeared

with/without counsel

Andrew Lannie

RLS 10/31/06

OCT 31 2006

Defendant

appeared

with/without counsel

A. LANNIE

RLS 1/26/07
1/29/07

JAN 26 2007

CLO

JAN 29 2007

Defendant

Hayes

appeared

with/without counsel

Lannie

RLS 1/31/07

JAN 31 2007

Defendant

Hayes

appeared

with/without counsel

Lannie

RLS 2/5/07

FEB 05 2007

CLO

GENERAL ORDERS OF THE COURT

FEB 06 2007

RLS By Computer 2/9/07

FEB 09 2007

2/7/07 RLS By Computer 2/9/07
C/O

FEB 12 2007

Defendant

with/without counsel

appeared

A. LANNIE

RLS 2/13/07 JTR

FEB 13 2007

C/O

FEB 14 2007

C/O

FEB 15 2007

Defendant

with/without counsel

appeared

A. LANNIE

RLS 2/19/07 JTR

At 9:00 A.

the Bailiff called the
Defendant's name at the Courthouse door.
Defendant's name at the Courthouse door.

BOND FORFEITED ALIAS CAPIAS TO ISSUE

New Bail fixed in the sum of \$

NO BOND

FEB 20 2007

RLS By Computer 2/26/07

FEB 26 2007

RLS 2/28/07 P/C

THE STATE OF TEXAS VS.

Hayes, James
1083786
185th

GENERAL ORDERS OF COURT

MAR 02 2007 11:09am the state began testimony. @
& defense rested & closed. @ 11:20 am the court's
read. @ 11:27am the defense made a closing sta
11:28am the state made their closing state
the jury was excused to begin deliberations. @
jury was seated & returned with a sentence of
Htc of Appeal Filed

Cause No. 1083786

22/999
998 Su
P.3

THE STATE OF TEXAS

James Hayes V. A/K/A

185th District Court / County Criminal Court at Law No. _____

Harris County, Texas

NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

On March 2, 2007 (date), the defendant in the above numbered and styled cause gives NOTICE OF APPEAL of his conviction.

The undersigned attorney (check appropriate box):

- ☒ MOVES to withdraw.
☐ ADVISES the court that he will CONTINUE to represent the defendant on appeal.

March 2, 2007
Date

Andrew J. Lawrie
Attorney (Signature)

James Hayes
Defendant (Printed name)

ANDREW J. LAWRIE
Attorney (Printed name)

11937000
State Bar Number

6232 Hwy 146 Baytown Tx
Address

2814229016
Telephone Number

The defendant (check all that apply):

- ☒ REPRESENTS to the court that he is presently INDIGENT and ASKS the court to immediately APPOINT appellate counsel to represent him.
☒ ASKS the Court to ORDER that a free record be provided to him.
☒ ASKS the court to set BAIL.

Accordingly, Appellant ASKS the Court to conduct a hearing, make findings, and enter an Order Granting the requested relief.

James Hayes
Defendant (Signature)

James Hayes
Defendant's Printed name

SWORN TO AND SUBSCRIBED BEFORE ME ON MAR 02 2007

By Deputy District Clerk of Harris County, Texas Hayes

Cause No. 1083786

THE STATE OF TEXAS

James Hayes v. NK/A

185 District Court / County ~~Criminal Court~~ at Law No. _____

Harris County, Texas

OATH OF APPOINTED ATTORNEY ON APPEAL

I, _____, Attorney at Law, swear or affirm that I will be solely responsible for writing a brief and representing the appellant on appeal. If I am not able to perform my duties as appellate counsel, I will notify the Court immediately so that the Court may take the appropriate action as deemed necessary.

Attorney-at-Law (Signature)

BAR Number / SPN

Address

City / State / Zip

Phone

FAX

SWORN TO AND SUBSCRIBED BEFORE ME ON _____

By Deputy District Clerk of Harris County, Texas _____

1083786 PAUPER'S OATH ON APPEAL
CAUSE NO.: 1083785 OFFENSE: Credit Card Abuse
THE STATE OF TEXAS 185th DISTRICT COURT

VS
James Hayes
OF
HARRIS COUNTY, TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES James Hayes, defendant in the above styled and numbered cause, and states under oath that he is without funds, property or income. The defendant respectfully petitions the court to: (check all that apply)

- ☒ Appoint appellate counsel to represent him.
- ☒ Asks the court to order that a free record be provided to him.

X In Custody
DEFENDANT

SUBSCRIBED AND SWORN to before me, this 21 day of March A.D., 2007.

FILED
CHARLES MACARISSE
District Clerk

MAR 21 2007
Harris County, Texas

DEPUTY DISTRICT CLERK
185th DISTRICT COURT
HARRIS COUNTY, TEXAS

131 899 SW
LHH

ORDER

On Deputy the court conducted a hearing and found that the defendant is indigent.

- ☐ The court orders that is appointed to represent defendant/appellant on appeal.
- ☐ The court reporter is ordered to prepare and file the reporter's record without charge to the defendant/appellant.

It is further ordered that the clerk of this court mail a copy of the order to the court reporter: by certified mail return receipt requested.

J. Brown
JUDGE PRESIDING
185th DISTRICT COURT
HARRIS COUNTY, TEXAS

AFFIRMATION

I, Sharon Slopi's, Attorney at Law, swear or affirm that I will be solely responsible for writing a brief and representing the appellant on appeal. If I am not able to perform my duties as appellate counsel, I will notify the court immediately so that the court may take the appropriate action as deemed necessary.

Sharon Slopi's
ATTORNEY (SIGNATURE)

P.O. Box 980803
ADDRESS

(713) 529-0771
PHONE

Seslopi's@yahoo.com
EMAIL ADDRESS

18511300
BAR/SPN NUMBER
Houston, Tx 77098
CITY STATE ZIP
(713) 529-8771
FAX NUMBER -3602

SWORN TO AND SUBSCRIBED BEFORE ME ON

DEPUTY DISTRICT CLERK (SIGNATURE)
DISTRICT CLERK

5/11/07
5/11/07

00122
000063

APP136



CHARLES BACARISSE
HARRIS COUNTY DISTRICT CLERK

Direct Dial Line:
(713) 755-5738

March 22, 2007

SHARON SLOPIS
ATTORNEY OF RECORD
P. O. BOX 980803
HOUSTON TEXAS 77098

Defendant's Name: JAMES HAYES

Cause No: 1083786

Court: 185TH DISTRICT COURT

Please note the following appeal updates on the above mentioned cause:

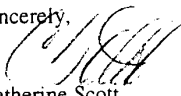
Notice of Appeal Filed Date: 3-7-07

Sentence Imposed Date: 3-2-07

Court of Appeals Assignment: First Court of Appeals

Appeal Attorney of Record: SHARON SLOPIS

Sincerely,


Catherine Scott
Criminal Post Trial Deputy

CC: Mr. Charles Rosenthal, Jr.
District Attorney
Appellate Division
Harris County, Texas

CARRIE LOGAN

This is your notice to inform any and all substitute reporters in this cause.

Cause No. 1083786

THE STATE OF TEXAS } IN THE DISTRICT COURT OF
VS. } HARRIS COUNTY, TEXAS
JAMES HAYES } 185th DISTRICT COURT

DEFENDANT'S DESIGNATION TO THE CLERK OF
MATTERS TO BE INCLUDED IN THE RECORD

TO THE HONORABLE CLERK OF SAID COURT:

COMES NOW JAMES HAYES, defendant in the above cause, pursuant to Tex. R. App.

P. 34.5, and would request the following to be included in the appellate record. In support of said motion, defendant would show as follows:

I.

Defendant would request the clerk of this Court include the following in the transcript to be
prepared for appellate record:

(1) A copy of the pleadings, docket sheets, documents, written motions, motions to dismiss, motions to quash, motion to shuffle the jury, motion for change of venue, subpoena lists, jury lists, and exhibits filed in this cause.

(2) A copy of the notes or other written communications by the jury to the court or any court official.

(3) A copy of the executed and unexecuted arrest and search warrants connected with this cause.

(4) the original exhibits and documents filed in this cause, whether admitted into evidence or admitted solely for the appellate record.

FILED
CLERK OF DISTRICT COURT
HARRIS COUNTY, TEXAS
MAR 23 AM 10:46
185th DISTRICT COURT

[Handwritten signature]

(5) The bills of exceptions filed.

(6) A copy of the written findings of facts and conclusions of law entered in this cause for any purpose, or under any other cause which alleges the same offense as the offense alleged in this cause.

(7) A copy of all pleadings motions, subpoenas, and all other papers of any kind contained in the court's file for any other cause filed previously or subsequently to this cause, and which alleges the same offense as alleged in this present cause. Such matters included, but are not limited to, reset forms and/or agreed continuance, all written motions, the indictment or information in that cause, motions to dismiss or quash, motions for change of venue, and motions for new trial.

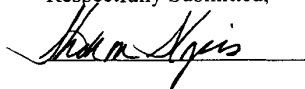
(8) The physical exhibits marked and identified, whether or not introduced into evidence.

(9) The video tape or tapes introduced into evidence or otherwise made a part of the record in this case.

~~(10) Executed waivers of jury trial, jury punishment, and pre-sentence report.~~

(11) The pre-sentence report prepared and considered by the trial judge in assessing punishment.

Respectfully Submitted,



SHARON SLOPIS
P.O.Box 980803
Houston, Tx, 77098
(723) 529-0771
TBN 18511300

ATTORNEY FOR DEFENDANT

: 201000066

APP139

CERTIFICATE OF SERVICE

I hereby certify that on MAR. 23, 2007, a true and correct copy of the foregoing designation was tendered to the Clerk of the Court to be deposited in the box reserved for the Harris County District Attorney's Office.


SHARON SLOPIS

: 00124 000067

APP140

Cause No. 1083786

THE STATE OF TEXAS	}	IN THE DISTRICT COURT OF
VS.	}	HARRIS COUNTY, TEXAS
JAMES HAYES	}	185 th DISTRICT COURT

ORDER

BE IT REMEMBERED, that on this day came to be heard the foregoing Defendant's Designation to the Clerk of Matters to Included in the Record. Defendant's motion is hereby GRANTED/DENIED.

IT IS SO ORDERED.

Signed this _____ day of _____, 2007

JUDGE PRESIDING

: 001200068

APP141

Cause No. 1083786

THE STATE OF TEXAS	}	IN THE DISTRICT COURT OF
VS.	}	HARRIS COUNTY, TEXAS
JAMES HAYES	}	185 th DISTRICT COURT

DEFENDANT'S DESIGNATION TO THE COURT REPORTER OF

MATTERS TO BE INCLUDED IN THE RECORD

TO THE HONORABLE CLERK OF SAID COURT:


COMES NOW, JAMES HAYES, defendant in the above cause, pursuant to Tex. R. App. P. 34.6(b), and would request the following to be included in the appellate record. In support of said motion, defendant would show as follows:

I.

The Defendant has been found indigent, and a record ordered to be prepared at state expense.

II.

This appeal lies from appellant's conviction in *The State of Texas vs. JAMES HAYES*, Cause No. 1083786 in the 185TH Judicial District Court, Harris County, Texas. Defendant plead not guilty to Fraudulent Use and Possession of I.D. on February 28, 2007. On March 2, 2007, the jury found the Defendant guilty and sentenced him to 2 years State Jail and a \$10,000.00 fine. Notice of appeal was filed on March 2, 2007. An Amended Notice of Appeal was filed on March 23, 2007.

FILED
CHARLES C. CARLISSE
DISTRICT CLERK
HARRIS COUNTY, TEXAS
07 MAR 23 AM 10:44
BY  TEF/TP

: 0000069

APP142

III.

Defendant would request each of the court reporters listed below to transcribe any hearing, trial or other matter before court for each of the dates listed:

C. Logan – Feb. 28, 2007; March 1, 2007; & March 2, 2007.

IV.

