



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-16-00184-CR

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LEON POSADA, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from the 428th District Court  
Hays County, Texas  
Trial Court No. CR-16-0328

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Before Morriss, C.J., Moseley and Burgess, JJ.  
Memorandum Opinion by Justice Burgess

## MEMORANDUM OPINION

The State charged Leon Posada with theft of