In addition, defendant would request the court reporter of this Court to include the following in the statement of facts to be prepared for the appellate record:

- (1) The statement of facts for the pretrial hearings, or the bench conferences, conducted in this cause.
- (2) The statement of facts for the jury voir dire.
- (3) ~~The statement of facts for the trial conducted in this cause, including any bench conferences or matters conducted in chambers.~~
- (4) The statement of facts showing the defendant's objections and requests concerning the charge, a copy of any written objections to the charge, and any written special instructions tendered to the court.
- (5) The statement of facts for the motion for new trial, and the motion in arrest of judgment.
- (6) The statement of facts from the defendant's motion to revoke probation hearing.
- (7) The statement of facts from the defendant's motion to adjudicate guilt hearing.
- (8) The statement of facts from the defendant's guilty plea, or no contest plea hearing, and from the sentencing hearing or hearings.
- (9) The statement of facts from the defendant's bench trial.
- (10) The original exhibits and documents filed in this cause, whether admitted into evidence or admitted solely for the appellate record.

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APP143

(11) The bills of exceptions filed.

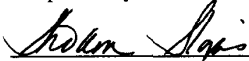
(12) A transcript of the court reporter's notes pertaining to any hearing or other matter for any other cause filed previously or subsequently to this cause, and which alleges the same offense as alleged in this present cause.

(13) The physical exhibits marked and identified, whether or not introduced into evidence.

(14) The video tape or tapes introduced into evidence or otherwise made a part of the record in this case.

(15) The statement of facts from defendant's previous trial in this cause or under a different cause number alleging the same offense, which resulted in a mistrial or motion for new trial or motion in arrest of judgment being granted.

Respectfully submitted,



SHARON SLOPIS

P.O. BOX 980803

713/529-0771

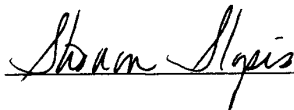
Houston, Texas 77098

TBN: 18511300

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on MAY 23, 2007, a true and correct copy of the foregoing designation was tendered to the Clerk of the Court to be deposited in the box reserved for the Harris County District Attorney's Office, and a copy mailed certified to the court reporter(s) listed below.



SHARON SLOPIS

000071
: 00128

APP144

Cause No. 1083786

THE STATE OF TEXAS	}	IN THE DISTRICT COURT OF
VS.	}	HARRIS COUNTY, TEXAS
JAMES HAYES	}	185 th DISTRICT COURT

ORDER

BE IT REMEMBERED, that on this day came to be heard the foregoing Defendant's Designation to the Court Reporter of Matters to Included in the Record. Defendant's motion is hereby GRANTED/DENIED.

IT IS SO ORDERED.

Signed this ____ day of _____, 2007 .

JUDGE PRESIDING

: 0012000072

APP145

Cause No. 1083786

THE STATE OF TEXAS	}	IN THE DISTRICT COURT OF
VS.	}	HARRIS COUNTY, TEXAS
JAMES HAYES	}	185 th DISTRICT COURT

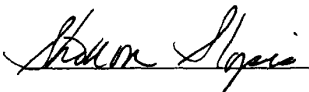
FIRST AMENDED WRITTEN NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE DEFENDANT, JAMES HAYES , on this the 23rd day of March, 2007, and within thirty days of sentencing, or within ninety (90) days of sentencing where a motion for new trial was filed, having been pronounced in the above numbered and styled cause and, excepting to the ruling of the court, files this written notice of appeal of said conviction to the Court of Appeals pursuant to Texas Rules of Appellate Procedure 25.2 and 26.2.

WHEREFORE, premises considered, Defendant prays this written notice of appeal be entered of record this date.

Respectfully Submitted,




SHARON E. SLOPIS
P.O.Box 980803
Houston, Tx, 77098
(723) 529-0771
TBN 18511300

ATTORNEY FOR DEFENDANT

FILED
CHARLES TACARISSE
DISTRICT CLERK
HARRIS COUNTY, TEXAS

07 MAR 23 AM 10:43

BY  DEPT

000073
00130

APP146

CERTIFICATE OF THE CLERK

THE STATE OF TEXAS
COUNTY OF HARRIS

IN THE 185TH JUDICIAL DISTRICT COURT
OF HARRIS COUNTY, TEXAS

I, **CHARLES BACARISSE**, District Clerk of Harris County, Texas, do hereby certify that the above and foregoing proceedings, instruments and other papers contained in Volume I Pages 1 - 74 inclusive, to which this certification is attached and made a part thereof, are true and correct copies of all proceedings, instruments and other papers specified by Rule 51 (a) and matter designated by the parties pursuant to Rule 51 (b) in Cause No. 1083786, styled JAMES HAYES vs. The State of Texas in said court.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Harris County, Texas on

April 18TH, 2007.

CHARLES BACARISSE,
Harris County District Clerk

By: _____

C. Scott, Deputy



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February 15, 28, March 1, 2 and 5, 2007

REPORTER'S RECORD
VOLUME 1 OF 8 VOLUME(S)
TRIAL COURT CAUSE NOS. 1083785, 1083786

APPELLATE COURT NO. _____

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
))
V.) HARRIS COUNTY, TEXAS
))
JAMES HAYES) 185TH JUDICIAL DISTRICT

MASTER INDEX

On February 15th, 28th and March 1st, 2nd and 5th, 2007, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Susan Baetz Brown, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

F I L E D
CHARLES BACARISSE
District Clerk

APR 09 2007

Time: _____
By: SAH Harris County, Texas
Deputy

Carrie Scardaville Logan, Texas CSR No. 3150
Official Court Reporter, 185th District Court
1201 Franklin
Houston, Texas 77002

COPY

: 00132

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Master Index
February 15, 28, March 1, 2 and 5, 2007

APPEARANCES

Ms. Katie Taylor
SBOT No. 24048232
Assistant District Attorney
Harris County District Attorney's Office
1201 Franklin
Houston, Texas 77002
Telephone: 713.755.5800
Attorney for the State of Texas

* * * * *

Mr. Andrew Lannie
SBOT No. 11937000
Attorney at Law
6232 Highway 146
Baytown, Texas 77520
Telephone: 281.303.9700
Attorney for the Defendant

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February 15, 28, March 1, 2 and 5, 2007

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FINAL ARGUMENTS AND PUNISHMENT HEARING

March 2, 2007

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EXHIBITS OFFERED BY THE STATE

	EXHIBIT	DESCRIPTION	OFFERED	ADMITTED	VOL.
12	1	computer printout	19,22	22	4
13	2	photograph	21	22	4
14	3	photograph	198	199	5
15	4	photograph	21	22	4
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20	8	photograph	198,200	200	5
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EXHIBITS OFFERED BY THE STATE

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14	invoice	79	80	5
15	three-page timeline	105	105	5
16	three sentences on legal pad	107	117*	5
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*Admitted for the Court only

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Pretrial Hearing
February 15, 2007

REPORTER'S RECORD
VOLUME 2 OF 8 VOLUME(S)
TRIAL COURT CAUSE NOS. 1083785, 1083786

APPELLATE COURT NO. _____

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
V.) HARRIS COUNTY, TEXAS
JAMES HAYES) 185TH JUDICIAL DISTRICT

PRETRIAL HEARING

On the 15th day of February, 2007, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Susan Baetz Brown, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

F I L E D
CHARLES BACARISSE
District Clerk

APR 09 2007

Time: _____
By: BY Deputy
Harris County, Texas

Carrie Scardaville Logan, Texas CSR No. 3150
Official Court Reporter, 185th District Court
1201 Franklin
Houston, Texas 77002

COPY

: 00140

APP156

Pretrial Hearing
February 15, 2007

APPEARANCES

No Assistant District Attorney present for the State
of Texas

* * * * *

Mr. Andrew Lannie
SBOT No. 11937000
Attorney at Law
6232 Highway 146
Baytown, Texas 77520
Telephone: 281.303.9700
Attorney for the Defendant

Pretrial Hearing
February 15, 2007

VOLUME 2

PRETRIAL HEARING

February 15, 2007

PAGE VOL.

Proceedings 4 2

Adjournment 15 2

Reporter's Certificate 16 2

There were no witnesses for this volume.

There were no exhibits for this volume.

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1 (Open court, defendant present.)

2 THE COURT: This is Cause No. 1083785
3 and 1083786, the State of Texas versus James Hayes.
4 Mr. Lannie, I believe you wanted to put something on
5 the record.

6 MR. LANNIE: Yes, Judge. At this time
7 I'd like to reurge a motion to withdraw that I
8 previously filed on October 16th of 2006. And in
9 connection with this case, so the Court will have an
10 overview of what's taken place, I was hired in the
11 courtroom and paid a small deposit, a \$200 deposit of
12 a \$1500 fee. Mr. Hayes indicated he would come by my
13 office. And since I was hired in September, prior to
14 September 27th, on September 27th, I wrote him a
15 letter indicating that his new court date was
16 October 10th at 8:30 AM and asked him to contact me
17 within three days prior to that date to confirm the
18 setting. He did not contact me.

19 On October 11th I again advised him
20 that his case was reset for October 31st at 8:30 and
21 I asked him to contact me within three days prior
22 to -- before the hearing to confirm that setting and
23 he did not contact me.

24 On October 18th, I filed a motion to
25 withdraw as counsel. I mailed this motion to the

Pretrial Hearing
February 15, 2007

1 only address that I had in Missouri City, which I
2 think is a bogus address. That motion to withdraw
3 came back. It was not delivered.

4 On January 22nd of 2007, I wrote him a
5 letter and indicated I received a fax from the
6 District Attorney's office that I intend to enter a
7 copy of his criminal record of prior convictions and
8 extraneous offenses for which he had been convicted
9 of in the trial of the case. And I said, Based upon
10 that evidence, I suspect you will have zero
11 credibility with a jury selected in your case. This
12 case is set for trial Monday, January 29th, 2007,
13 that your failure to communicate with my office in
14 assisting your defense in this case will likely be
15 your undoing. You cannot have it both ways. What do
16 you expect?

17 The next letter that was written was
18 November 1st. I advised Mr. Hayes that his case was
19 set for trial on January 26th and I asked him to
20 contact me three days prior to that time to confirm
21 the hearing. He did not contact me and did not
22 confirm the hearing.

23 On February 6th of 2006, I wrote him a
24 letter to the same address, the only address that I
25 have, which essentially indicated that he had asked

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APP160

1 that he -- he wanted four witnesses subpoenaed to --
2 for the trial. One was Mario Elie, a former Houston
3 Rocket basketball player; Robert Horry, who is
4 currently playing with the San Antonio Spurs; Grady
5 Prestige, county commissioner; and Sam Cassell, who
6 was playing with the LA Clippers.

7 At the courthouse steps I asked him:
8 What do you expect the context of the testimony to
9 be?

10 He stated they were friends of his and
11 they would testify as for his truthfulness. I
12 explained to him at that time that normally a
13 personal subpoena would have to be filed ten days in
14 advance of the trial. At that time a dispute arose
15 between he and I and I indicated to him if he was
16 dissatisfied with my representation, he should hire
17 another lawyer.

18 He has never responded to any of these
19 letters. I've marked these, Motion to Withdraw No. 1
20 and I'm going to ask that be submitted in the record.

21 My office has never received a phone
22 call prior to the trial date from James Hayes. We
23 have a recorder that picks up every phone call made
24 after 5:00 o'clock and sometime after 5:30 PM on
25 January 6th, I received a call where he indicated who

Pretrial Hearing
February 15, 2007

1 he wanted -- who he wanted subpoenaed in the case.

2 On January 24th, he called at 9:12 PM
3 at night and indicated that he has a mess, that he
4 would be back after 9:00 PM, that he was homeless, no
5 address, no money and a friend's phone number would
6 be free after 9:00 o'clock. He didn't give me that
7 number, but I suspect that is a number that he had
8 previously given me involving a cell phone that's
9 interfaced in Mission Viejo, California, of which
10 I've called that number numerous times and I've never
11 gotten through to Mr. Hayes, nor has he returned the
12 call when messages were left.

13 On Friday, January 26th at 9:33 PM at
14 night, he called my office and he said he would have
15 funding Saturday if I could reset the court date till
16 later. Please give him a call as soon as possible.

17 I want -- this is -- has been marked
18 as Motion to Withdraw No. 2. So, I want to indicate
19 to the Court at this time in the presence of
20 Mr. Hayes that he has never visited my office, he's
21 never discussed his case. On February 9th I spent
22 approximately an hour and a half with him in the
23 trial ready room and took a detailed statement from
24 him about the -- about his comments as to the events
25 that led up to his arrest.

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February 15, 2007

1 I suspect that he intends to give
2 perjured testimony about those events and I do not
3 want to be a party to that. I do not want to have to
4 answer a writ for ineffective assistance of counsel,
5 nor do I want to answer a grievance in this case.
6 For that reason, I'd like to reurge my motion to
7 withdraw.

8 THE COURT: Mr. Hayes, I'm confused.
9 Do you want Mr. Lannie as your lawyer? I mean, if
10 you don't have any contact with him? Have you hired
11 somebody else? What's going on?

12 THE DEFENDANT: At this point, Your
13 Honor, I'm looking into new counsel, but I have
14 contacted Mr. Lannie and his office several times.

15 THE COURT: During regular business
16 hours, I guess my question should have been.

17 THE DEFENDANT: Oh, okay. Yes, ma'am.
18 Just on the days that I was supposed to be on a
19 four-hour call were the days that I contacted his
20 office.

21 THE COURT: Okay. I guess I don't
22 really understand. If he's been trying to get ahold
23 of you -- I mean, you hired him.

24 THE DEFENDANT: Right.

25 THE COURT: So, do you not want him to

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1 be your lawyer?

2 *THE DEFENDANT:* Yes, I do. That's
3 what I was asking him to do. I just wanted him -- I
4 asked him for a few things, file a few motions,
5 subpoena a few witness, for example, Anthony Poly,
6 Elridge Stevens, who were there at the scene and
7 there at the place of the alleged crime.

8 So, I just was asking for him to do a
9 little work, you know, and show me that he could
10 represent me. And at this point yesterday, it came
11 to a point to where he called the bail bondsman
12 company and asked them to revoke my bond because I
13 wasn't here in a timely fashion, but I was on a
14 four-hour call and I never received a call from him.
15 When I received my first call, it was at 9:06
16 yesterday morning from the bail bonds company and I
17 made it to your courtroom before 10:30.

18 *MR. LANNIE:* I was present, Judge, and
19 I did not see him in the courtroom. I did not leave
20 the courthouse until 11:00 o'clock or 11:05 or 11:10.

21 *THE COURT:* And as far as that, that's
22 neither here nor there. As a courtesy to both you
23 and Mr. Lannie, as I do in all cases, you all were on
24 call and I gave him the opportunity before with the
25 understanding or had my coordinator that he would

Pretrial Hearing
February 15, 2007

1 then contact you and have you here in the morning.
2 We were ready to pick a jury on your case yesterday.
3 You were not here. I don't know what happened. It's
4 not the bonding company's responsibility to get you
5 here. It's your responsibility to keep up with your
6 lawyer and your lawyer to keep up with you, for that
7 matter. I'm sort of at a loss. I don't know. Is he
8 your lawyer? Have you hired somebody else? Are you
9 hiring somebody else? What's going on?

10 THE DEFENDANT: At this point I ask
11 that you allow me to reinstate my bond and hire new
12 counsel.

13 THE COURT: I'm not going to reinstate
14 your bond at this point. I am extremely bothered by
15 the fact that, as a courtesy, I put you on call and
16 you did not appear until I was picking a jury in
17 another case. I don't know why that happened, but
18 you knew that your case was the second case out this
19 week for trial and we were doing everything we could
20 to get it to trial.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And because you chose not
23 to appear at 9:00 o'clock yesterday morning and
24 whenever I guess you did appear, it was too late
25 because we had already -- were in the process of

Pretrial Hearing
February 15, 2007

1 picking another jury. So, if you want to hire new
2 counsel, I'll certainly carry your case over until
3 one day next week if you want to hire new counsel,
4 that would be great and we'll put you back on the
5 trial docket at some point.

6 *THE DEFENDANT:* At this point if I'm
7 not able to get my bond reinstated, I will not be
8 able to hire new counsel. So, I would have to stick
9 with Mr. Lannie at this point.

10 *THE COURT:* Well, and that's really up
11 to you. I mean, I don't really know what to tell you
12 because you hired him. I can't fire him.

13 *THE DEFENDANT:* Right, right. And at
14 this point --

15 *THE COURT:* I mean, it is -- the only
16 person that hurts in not contacting your lawyer is
17 you.

18 *THE DEFENDANT:* Yes, ma'am.

19 *THE COURT:* The only person that it
20 hurts and your lawyer being concerned that you're
21 going to file a grievance against him is you.

22 *THE DEFENDANT:* Yes, ma'am. But at
23 the same time, ma'am, I have been contacting
24 Mr. Lannie's office and I have yesterday, in that
25 instance yesterday, I wouldn't have never been late,

1 Your Honor. If I would have just knew I had to be
2 here for 9:00 o'clock, I would have been here for
3 9:00 o'clock. Yesterday when --

4 THE COURT: He indicated he tried to
5 call you a number of times and you never responded,
6 that you would not take his calls.

7 THE DEFENDANT: No, ma'am. He did not
8 call me, not one time, to let me know that I was due
9 in court at 9:00 AM, not one time.

10 THE COURT: He told me yesterday
11 morning that he called you and that you were not
12 accepting his calls.

13 THE DEFENDANT: Ma'am, we can go right
14 now to the computer and look at my phone records. I
15 did not receive one call from him, not one. If I
16 would have received a call from him, I would have
17 been in your courtroom on time. I would have been
18 here.

19 MR. LANNIE: Judge, may I ask one
20 question of him?

21 THE COURT: Uh-huh.

22 MR. LANNIE: Since we're on the
23 record. Mr. Hayes, do you have a local phone number?

24 THE DEFENDANT: No.

25 MR. LANNIE: All right. Do you have a

Pretrial Hearing
February 15, 2007

1 local address?

2 THE DEFENDANT: No.

3 MR. LANNIE: Are you a homeless
4 person?

5 THE DEFENDANT: No.

6 MR. LANNIE: You indicated to me in
7 the telephone call that you were homeless, correct?

8 THE DEFENDANT: No. What I indicated
9 to you was I live in California in Mission Viejo and
10 that's why that phone number is registered to Mission
11 Viejo.

12 MR. LANNIE: I've made a number of
13 calls to Mission Viejo and I've never gotten an
14 answer back. That phone is not answered by you or
15 anyone else. The only thing I get is some hip-hop
16 message that, you know, leave a message and I left
17 those messages. In my office my secretary has phone
18 cards. Those phones are -- we don't keep up with
19 those phone cards; however, I have phone records in
20 my office where I called that number -- that number
21 in -- and left a message a number of times and you
22 have never, not one time, called me back --

23 THE DEFENDANT: Okay.

24 MR. LANNIE: -- during business hours
25 except for yesterday. In your defense, I will

Pretrial Hearing
February 15, 2007

1 indicate you did call my office yesterday and talk to
2 my secretary.

3 THE DEFENDANT: Did you call me at all
4 to notify me about being in court at 9:00?

5 THE COURT: Wait one second. Here's
6 what I'm going to do. I am going to reset this case
7 until Monday. Mr. Lannie, Mr. Hayes, y'all need to
8 decide is he your counsel or not. It doesn't matter
9 to me. I don't have a dog in the hunt. But you need
10 to have representation. We need to get your case
11 tried, if that's what you intend to do.

12 THE DEFENDANT: Yes.

13 THE COURT: Y'all need to work it out.
14 You know, I don't understand why somebody would hire
15 somebody and then never want to have any contact with
16 him or give him good phone numbers or give him a good
17 address. Y'all need to work that out. On Monday
18 either you have Mr. Lannie as your lawyer or you have
19 someone else that you've hired or you tell me you
20 can't afford somebody and I'll appoint somebody. I
21 don't care, but this case has got to move forward.
22 We have witnesses waiting to get on flights yesterday
23 so that we could try this case. All right?

24 THE DEFENDANT: Yes, ma'am.

25 MR. LANNIE: Judge, for the record, I

: 00153

APP169

Pretrial Hearing
February 15, 2007

1 would like to indicate I've indicated to Mr. Hayes on
2 one or more occasions that although I differ in his
3 trial strategy in this case, that if I tried the
4 case, ethically I was bound to do a good job and I
5 would do a good job in the trial.

6 THE COURT: I feel confident that you
7 would.

8 MR. LANNIE: I want that on the
9 record, Judge.

10 THE COURT: You probably want to
11 discuss with him, since he was putting on perjured
12 testimony, and how that works.

13 If you want to put Mr. Hayes in the
14 holdover, please.

15 MR. LANNIE: Thank you, Judge.

16 THE DEFENDANT: Judge, no way I can
17 get my bond reinstated?

18 THE COURT: No, sir. Not at this
19 point. I have some great concerns about what's going
20 on.

21 (Court in recess for the day.)
22
23
24
25


Pretrial Hearing
February 15, 2007

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3 I, Carrie Scardaville Logan, Official Court
4 Reporter in and for the 185th District Court of
5 Harris County, State of Texas, do hereby certify that
6 the above and foregoing contains a true and correct
7 transcription of all portions of evidence and other
8 proceedings requested in writing by counsel for the
9 parties to be included in this volume of the
10 Reporter's Record in the above-styled and numbered
11 cause, all of which occurred in open court or in
12 chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 9 day
17 of April, 2007.

18
19 
Carrie Scardaville Logan, CSR
Texas CSR 5150
20 Official Court Reporter
21 185th District Court
22 Harris County, Texas
23 1201 Franklin
Houston, Texas 77002
Telephone: 713.755.0816
Expiration: 12/31/08
24
25

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Voir Dire
February 28, 2007

REPORTER'S RECORD
VOLUME 3 OF 8 VOLUME(S)
TRIAL COURT CAUSE NOS. 1083785, 1083786

APPELLATE COURT NO. _____

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
)
V.) HARRIS COUNTY, TEXAS
)
JAMES HAYES) 185TH JUDICIAL DISTRICT

VOIR DIRE

On the 28th day of February, 2007, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Susan Baetz Brown, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

F I L E D
CHARLES BACARISSE
District Clerk

APR 09 2007

Time: _____
Harris County, Texas

By: BAT

Carrie Scardaville Logan, Texas CSR No. 150
Official Court Reporter, 185th District Court
1201 Franklin
Houston, Texas 77002

COPY

Voir Dire
February 28, 2007

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There were no witnesses for this volume.

There were no exhibits for this volume.

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1 (Open court, defendant present.)

2 THE COURT: All right. This is Cause
3 Nos. 1083785 and 1083786, the State of Texas versus
4 James Hayes. First thing I wanted to do is,
5 Ms. Taylor, we're set for trial today. And are we
6 going on both cases or one case?

7 MS. TAYLOR: My intention is to go on
8 both.

9 THE COURT: Both cases. Okay. Just
10 wanted to make sure the defense was aware of that. I
11 knew we talked about it, but I just wanted that on
12 the record.

13 All right, Mr. Hayes. It's my
14 understanding that the State and your attorney are
15 prepared to proceed to trial. I just want to make
16 sure that on the record we know what the State's last
17 offer is.

18 MS. TAYLOR: I remember the last offer
19 being 13 months. That's the last I recall. I don't
20 remember ever getting any counteroffer or anything
21 like that.

22 THE COURT: You are aware of that
23 offer of 13 months?

24 THE DEFENDANT: I was aware of 15
25 months. I wasn't aware of 13.

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1 THE COURT: There you go.

2 MS. TAYLOR: It's not written down.
3 I'm going from my memory.

4 THE COURT: Which is bad, very bad.

5 MS. TAYLOR: Yes, yes.

6 THE COURT: I suppose since she's nice
7 enough to offer 13 months, you want to take the 13
8 months --

9 THE DEFENDANT: No, ma'am.

10 THE COURT: I want to make sure that's
11 on the record, so there's no question about that.
12 He is not probation eligible; is that
13 right?

14 MS. TAYLOR: Correct.

15 THE COURT: So, the range of
16 punishment -- I'm sorry. I just can't read your -- I
17 can't read this very well. Is this prior credit card
18 abuse a state jail?

19 MS. TAYLOR: No. It is a TDC case.

20 THE COURT: Okay. Okay. I just
21 wanted to check that. So, the range is no less than
22 180 days or more than 2 years?

23 MS. TAYLOR: (Nods head
24 affirmatively.)

25 THE COURT: Up to a \$10,000 fine. You

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1 were aware of that, right, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All righty. Well, as soon
4 as the jury gets here, we'll put their feet to the
5 fire.

6 MR. LANNIE: Thank you, Judge.

7 MS. TAYLOR: Just for the record,
8 Judge, I have never received any kind of counteroffer
9 on this case. I just wanted that to be in the
10 record, too.

11 MR. LANNIE: I'll discuss that with
12 her now, Judge.

13 THE COURT: Okay. That would be fine.

14 (Recess.)

15 (Prospective jury panel present.)

16 VOIR DIRE BY THE COURT

17 THE COURT: Good morning, ladies and
18 gentlemen.

19 THE JURORS: Good morning.

20 THE COURT: Welcome to the 185th
21 Criminal District Court. I'm Susan Brown. I'm the
22 elected judge of the 185th. And I know that y'all
23 realized as you were walking over here that the
24 reason we needed you today was because we need to
25 find 12 of you who can listen to the evidence in this

1 case and base your verdict on the evidence that you
2 hear in the courtroom, not a personal experience that
3 you've had, not something that you read about in the
4 newspaper or somebody -- something that a friend or
5 family member told you about.

6 I will tell you it's probably going to
7 take us the next couple of hours to find those 12 of
8 you. So, if you would, just kind of sit back, make
9 yourselves comfortable. We will get through this
10 just as quickly as we can. But not -- we don't want
11 to go so quickly that we miss answering a question or
12 we don't give y'all an opportunity to give us your
13 thoughts on whatever issue we're talking about.

14 So, first question I have, though, is
15 for some reason when we got the jury list, it started
16 out with Juror No. 64. So, are you No. 1 or did they
17 tell you 64?

18 VENIREPERSON: I'm No. 1.

19 THE COURT: So, you know your numbers
20 between 1 and 63?

21 THE JURORS: (Nods head
22 affirmatively.)

23 THE COURT: We haven't quite figured
24 out what happened over there.

25 All right. I want to tell you a

*Voir Dire by The Court
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1 little bit about the 185th. As I said, this is a
2 criminal district court. That means we have
3 jurisdiction over only criminal cases and only those
4 of a felony in nature. Because this is a criminal
5 court, we generally just have two parties involved in
6 each of our cases and one of those is always the
7 State of Texas. The reason for that, it is the
8 State's responsibility to bring criminal charges
9 against a defendant. It's also their responsibility
10 to prove that person's guilt beyond a reasonable
11 doubt. Okay?

12 So, generally the name or the style of
13 our case is the State of Texas versus whoever the
14 defendant is. In this case, the name or the style of
15 the case is the State of Texas versus James Hayes.
16 Mr. Hayes is here with his attorney --

17 Please stand, Mr. Hayes.

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: -- Mr. Andrew Lannie.

20 Anybody know either Mr. Hayes or
21 Mr. Lannie? If you would, raise your hand. Yes,
22 sir. If you would, tell me your last name?

23 VENIREPERSON: Phillips.

24 THE COURT: Who do you know?

25 Mr. Hayes or Mr. Lannie?

:00167

APP183

Voir Dire by The Court
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1 VENIREPERSON: Andrew Lannie.

2 THE COURT: And, Mr. Phillips, is that
3 a professional or personal relationship?

4 VENIREPERSON: He was -- no, he was my
5 attorney for a divorce.

6 THE COURT: Okay. Anything about that
7 that would affect you in serving as a juror in this
8 case?

9 VENIREPERSON: No.

10 THE COURT: Okay. Thank you. Thank
11 you.

12 The State of Texas is represented in
13 this matter by her Assistant District Attorney,
14 Ms. Katie Taylor, who's right here behind me.

15 MS. TAYLOR: Good morning.

16 THE COURT: Anybody know Ms. Taylor?

17 She didn't represent your wife. No,
18 just kidding. I just wanted to check that out.

19 Okay. All right. Okay. That made me
20 lose my train of thought.

21 Couple of things that I want to go
22 over with you that make this part of the trial go a
23 little bit more smoothly for everybody that's
24 involved. The first thing -- this is very important
25 for my court reporter, Ms. Carrie Logan, who sits

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*Voir Dire by The Court
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1 right up here, because it's her responsibility to
2 write down everything that's said during the entire
3 trial of this case. So, it's really important that
4 when you raise your hand to ask or answer a question
5 or make a comment that you tell us not only your last
6 name but also your juror number. And the number that
7 I'm interested in is not the number they gave you in
8 the jury room, okay? It's the number you now have
9 between 1 and 63, right?

10 Okay. If you're not sure what your
11 number is between 1 and 63, take a minute, check with
12 your neighbor. The reason I tell you that is you've
13 never seen such a reaction from somebody you just met
14 as when you give their number instead of your number
15 during jury selection.

16 All right. The other thing you need
17 to know about jury selection: ~~The lawyers are not~~
18 going to be able to talk about the facts of this
19 particular case with you during the jury selection
20 process.

21 The reason for that is what I told you
22 at the beginning: Your verdict has to be based only
23 on the evidence that you hear, either from the
24 witness stand or physical evidence that's admitted
25 before you.

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APP185

*Voir Dire by The Court
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1 What these folks say is not evidence
2 that you can consider. So, what they can't do during
3 jury selection is come up here and give you a set of
4 facts or kind of commit you one way or another as to
5 what you would do.

6 We know that makes it hard for you
7 because a lot of times when you give your answer, you
8 want to do it based on what you think the case is
9 about.

10 My only advice on that: Give them the
11 first response that comes to your mind, okay? You
12 may get into a situation where you ask a question and
13 they say, I'm sorry, I can't answer it because it has
14 to do with the facts. Don't be offended. Those are
15 just the rules that they have to follow. They're
16 just kind of looking for that first response that
17 comes to your mind. So, if you'll do that, that will
18 help them a lot.

19 All right. The other thing you need
20 to know about jury selection is that it is not a
21 selection process. It is a process of elimination.
22 Because here's what happens. After I get done
23 talking with you, both the lawyers have an
24 opportunity to talk to you. After that, they get to
25 strike a certain number of names off the list of

*Voir Dire by The Court
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1 potential jurors and the 12 of you who are left once
2 they make what we call their strikes will be the 12
3 jurors in the case.

4 Now, I know, because I pick lots of
5 juries every year, that some people come down here
6 and they think that if they don't act like they're
7 very interested in being on the jury, you know, maybe
8 they look like they're taking a nap, their eyes kind
9 of roll back in their head, they think they won't get
10 selected, okay?

11 Guess what? Because it's an
12 elimination process, that's the 12 of you who come
13 sit right over here at the end of this, okay?

14 Now, please understand. I am not
15 telling you that because I want you to raise your
16 hand and answer every single question, say some
17 things that maybe you don't believe in because you
18 feel like there's something else you need to do this
19 week. Okay?

20 I'm telling you that because once you
21 sit over there, if you have a question or a concern
22 or a problem, I can't help you with it anymore, okay?

23 So, please, raise your hand, ask your
24 questions, ask them questions; they'll try to answer
25 them the best that they can.

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1 All right. That reminded me. I need
2 to tell y'all. I have another jury out deliberating
3 right now, okay? They're back in my jury room
4 deliberating. We started a trial on Monday. So, if
5 you hear, like, a ringing bell, it's not both lawyers
6 go to separate corners and come out fighting, okay?
7 It is that they've either got a question, one bell --
8 and they've had a lot of them this morning -- or they
9 have a verdict, which is two bells. So, depending
10 upon what they're doing, I might have to give y'all a
11 little break or whatever. But we're going to work
12 around them as best we can because we need to go
13 ahead and get this case started.

14 And also we didn't want you to think
15 that we just, after Wednesday, didn't do anything
16 down here. Just so you know, we're working.

17 All right. I want to take a couple of
18 minutes and go over with you the procedure that we're
19 going to follow in this case. And for those of you
20 who've been down here and served on a criminal jury
21 before, it's going to sound very familiar. Because
22 we do the same thing in every single criminal case.

23 And let me just ask: How many of you
24 have been down and actually served on a criminal
25 jury? If you would, just raise your hand.

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1 Okay. Few experts out there. Very
2 good.

3 All right. Basically what's going to
4 happen after we select the jury, obviously those of
5 you who are not selected will be released for the day
6 to go home to get that next jury summons in your
7 mailbox, next week, next year.

8 Those of you who are selected, we're
9 going to take a lunch break and then we're going to
10 begin the evidence or the testimony part of the
11 trial.

12 What you will notice as we go through
13 this entire process, whenever we switch gears to do
14 something different, the State is always going to go
15 first. The reason that they get to go first is
16 because they have the burden of proof in this case,
17 the burden of proving the defendant's guilt beyond a
18 reasonable doubt.

19 So, every time we do something
20 different, they're always going to go first. So,
21 what will happen is after we break for lunch, then
22 Ms. Taylor will begin by putting on whatever live
23 witnesses she has or offering any physical evidence
24 before you. And I want to talk about physical
25 evidence for just a moment. Because I realized there

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1 may be a few of you out there who watch those lawyer
2 crime shows on TV, you know, the whole CSI thing?

3 All right. Before those shows, we
4 didn't ever have to talk about physical evidence.
5 But now y'all's expectations are really high when
6 you're coming down here, okay? You think that in
7 every murder case, we're going to have fingerprints
8 on a dead body or that, you know, some guy who drives
9 up in a Hummer can walk into a room and say, I know
10 who committed the crime by the smell of the perfume.

11 Well, now, I have to let you in on a
12 little secret. Lawyers who practice criminal law do
13 not watch lawyer crime shows. Okay? They watch
14 doctor shows. You know why? Because what happens on
15 those shows doesn't happen in real life. And then
16 y'all come down here and you think it's going to be
17 just like TV and I have to tell you that you're about
18 to be disappointed, okay?

19 Here's the deal with physical
20 evidence. If there is some, you'll get to see it.
21 If there's not any, it's just because it does not
22 exist.

23 I will tell you in all the years I've
24 been doing this, never once in all the murder cases
25 I've tried have I ever seen a fingerprint on a dead

1 body. It just doesn't happen, okay? But it does on
2 TV, right?

3 So, if there's physical evidence,
4 you'll get to hear all about it, you'll get to see
5 it. If there's not any, it's just because it doesn't
6 exist, okay?

7 All right. So, after Ms. Taylor gets
8 done putting on whatever evidence she has, she's
9 going to stand up, she's going to say, Judge Brown,
10 the State rests. That lets you and I know that she's
11 completed putting on all the evidence that she has.

12 Then I'm going to turn to the defense
13 and give them the same opportunity. There's a few
14 things you need to know about that. First and most
15 important thing that you need to know is that in the
16 state of Texas, the defense does not have any burden
17 of proof, okay? Remember the State has that burden
18 of proving the defendant's guilt beyond a reasonable
19 doubt.

20 The defense does not have any burden
21 of proof. It's not Mr. Lannie's responsibility to
22 prove his client is not guilty or that he's innocent
23 or that he didn't do it, all right?

24 Really, the only thing that any
25 defendant in any criminal case has to do is show up

1 and sit at counsel table. They don't have to call
2 any witnesses. They don't have to ask the State's
3 witnesses any questions. They don't even have to
4 make any objections to the questions the State asks,
5 all right? They have no burden. Their only
6 responsibility is to show up, all right?

7 Now, I understand one or two of you
8 might be sitting out there thinking, wait a minute.
9 I understand if they don't call any witnesses, but
10 not make any objections or ask any questions?

11 Let me just tell you: I've known
12 Mr. Lannie for a long time. If he didn't ask some
13 questions or make some objections, I would call 911,
14 okay? But the law just doesn't put any burden on
15 them to do that.

16 The other thing you need to know about
17 the defense case is that it is entirely up to
18 Mr. Hayes, after he talks with Mr. Lannie, as to
19 whether or not he's going to take the witness stand,
20 okay? That is a right every single one of us has if,
21 God forbid, we are ever charged with a crime. We can
22 set our case for trial, we can sit during the trial,
23 we can listen to all the State's evidence and then we
24 can talk to our lawyer and decide: Do we take the
25 witness stand or not.

1 If a person chooses not to take the
2 witness stand, the jury may not consider that for any
3 purpose during their deliberations. Okay?

4 And it kind of goes back to what I
5 told you at the beginning. Your verdict has to be
6 based only on what you hear. So, what you can't do
7 when you go back into the jury room, if a defendant
8 doesn't testify, you cannot speculate as to what they
9 would have said or why they didn't say it. It's just
10 not an issue. Okay? Not an issue at all. Does that
11 make sense to everybody? Okay.

12 Anybody who's not comfortable with
13 that? Okay.

14 And the reason I'm asking this is at
15 the end of the trial when I give you the
16 instructions, if a defendant doesn't testify, one of
17 the instructions I'm going to give you is to remind
18 you you can't consider it for any purpose. And I
19 just need to make sure everybody's willing to follow
20 that instruction. Okay? Defendant doesn't testify,
21 you just don't consider it. All right.

22 Okay. Let's -- let me tell you, also,
23 that the defense has the same subpoena power the
24 State does. They can subpoena anybody they want to
25 come into court, put them up there on the witness

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1 stand and have them tell you whatever it is they know
2 about the case, okay?

3 The law just doesn't require that they
4 do that. Does that kind of make sense to everybody?
5 Okay.

6 All right. After Mr. Lannie puts on
7 evidence, if he chooses to do so, at some point he's
8 going to stand up and he's going to say, Judge Brown,
9 the defense rests. Once again, that lets you and I
10 know he's completed putting on all his evidence.

11 Then I'm going to read to you what we
12 call the Court's charge. That's all the law, all the
13 definitions, kind of the road map that y'all take
14 back with you when you go back into the jury room to
15 deliberate. Then both sides get to make their
16 closing statements to you, kind of sum up what they
17 think the evidence showed and then we send the 12 of
18 you back to deliberate the case.

19 At this point your focus is: Did the
20 State prove the defendant's guilt beyond a reasonable
21 doubt? If they did, you find him guilty. If they
22 didn't, you find him not guilty. Okay?

23 Obviously if you find somebody not
24 guilty, that ends the trial. You go home, they go
25 home, that's the end of it.

1 On the other hand, if you find
2 somebody guilty, then we go into the second phase of
3 the trial, which is the punishment phase.

4 The punishment phase follows the same
5 procedure as the guilt or innocence phase. The
6 difference is the type of evidence that's available
7 to you in the punishment phase may be character
8 evidence, evidence of a person's prior convictions,
9 all right? Because you already know the facts of the
10 case. So, what you're asked to do during punishment
11 is take -- look at the facts, look at any other
12 evidence about the person who's charged or who you've
13 convicted and then decide what is the appropriate
14 punishment for this person based on all the evidence
15 that you hear. All right.

16 The range of punishment is set out by
17 the Legislature and we're going to go over that in
18 just a moment. So, what your responsibility in
19 punishment is is to look at all the evidence and then
20 assess a punishment somewhere within the range.
21 Okay? Once you do that, that ends your service as a
22 juror.

23 Anybody have questions about the
24 procedure we're going to follow?

25 All right. Now, I know that probably

1 one of the questions you have is, Well, how long is
2 that going to take us, Judge Brown? And I
3 anticipate, from talking to the lawyers and just sort
4 of figuring out how many witnesses we have, that we
5 will finish this case by Friday, okay? It should not
6 go into next week. I can't imagine that that would
7 happen. All right? Just on the numbers of
8 witnesses.

9 So, here's what I need to know. I
10 need to know if anybody has a scheduling problem
11 between now and Friday. And let me sort of help you
12 out with working hours. Our normal working hours are
13 9:30 in the morning until between 4:00 and 5:00 in
14 the afternoon, just kind of depends on where we are
15 with the evidence, okay?

16 So, what I need to know is what your
17 scheduling problem is. Please tell me. You know,
18 sometimes we can accommodate it. Like, the jury that
19 we have now, we have one juror that has to leave at
20 4:30 every day. So, we've been leaving at 4:30.
21 Sometimes it's something very easy to accommodate.

22 But, also, please understand that if
23 the only people who ever served on juries did not
24 have jobs, did not have families and had nothing
25 better to do, we'd be in California. Think about

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1 that.

2 All right. First row, anybody who has
3 a scheduling problem between now and Friday that I
4 need to know about? Anybody on the first row?
5 Perfect.

6 All right. How about the second row?
7 Anybody on the second row? Yes, sir. Don't forget
8 to give me your last name and juror number.

9 VENIREPERSON: Golinkin, 18.

10 THE COURT: Perfect.

11 VENIREPERSON: I'm a CEO of a company
12 and we're closing a financing transaction this week,
13 right now, and I don't -- you know, I'm just
14 preoccupied with making sure that that happens.

15 THE COURT: Okay. Anybody else?

16 Second row? Yes, sir.

17 VENIREPERSON: Need a name first?

18 THE COURT: Either one. Name or
19 number. Doesn't matter.

20 VENIREPERSON: Last name is Ali,
21 A-L-I. Juror number is 2529. I have --

22 THE COURT: No.

23 VENIREPERSON: Oh, 23.

24 THE COURT: 23? You sure?

25 VENIREPERSON: Yeah.

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1 THE COURT: Don't throw those big
2 numbers at me.

3 VENIREPERSON: I have college class
4 tomorrow. It starts at 4:00 in the afternoon.

5 THE COURT: Okay. We'll make that
6 work.

7 And where do you go to school?

8 VENIREPERSON: U of H Clear Lake.

9 THE COURT: You can just give me an
10 idea of what time you might need to leave. We'll
11 work around that, if need be.

12 VENIREPERSON: (Nods head
13 affirmatively.)

14 THE COURT: Okay. All right. Anybody
15 else? Second row? Oh.

16 VENIREPERSON: I got a alibi.

17 THE COURT: An alibi.

18 VENIREPERSON: In the military, that
19 means --

20 THE COURT: That's fast.

21 VENIREPERSON: I supposed to start a
22 case Monday and I -- there's some research I have to
23 do with my partner. So, and I hadn't started. I
24 just took today off to come down here, hoping I
25 didn't get picked. Juror No. 9. I'm just being

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1 honest. We're in court. And my last name is Boyd.
2 So, I got a little research I have to do some
3 collection with to be ready by Monday.

4 THE COURT: Hoping I wouldn't get
5 picked.

6 VENIREPERSON: Well, I just -- maybe I
7 shouldn't have said nothing.

8 THE COURT: Everybody else out here is
9 dying to get picked. I'm always dying to get picked.
10 They never pick me.

11 VENIREPERSON: I'm bad. I'm sorry. I
12 apologize.

13 THE COURT: Man. Okay.

14 How about on the third row? Anybody
15 have a scheduling problem I need to know about or an
16 alibi is what we're now going to call it. That's
17 great.

18 Okay. Fourth row? Anybody with a
19 scheduling problem? Yes, sir.

20 VENIREPERSON: I work --

21 THE COURT: I need last name and juror
22 number, sir?

23 VENIREPERSON: Quiroz, 55. I work in
24 the Medical Center. I work a 12-hour shift,
25 graveyard, work 7:00 to 7:00.

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1 THE COURT: Okay. Now, you know you
2 can't go to work if you're here --

3 VENIREPERSON: They got me off
4 yesterday because, you know, otherwise I'd be getting
5 off 7:00 this morning. Right? So, like, on Friday,
6 I would have to go in 7:00 in the evening after being
7 up all day here.

8 THE COURT: Okay. Well, hopefully we
9 finish before that.

10 VENIREPERSON: Right. We operate the
11 plant, so.

12 THE COURT: Okay. How about the four
13 of y'all back here?

14 All right. And how about you four
15 over here? Anybody have a scheduling problem?

16 Great. Okay.

17 Let's talk about this standard of
18 proof or burden of proof that the State has, this
19 beyond a reasonable doubt standard. That standard is
20 the same in every single criminal case. It's set out
21 by the Legislature. Basically what they've said is,
22 State of Texas, if you want 12 citizens to convict
23 somebody of a criminal offense, you have to prove
24 their guilt beyond a reasonable doubt.

25 The only real difficulty in that is

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1 that there is not a definition that I can give you of
2 what beyond a reasonable doubt means. The
3 Legislature hasn't given us one. It's just sort of
4 a -- your own decision as a juror as to that standard
5 of what is beyond a reasonable doubt. I guess the
6 Legislature figures everybody's a reasonable person,
7 all right, and you would know a reasonable doubt when
8 you saw it.

9 I can tell you what it is not. It
10 does not mean the State has to prove the defendant's
11 guilt beyond all possible doubt or without any doubt
12 in your mind or beyond a shadow of a doubt or
13 100 percent sure. And here's sort of my thoughts as
14 to why the State doesn't have to prove the
15 defendant's guilt without any doubt in your mind.

16 If you think about it, the only way
17 you'd ever be convinced without a doubt in your mind
18 or a hundred percent sure is if you saw the offense
19 being committed, you saw it with your own two eyes,
20 or you saw it on videotape. Okay? That's the only
21 way you could ever be convinced without any doubt.

22 Now, common sense tells you that if
23 you saw the offense being committed, you'd be
24 standing out in the hallway waiting to come in here
25 and testify as opposed to sitting in here, right?

1 And if you think about it, if the only
2 people who were ever charged with crimes were those
3 who were caught on videotape, there'd be a lot of
4 really bad folks running the streets who were smart
5 enough to make a check to see that there was no video
6 camera around before they committed the crime.

7 So, the law says the State has to
8 prove the defendant's guilt beyond a reasonable
9 doubt. All right? That's kind of that standard that
10 they have to follow.

11 Now, what the Legislature has done, to
12 make it a little bit easier to understand for
13 everybody involved, is they've taken all the
14 different types of crimes and to those crimes they
15 told the State what they have to prove and what they
16 have to prove is what we call the elements of the
17 offense, kind of the pieces of the puzzle. And they
18 have to prove each and every element beyond a
19 reasonable doubt before you can find somebody guilty
20 of the crime that they've been charged with. So, if
21 there are seven elements, the State has to prove all
22 seven. They are all equally important. All right?
23 If there's seven and they only prove six, that's not
24 good enough. Okay?

25 Now, in this situation, Mr. Hayes is

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1 charged with the felony offenses of credit card abuse
2 and fraudulent use or possession of identifying
3 information. So, I'm just going to go through them
4 one at a time.

5 So, what they have to prove in the
6 credit card abuse case is that this offense happened
7 in Harris County, Texas. Okay? Because if they
8 don't prove it happened in Harris County, then we do
9 not have jurisdiction. All right?

10 So, they have to prove it happened in
11 Harris County, Texas. They have to prove it happened
12 on or about September the 7th of 2006, that this
13 defendant, unlawfully, with intent to obtain a
14 benefit, fraudulently use a MasterCard, knowing the
15 use was without the effective consent of the
16 cardholder, that the cardholder's name is Dean Alac;
17 ~~namely, without any consent of any kind, knowing the~~
18 MasterCard had not been issued to the defendant.
19 Okay?

20 Basically it's using someone's credit
21 card, a card that has not been issued to you, that
22 belongs to someone else, okay? Whether that person
23 knew that the card had been issued, if there was a
24 card issued. Does that make sense?

25 So, it's -- you're using a credit card

1 that basically does not belong to you and without the
2 owner of that card's permission.

3 Anybody have questions about that?
4 What the State has to prove?

5 The other thing you need to know -- I
6 just want to mention this -- let me just tell you: I
7 don't know what the facts of the cases are as we hear
8 them. I hear them right along with you. Sometimes I
9 talk about things that do not become an issue;
10 sometimes they do become an issue.

11 But in any type of criminal case,
12 sometimes offenses are committed in a variety of
13 places, okay? Some part of the offense may have
14 happened in Harris County, some part of the offense
15 may have happened in Galveston County. But that --
16 if the State proves that any part of the offense
17 occurred in Harris County, that's enough to get them
18 to that jurisdictional issue. Does that make sense?
19 Okay? I just want to make sure everybody's clear on
20 that.

21 Let's just say, for a wild example, a
22 driving while intoxicated case. If a person's seen
23 driving in Harris County and they drive into Brazoria
24 County and they're stopped there, they could be
25 charged in either place if someone saw them driving

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1 in either one of those counties while they were
2 intoxicated. Does that make sense? Okay.

3 All right. Now, in the fraudulent use
4 or possession of identifying information, what the
5 State has to prove beyond a reasonable doubt is that
6 this offense happened in Harris County, Texas, that
7 it happened on or about September the 7th of 2006,
8 that this defendant, James Hayes, unlawfully,
9 intentionally or knowingly obtained, possessed or
10 used identifying information of Percy Vital; namely,
11 name, date of birth and government-issued
12 identification number, without the consent of Percy
13 Vital and with intent to harm and defraud another.
14 All right?

15 So, that's basically using someone's
16 identifying information with the intent to defraud or
17 ~~harm someone. Okay? Anybody have questions about~~
18 that?

19 Okay. Now, let me just say, since
20 there are two charges against Mr. Hayes, that even
21 though you may hear evidence, the evidence all
22 together, your verdict must be individual. Okay? It
23 is quite possible that in hearing the evidence, you
24 could determine that he is not guilty of both
25 charges, that he's guilty of both charges, that he's

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1 guilty of credit card abuse, not guilty of possession
2 of fraud -- fraudulent use or possession of
3 identifying information or vice versa, okay?

4 So, they're considered -- the verdict
5 is individual. Anybody have questions about that?

6 All right. Now, I know that at the
7 beginning, I told you we were not going to talk about
8 the facts of this case. Now I've gone and I've read
9 these pleadings to you. The pleadings that I've read
10 are not evidence that you can consider. They're not
11 facts of the case. All they do is give the defendant
12 notice of what he is charged with. It's like, for
13 those of you who've ever had that unfortunate
14 experience of getting a traffic ticket, you know, the
15 policeman gives you that ticket and on there it tells
16 you, if he said you were speeding, where it was that
17 ~~you were speeding and how fast you were going,~~
18 whether it was daytime or nighttime. Right?

19 So that when you go to court, you know
20 what the policeman's going to say that you did. All
21 right? Or what he's accusing you of doing.

22 That is all these pleadings do. They
23 give the defendant notice of what he's charged with.
24 Not evidence that you can consider.

25 As a matter of fact, the fact these

1 pleadings exist, the fact that Mr. Hayes is here in
2 court, the fact that he's hired a lawyer to represent
3 him, none of that is evidence that you can consider.
4 And as Mr. Hayes sits here right now, you must
5 presume that he's innocent of these charges. And you
6 must give him that presumption of innocence until the
7 State proves his guilt beyond a reasonable doubt, if
8 they ever do. All right?

9 Now, I talk -- like I said before, I
10 talk to a lot of jurors every year and in this area
11 or on this topic, I've kind of categorized people. I
12 know you're not really supposed to do that, but it
13 just makes it a little easier. I have two big
14 categories. I understand people might kind of fall
15 out. But generally I find there are kind of two
16 categories of people. The first category is the
17 ~~juror who walks in and they know it's criminal court.~~

18 And they kind of look around. They're kind of
19 curious. What's this case going to be about? Who's
20 the defense lawyer? Who's the defendant? Who's the
21 prosecutor? What am I going to hear?

22 They haven't made any decisions, but
23 they're naturally curious because they know it's
24 criminal court, all right?

25 Sometimes I have jurors who fit in the

1 second category and they're the people who know it's
2 criminal court and because of that, they've already
3 made up their mind. They've already decided, based
4 on a past experience, based on whatever, they've
5 already made a decision in this case. Either they
6 are always going to find somebody guilty or they will
7 never find anybody guilty. From either side.
8 Doesn't matter what the evidence is, that's just
9 their mind-set, for whatever reason, all right?

10 Now, those are the people who say, You
11 know what? Judge Brown, I don't need to hear any
12 evidence. Just give me the verdict form. I just
13 need to sign it. Because I've already made up my
14 mind. When I saw where we were or because of
15 something that happened to somebody I know, always
16 going to find somebody guilty, never going to find
17 anybody guilty.

18 Now, if you fit into Category 1, you
19 are just curious, waiting to hear about the case, no
20 opinions formed, that's fine.

21 If you're in Category 2, that you've
22 already made a decision, that's fine, too. But I
23 just need to know about that. Okay? So, is there
24 anybody who feels like that? They've already made up
25 their mind? Okay. Not very often do I get those

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1 people, but I always have to ask. Okay.

2 VENIREPERSON: I feel that way.

3 THE COURT: Yes, ma'am. Tell me your
4 last name and juror number.

5 VENIREPERSON: Hightower, 14.

6 THE COURT: Okay. You've already made
7 up your mind?

8 VENIREPERSON: Uh-huh.

9 THE COURT: You don't need to hear any
10 evidence at all?

11 VENIREPERSON: Uh-huh.

12 THE COURT: I'm sorry. You got to
13 answer out loud so she --

14 VENIREPERSON: Yes, ma'am.

15 THE COURT: Okay. All right.

16 VENIREPERSON: Right here.

17 ~~THE COURT: Yes, sir.~~

18 VENIREPERSON: Juror 19, last name
19 Berhanu, B-E-R-H-A-N-U.

20 THE COURT: Already made up your mind?
21 Don't need to hear any evidence at all?

22 VENIREPERSON: No.

23 THE COURT: Okay. All right. I want
24 to talk a little bit about witnesses. You know, it's
25 criminal court. Obviously we're going to have some

1 witnesses. We have all kinds of witnesses. You
2 know, obviously it's a criminal case. We have police
3 officers. Lots of times we have police officers.
4 Sometimes jurors are surprised when you don't have a
5 police officer and sometimes the reason for that is
6 they can't tell you anything that somebody -- that
7 some other witness isn't going to tell you, you know?
8 So, maybe they did some investigation, but there's a
9 witness there that's going to come and tell you the
10 steps.

11 So, sometimes we have police officers.
12 Sometimes we have doctors. Sometimes we have
13 accountants. Sometimes we have nurses. Sometimes we
14 have folks who come out of the holdover and they've
15 got a bright orange jumpsuit that says "Harris County
16 Jail" on the back. Sometimes we have prostitutes.
17 You just never know because you never know what the
18 case is going to be about.

19 But the deal with witnesses is that as
20 they come into the courtroom, whether they come in
21 the back door or the side doors, they all start out
22 equal in their believability. It's the juror's
23 responsibility to listen to what they have to say,
24 compare it with what the other witnesses say and then
25 decide: Do I believe them or do I not believe them?

1 They all start out equal. So, the person with the
2 orange jumpsuit isn't more or less believable than
3 the police officer. Okay? They start out equal and
4 then you make the decision.

5 Now, certainly you can give somebody
6 more credibility because of their training and
7 experience. But you have to wait till you hear what
8 that is before you give them that extra credibility.
9 Anybody have difficulties with that? Starting
10 everybody out equal?

11 Okay. All right. The last thing that
12 I want to talk about then is the punishment phase.
13 As I told you before, the Legislature sets out the
14 range of punishment. And basically what they've
15 done, they've taken all the different criminal cases
16 and they've divided them up based on their
17 seriousness. So, what we have are first degree,
18 second degree, third degree and state jail felonies.

19 Now, credit card abuse and fraudulent
20 use or possession of identifying information -- I'm
21 going to have to figure out a shorter term for
22 that -- are state jail felonies. They carry a range
23 of punishment -- this is set up by the Legislature --
24 of no less than 180 days nor more than 2 years in the
25 state jail. State jail is a division of the Texas

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1 Department of Criminal Justice. It's just a
2 different location, okay?

3 So, standard range: No less than 180
4 days, nor more than 2 years and up to a \$10,000 fine.

5 As jurors, you have to be able to
6 consider the full range of punishment. In order to
7 sit as a juror, you have to be willing to keep an
8 open mind to that full range of punishment, wait till
9 you hear the evidence and then decide where that
10 person fits, okay?

11 Now, let me just tell you, I cannot
12 ask you what type of punishment that you would assess
13 because you don't know. You haven't heard the facts.

14 I can't ask you if you'd be on the
15 high end or if you'd be on the low end because you
16 don't know. You haven't heard the facts.

17 ~~All I can ask is:~~ Can you keep an
18 open mind to the full range, minimum 180 days, up to
19 2 years in the state jail and a \$10,000 fine? All
20 right? Anybody have questions about that?

21 VENIREPERSON: Each charge carries the
22 same punishment?

23 THE COURT: Same punishment. Yes.
24 Exactly right.

25 Okay? All right. I'm going to do it

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1 row by row. What I need to know is: Is there
2 anybody who could not consider the full range of
3 punishment, 180 days to 2 years, if you convict
4 somebody of fraudulent use or possession of
5 identifying information or credit card abuse? Okay?
6 I'm just going to use the "or" word since you've got
7 two charges.

8 Okay. First row? Anybody who could
9 not consider the full range of punishment?

10 All right. How about the second row?
11 Anybody who could not consider the full range of
12 punishment? 6 months to 2 years, 10,000.

13 All right. Third row. So much easier
14 with this range than when I have to talk about 5 to
15 99 or life. Okay.

16 All right. Third row? Everybody's
17 good.

18 All right. Fourth row? Everybody
19 okay? Fourth row? Can keep an open mind to the full
20 range?

21 *VENIREPERSON:* I have one question.
22 Juror 55, Quiroz. In obtaining this material, the
23 credit card, would that also be considered --

24 *THE COURT:* How the person got the
25 credit card?

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1 VENIREPERSON: On the trial as to how
2 the credit card was picked up, was it --

3 THE COURT: That may be evidence --

4 VENIREPERSON: Yeah, was it obtained
5 by getting into a car or some individual that was --
6 it's going to be considered or add to this?

7 THE COURT: Certainly if there is --
8 if there is some evidence of that, you would get to
9 hear it. That would be available to you as to how
10 the card was obtained, if they're able to determine
11 how it was obtained, okay?

12 How about the four of you back here?
13 Anybody who could not consider the full range?

14 How about you four over here?
15 Everybody's good with that?

16 Okay. All right. I know y'all have
17 ~~been sitting there for a while. I'm just going to~~
18 give y'all just a real short break in case anybody
19 needs to run to the restroom or get a drink of water
20 or make a quick phone call before we start with the
21 lawyers.

22 We're going to take a ten-minute
23 break. Let's just say I need everybody back in their
24 seats at 11:30.

25 Now, here's the deal. I'm going to

1 talk till 11:20. No.

2 Here's the deal. You got to come back
3 and sit where you're sitting, even if you would
4 rather be in the front and you're in the back, okay?
5 You got to sit where you're sitting.

6 Also, I can't start till everybody
7 comes back. So, if you decide to take a 30-minute
8 break, guess what? We all sit here and wait for you.
9 Please be courteous to the other jurors because the
10 quicker we can get started, the quicker we'll get
11 through.

12 If you do not want to go anywhere,
13 feel free to just make yourself comfortable, although
14 I would at least suggest you stand up and stretch.
15 If I can have everybody back in their seats at 11:30,
16 please.

17 *(Recess.)*

18 *(Mr. Lannie not present.)*

19 THE COURT: All right. Ms. Taylor,
20 they're all yours.

21 **VOIR DIRE BY THE STATE**

22 MS. TAYLOR: Thank you, Judge.

23 Good morning.

24 THE JURORS: Good morning.

25 MS. TAYLOR: Almost afternoon, right?

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1 Well, I'm going to introduce myself
2 again. My name's Katie Taylor. I work for the
3 District Attorney's office here, this office, and I
4 have a helper sitting with me. His name is
5 Nathaniel. He is a law student over at U of H and
6 he's just going to be helping, taking some notes
7 during jury selection, just because it's kind of hard
8 to talk and take notes at the same time. If you see
9 him come and go through the trial, then he's just
10 helping me out. He's not licensed yet; so, he
11 doesn't get to argue or anything, but he does get to
12 help out in trial.

13 THE COURT: Oh, my God. Katie, stop.
14 I thought Mr. Lannie was here. I just didn't see.
15 My fault.

16 MS. TAYLOR: We had almost everybody
17 back.

18 THE COURT: Do you think he's in the
19 bathroom or something?

20 THE DEFENDANT: 262. He went to Court
21 262.

22 (Mr. Lannie present.)

23 THE COURT: All right, Ms. Taylor.
24 You may proceed.

25 MS. TAYLOR: Thank you, Judge.

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1 All right. Juror No. 48, in the back,
2 you said that you had -- I guess you had hired
3 Mr. Lannie to represent you for a matter that you
4 needed his help on?

5 VENIREPERSON: Yes.

6 MS. TAYLOR: You happy with him?

7 VENIREPERSON: Yes.

8 MS. TAYLOR: Didn't have any problems?

9 VENIREPERSON: No. He did a good job.

10 MS. TAYLOR: Okay. Do you think that
11 because of your knowledge of how you worked with him
12 that maybe that you might be a little -- have a
13 little more of a tendency to be sided towards him
14 than sided against him?

15 VENIREPERSON: No. Two different
16 cases.

17 MS. TAYLOR: You think you can be
18 completely fair and impartial?

19 VENIREPERSON: Oh, yes.

20 MS. TAYLOR: All right. Okay. Good.
21 That's all I need.

22 Okay. There's a couple things I want
23 to go over with you and let's see. To start off the
24 bat, I notice we had some people that had served on a
25 criminal jury before. Can I see everybody -- raise

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1 your hand if you've been on a criminal jury before.
2 Juror No. 5. Juror No. -- raise your hand high in
3 case I miss you.

4 VENIREPERSON: 26.

5 MS. TAYLOR: No. what?

6 VENIREPERSON: 26.

7 VENIREPERSON: 24.

8 MS. TAYLOR: 24.

9 VENIREPERSON: 21.

10 MS. TAYLOR: 21.

11 VENIREPERSON: 20.

12 MS. TAYLOR: 20.

13 Third row?

14 VENIREPERSON: 42.

15 MS. TAYLOR: 42.

16 VENIREPERSON: 38.

17 MS. TAYLOR: 38.

18 Anybody else on the third row?

19 Okay. Fourth row?

20 VENIREPERSON: 46.

21 MS. TAYLOR: 46. Wow, we've had a
22 lot.

23 VENIREPERSON: 49.

24 MS. TAYLOR: 49.

25 VENIREPERSON: 53.

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APP218

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1 MS. TAYLOR: 53.

2 VENIREPERSON: 55.

3 MS. TAYLOR: 55? Okay. Back over
4 here?

5 VENIREPERSON: 56.

6 MS. TAYLOR: 56.

7 VENIREPERSON: 57.

8 MS. TAYLOR: 57.

9 Thank you. Calling it out to me. In
10 the back, over here.

11 VENIREPERSON: 63.

12 MS. TAYLOR: 63. That's a lot of
13 people. Okay.

14 What I want to know from you is just
15 whether or not -- one of the things that -- if you
16 get put on this jury that you're going to be asked to
17 do is you're going to be asked to assess the
18 punishment in this case. So, I'd like to find out,
19 you know, whether or not, for those of you who've
20 served on a criminal jury, whether or not you were --
21 you were -- whether, in that prior jury service,
22 whether or not you were the ones assessing the
23 punishment or whether they went to the judge. So,
24 that's just what my question's going to be.

25 Juror No. 5, did you assess it or did

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1 the judge?

2 VENIREPERSON: The case was dismissed
3 and we never got to that point.

4 MS. TAYLOR: All right. You didn't
5 get there. Okay.

6 Juror No. 26, where are you?

7 VENIREPERSON: The judge assessed the
8 punishment.

9 MS. TAYLOR: Judge.

10 And 24?

11 VENIREPERSON: Jury.

12 MS. TAYLOR: Jury.

13 21?

14 VENIREPERSON: Jury.

15 MS. TAYLOR: Jury.

16 20?

17 ~~VENIREPERSON: Didn't get to that~~
18 point.

19 MS. TAYLOR: Didn't get there?

20 VENIREPERSON: (Shakes head
21 negatively.)

22 MS. TAYLOR: Okay. And 42, where are
23 you?

24 VENIREPERSON: Judge.

25 MS. TAYLOR: Judge. Okay.

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1 38.

2 VENIREPERSON: We found him not
3 guilty.

4 MS. TAYLOR: Okay. 46? Where is 46?

5 VENIREPERSON: It didn't get to the
6 punishment phase.

7 MS. TAYLOR: Didn't get to punishment.
8 Okay.

9 49?

10 VENIREPERSON: Judge.

11 MS. TAYLOR: There you go. Okay.

12 53?

13 VENIREPERSON: Not guilty.

14 MS. TAYLOR: And 55?

15 VENIREPERSON: Jury.

16 MS. TAYLOR: Jury did punishment?

17 Okay.

18 And 56?

19 VENIREPERSON: I had one each way:
20 The judge got it and one the jury got it.

21 MS. TAYLOR: So, you've done both?

22 VENIREPERSON: (Nods head
23 affirmatively.)

24 MS. TAYLOR: Okay. 57?

25 VENIREPERSON: Jury.

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APP221

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1 MS. TAYLOR: Jury punishment.

2 63?

3 VENIREPERSON: Judge.

4 MS. TAYLOR: Okay. All right. Thank
5 you very much.

6 All right. One of the things I want
7 to talk to you about -- I don't want you to think
8 that we're jumping our guns, but the 12 of you that
9 end up getting put on this jury over here are going
10 to be based -- going to be asked to judge the two
11 different phases of this trial, the guilt and
12 innocence phase and then, later on, if you find him
13 guilty, then you'll be asked to determine punishment.

14 The problem with that is functionally
15 after we pick you over here and put you over here,
16 put you in this box and then you find him guilty, we
17 ~~don't then get to take you back out of the box and~~
18 start talking to you about what your feelings are as
19 far as punishment goes and things like that. So, I
20 don't want you to think that I'm just assuming that
21 you're going to find him guilty. No, no, no. I'm
22 assuming that y'all are going to make me prove my
23 case and I expect that you would expect me to prove
24 my case.

25 But I do want to talk to you about

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APP222

1 punishment because that potentially is an issue that
2 you're going to be asked to decide.

3 Knowing that, what I want to know is
4 here is your -- here is your question. Okay. Let's
5 say that we were rewriting this Criminal Code of
6 Procedure, all right? Rewriting it. And on the
7 first page of this book, you are going to get to
8 decide what is written. On the first page, you have
9 two choices and only two choices. Your choice is
10 that the statement's going to be the purpose of this
11 code, the purpose of these criminal laws is to -- and
12 then you're going to have two choices. It's either
13 to punish or it's either to rehabilitate. And you
14 get to decide which of those two words are going to
15 be filled into that sentence for this criminal -- for
16 the criminal laws and that's what I want to know.
17 Okay.

18 Now, I want to just know -- it's not
19 something in depth and I know it's hard because I'm
20 asking you, you know, to overgeneralize. I'm not
21 really giving you any set of facts or anything to
22 base your decision on. I just kind of want to know
23 what's in your gut. And when I'm going to ask you, I
24 want you to have this in mind. I want you to think
25 to yourself that it -- what is the purpose of this

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1 code and I want you to have in the back of your mind,
2 if this is -- I'm going to give the freebie for free,
3 all right?

4 So, you're going to know that it is
5 not the person's first offense. Okay? So, because I
6 know lots of times generally people think, well, if
7 it's a person's first time with the law, we want to
8 do probation. I'm not opposed to that or anything
9 like that. But I want you to be thinking in your
10 mind, you're finishing the sentence for me, but with
11 the idea that it is not the person's first offense,
12 okay? All right.

13 Juror No. 1, with that in mind, are
14 you -- would you finish the sentence with punishment
15 or rehab?

16 VENIREPERSON: Punish.

17 ~~MS. TAYLOR: Okay. That's Juror No.~~
18 1. Okay.

19 Juror No. 2?

20 VENIREPERSON: Punish.

21 MS. TAYLOR: No. 3.

22 VENIREPERSON: Punish.

23 MS. TAYLOR: No. 4?

24 VENIREPERSON: Punish.

25 MS. TAYLOR: No. 5?

1 VENIREPERSON: I would have to hear
2 the case.

3 MS. TAYLOR: Yeah, I know. And it's
4 totally unfair for me to ask you this question. I
5 understand that. I wish that I could give you all
6 the facts, but like the Judge said, I'm not going to
7 be able to do that until you hear the evidence. So,
8 that's kind of why I'm asking for a gross
9 overgeneralization and just going with what's in your
10 gut. Can you just overgeneralize and think, if it's
11 not the person's first offense, would I be for
12 punishment or for rehab?

13 VENIREPERSON: Was the offense the
14 same offense?

15 MS. TAYLOR: Well, okay, let's say it
16 was. Would that -- you know? For punishment or
17 rehab?

18 VENIREPERSON: Well, I guess rehab.
19 I'm a rehabber.

20 MS. TAYLOR: You're Juror No. 5?

21 VENIREPERSON: (Nods head
22 affirmatively.)

23 MS. TAYLOR: Juror No. 6?

24 VENIREPERSON: Rehab.

25 MS. TAYLOR: Juror No. 7?

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1 VENIREPERSON: Punish.
2 MS. TAYLOR: Juror No. 8?
3 VENIREPERSON: Rehab.
4 MS. TAYLOR: Juror No. 9?
5 VENIREPERSON: Rehab.
6 MS. TAYLOR: Juror No. 10?
7 VENIREPERSON: Rehab.
8 MS. TAYLOR: Juror No. 11?
9 VENIREPERSON: Punishment.
10 MS. TAYLOR: Juror No. 12?
11 VENIREPERSON: Punishment.
12 MS. TAYLOR: No. 13?
13 VENIREPERSON: Punishment.
14 MS. TAYLOR: No. 14?
15 VENIREPERSON: Punishment.
16 MS. TAYLOR: No. 15?
17 ~~VENIREPERSON: Punish.~~
18 MS. TAYLOR: No. 16?
19 VENIREPERSON: Punishment.
20 MS. TAYLOR: No. 17?
21 VENIREPERSON: Punishment.
22 MS. TAYLOR: I see you're raising your
23 hand. I'll come back to you in a second.
24 No. 18?
25 VENIREPERSON: Punishment.

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1 MS. TAYLOR: 19?
2 VENIREPERSON: Punishment.
3 MS. TAYLOR: 20?
4 VENIREPERSON: Punishment.
5 MS. TAYLOR: 21?
6 VENIREPERSON: Punishment.
7 MS. TAYLOR: 22?
8 VENIREPERSON: Rehab.
9 MS. TAYLOR: 23?
10 VENIREPERSON: Rehab.
11 MS. TAYLOR: 24?
12 VENIREPERSON: Punishment.
13 MS. TAYLOR: 25?
14 VENIREPERSON: Rehab.
15 MS. TAYLOR: 26?
16 VENIREPERSON: Punishment.
17 ~~MS. TAYLOR: 27?~~
18 VENIREPERSON: Punishment.
19 MS. TAYLOR: 28?
20 VENIREPERSON: Punishment.
21 MS. TAYLOR: 29?
22 VENIREPERSON: Punishment.
23 MS. TAYLOR: 30?
24 VENIREPERSON: Rehab.
25 MS. TAYLOR: 31?

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1 VENIREPERSON: Rehab.
2 MS. TAYLOR: 32?
3 VENIREPERSON: Rehab.
4 MS. TAYLOR: 33?
5 VENIREPERSON: Rehab.
6 MS. TAYLOR: 34?
7 VENIREPERSON: Punishment.
8 MS. TAYLOR: 35?
9 VENIREPERSON: Punishment.
10 MS. TAYLOR: 36?
11 VENIREPERSON: Punishment.
12 MS. TAYLOR: 37?
13 VENIREPERSON: Punishment.
14 MS. TAYLOR: 38?
15 VENIREPERSON: Punishment.
16 MS. TAYLOR: 39?
17 ~~VENIREPERSON: Punishment.~~
18 MS. TAYLOR: 40?
19 VENIREPERSON: Rehab.
20 MS. TAYLOR: 41?
21 VENIREPERSON: Punishment.
22 MS. TAYLOR: 42?
23 VENIREPERSON: Punishment.
24 MS. TAYLOR: 43?
25 VENIREPERSON: Punishment.

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1 MS. TAYLOR: 44?
2 VENIREPERSON: Punishment.
3 MS. TAYLOR: 45?
4 VENIREPERSON: Punishment.
5 MS. TAYLOR: 46?
6 VENIREPERSON: Punishment.
7 MS. TAYLOR: 47?
8 VENIREPERSON: Punishment.
9 MS. TAYLOR: 48?
10 VENIREPERSON: Punishment.
11 MS. TAYLOR: 49?
12 VENIREPERSON: Punishment.
13 MS. TAYLOR: 50?
14 VENIREPERSON: Punishment.
15 MS. TAYLOR: 51?
16 VENIREPERSON: Punishment.
17 ~~MS. TAYLOR: 52?~~
18 VENIREPERSON: Rehab.
19 MS. TAYLOR: 53?
20 VENIREPERSON: Rehab.
21 MS. TAYLOR: 54?
22 VENIREPERSON: Rehab.
23 MS. TAYLOR: 55?
24 VENIREPERSON: Rehab.
25 MS. TAYLOR: 56?

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1 VENIREPERSON: Punishment.

2 MS. TAYLOR: 57?

3 VENIREPERSON: Punishment.

4 MS. TAYLOR: 58?

5 VENIREPERSON: Punishment.

6 MS. TAYLOR: 59?

7 VENIREPERSON: Punishment.

8 MS. TAYLOR: 60?

9 VENIREPERSON: Punishment.

10 MS. TAYLOR: 61?

11 VENIREPERSON: Punishment.

12 MS. TAYLOR: 62?

13 VENIREPERSON: Punishment.

14 MS. TAYLOR: 63?

15 VENIREPERSON: Punishment.

16 MS. TAYLOR: Okay. Thank you very

17 much. All right. Okay.

18 What we're talking about, ladies and
19 gentlemen, today or what we're going to be talking
20 about is kind of a touchy subject to lots of people.
21 Who here has been a victim of identity theft? Raise
22 your hand. Okay. Raise your hand high.

23 All right. Lots of people. Let me
24 ask you, Juror No. 1, since you said you're a victim
25 of identity theft.

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1 VENIREPERSON: Actually, it was my
2 wife.

3 MS. TAYLOR: Oh, your wife. Okay.

4 VENIREPERSON: I was directly involved
5 with it.

6 MS. TAYLOR: Okay. Do you know how
7 the facts came about, how the person was able to get
8 your wife's information?

9 VENIREPERSON: We used it at a
10 restaurant. We used the credit card at a restaurant
11 and they got their information through that.

12 MS. TAYLOR: Okay. So, you were able
13 to track back to pinpoint where that information came
14 from?

15 VENIREPERSON: Yes.

16 MS. TAYLOR: Okay. Has anybody been a
17 ~~victim of identity theft where you didn't lose your~~
18 wallet, you didn't have it stolen, you just somehow
19 found out that you were a victim and you have no idea
20 how it happened? Juror number?

21 VENIREPERSON: 19.

22 MS. TAYLOR: How did you find out?

23 VENIREPERSON: I got a call from the
24 credit card company while I was asleep, in the middle
25 of the day. They called me and said, We're running

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1 your credit card.

2 I said, I'm in my bed at home; so, how
3 could that happen.

4 MS. TAYLOR: That was your credit
5 card, right?

6 VENIREPERSON: That's my credit card,
7 yeah.

8 MS. TAYLOR: So, somebody else was
9 using your credit card?

10 VENIREPERSON: In San Francisco while
11 I'm in Houston.

12 MS. TAYLOR: In San Francisco?

13 VENIREPERSON: Yes, ma'am.

14 MS. TAYLOR: Have you ever been to San
15 Francisco?

16 VENIREPERSON: Never been there.

17 MS. TAYLOR: Never even been there.

18 So, you were a victim of identity theft where the
19 theft was occurring at a location that you'd never
20 even been to?

21 VENIREPERSON: Never been there.

22 MS. TAYLOR: Were you able to track
23 down exactly how that person got your information?

24 VENIREPERSON: I don't know how, but
25 they found out that he had a gas card under my name,

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1 all my credit cards and even a phone card. So, they
2 traced the guy from the numbers that he called. And
3 then they found out --

4 MS. TAYLOR: So, they were able to
5 catch the person using it?

6 VENIREPERSON: They finally catch the
7 person. I did not get involved in it --

8 MS. TAYLOR: But do you know how he
9 found out your information?

10 VENIREPERSON: I have no idea.

11 MS. TAYLOR: Okay. Can everyone kind
12 of see how sometimes we may not know -- I mean,
13 people -- who else has had any kind of similar
14 situation like that where you just don't know how
15 people get ahold of your information.

16 Had you left your wallet hanging out?
17 Had you been any kind of negligent with any of your
18 possessions or anything?

19 VENIREPERSON: Not that I can think,
20 no, not at all. My wallet is always with me.

21 MS. TAYLOR: Okay. Did it cause you
22 lots of problems? I mean -- this is open for anybody
23 who's been a victim of identity theft. Did it -- I
24 mean, do you -- is it kind of a pain? Has anybody
25 been a victim of identity theft where it wasn't just

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1 a single occurrence; it just sort of never stops?
2 Somebody else gets your identity and it just sort of
3 goes on and on. Raise your hands? Juror number --
4 okay. Juror number -- in the back row, what number
5 are you? Right here. In the red shirt.

6 VENIREPERSON: 39.

7 MS. TAYLOR: Juror No. 39.

8 VENIREPERSON: Uh-huh.

9 MS. TAYLOR: Tell us a little bit
10 about yours. How is yours recurring?

11 VENIREPERSON: It went for a few
12 months, but my husband worked offshore on a boat and
13 they had a French server and somehow they got his
14 credit card number from that French server. We
15 started getting airline tickets from Air France.

16 MS. TAYLOR: Okay. So, in your case
17 ~~they were able to trace it down?~~

18 VENIREPERSON: Not to who did it, but
19 they -- best guess is that's how they got it.

20 MS. TAYLOR: Can you certainly see how
21 it's possible that the person might not be able to
22 track down exactly how you got that information?
23 Everybody kind of see that? Okay.

24 And it happens both ways. Sometimes
25 you know. Sometimes you're, like, Yeah, my wallet

1 was stolen, and then sometimes maybe you don't, like
2 Juror No. 18; is that right?

3 VENIREPERSON: 19.

4 MS. TAYLOR: 19, Juror No. 19. Okay.

5 Now, I'd like to ask you a question
6 about -- let's see. Juror No. 18, you mentioned that
7 you were a CEO of a company, right?

8 VENIREPERSON: (Nods head
9 affirmatively.)

10 MS. TAYLOR: You got a big deal going
11 on right now, right?

12 VENIREPERSON: Uh-huh.

13 MS. TAYLOR: Let me ask you -- I think
14 you raised your hand when you said you'd been a
15 victim of identity theft as well, right?

16 VENIREPERSON: Actually, my wife and
17 my son.

18 MS. TAYLOR: Your wife and your son?

19 VENIREPERSON: Both. Separately.

20 MS. TAYLOR: Were they kind of
21 long-standing identity thefts or short-standing
22 identity thefts or did it happen more than once?

23 VENIREPERSON: There was some kind of
24 event in both cases which went on for about six
25 months in both cases probably.

1 MS. TAYLOR: Okay. Now, let me ask
2 you, generally when you're talking about credit
3 cards, right?

4 VENIREPERSON: Yes.

5 MS. TAYLOR: Okay. And in your cases,
6 and you may be able to answer this as well, Juror
7 No. 19, were you reimbursed by the credit card
8 company?

9 VENIREPERSON: They finally did.

10 MS. TAYLOR: They finally did. I
11 think lots of people would say most of the time the
12 credit card company will end up reimbursing you. Not
13 all the time. Is that true? Is that fair to say? I
14 need to see head nods to make sure we're all -- okay.

15 So, lots of times the person whose
16 identity, the owner, it's possible, at least you
17 ~~could see, where that person may not end up being out~~
18 any money. Is that true? Can you see how that would
19 happen?

20 VENIREPERSON: No.

21 MS. TAYLOR: Well, okay. I'm talking
22 about just the transaction. I'm not talking about
23 all the payment it would take to cancel or all the
24 things that go along with it. But can I -- can
25 anybody have an opinion on this? I'm getting a real

1 quiet panel, which means all 12 of the first jurors
2 are going to be sitting right over there.

3 Does anybody kind of have anything to
4 say about that as far as -- can you see -- can you
5 think of a situation where -- dealing with MasterCard
6 or Visa and, you know, Visa learns that it's a
7 fraudulent charge, then Visa or the company that was
8 trying to get the goods or whatever it is, might be
9 the ones to absorb that loss; is that right? Juror
10 No. 2, I see you nodding your head?

11 VENIREPERSON: It happened --

12 MS. TAYLOR: It can happen?

13 VENIREPERSON: They called me on a
14 Monday morning and asked if I had spent, like, \$1500
15 on Sunday and I said, No. And they told me that
16 apparently my card was being used without my
17 knowledge.

18 MS. TAYLOR: Okay. You didn't have to
19 absorb that 1500 loss, did you?

20 VENIREPERSON: No, no.

21 MS. TAYLOR: All right. I know
22 there's different circumstances in every different
23 case. I'm just talking about -- you can see how it's
24 a possibility, right?

25 VENIREPERSON: Right.

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1 MS. TAYLOR: Juror number --

2 VENIREPERSON: 18.

3 MS. TAYLOR: 18. Thank you. Let me
4 ask you. Have you ever been subpoenaed to come
5 testify in a trial, being a CEO of a big company?

6 VENIREPERSON: No.

7 MS. TAYLOR: Has anybody ever been
8 subpoenaed to come testify in a trial in criminal
9 court or anything? Raise your hands. Juror number?

10 VENIREPERSON: 35.

11 MS. TAYLOR: Did you -- were you, as a
12 witness or a person subpoenaed, did you get any say
13 on when the trial was or anything like that?

14 VENIREPERSON: It was -- I'm custodian
15 of medical records.

16 MS. TAYLOR: Okay. You do it all the
17 time.

18 VENIREPERSON: All the time.

19 MS. TAYLOR: Somebody who does not do
20 it as a part of their job, raise your hand. Juror
21 number?

22 VENIREPERSON: 24.

23 MS. TAYLOR: Were you called to
24 testify? Did you get any say over what day you
25 wanted to come and give your testimony?

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1 VENIREPERSON: No. I never testified,
2 but we -- about the time we all showed up for court,
3 they settled or whatever.

4 MS. TAYLOR: Okay. Okay. But the
5 point I'm trying to make is that you didn't have any
6 choice over the day, right?

7 VENIREPERSON: No. Right.

8 MS. TAYLOR: That was set by the
9 Court, correct?

10 VENIREPERSON: Correct.

11 MS. TAYLOR: Okay. Juror No. 18 --
12 17?

13 VENIREPERSON: 18.

14 MS. TAYLOR: All right. I want to ask
15 you, in your busy life, where you're the CEO of a
16 company, can you think of a reason -- I'm not saying
17 that you would do this, but can you think of a reason
18 why a person whose identity has been stolen, why they
19 would not be able to come and testify at a location
20 far away from where they are and where they work?
21 Can you think of a reason why they wouldn't come?

22 MR. LANNIE: May it please the Court.
23 We object to the global nature of the question.

24 THE COURT: Overruled.

25 VENIREPERSON: If I understand your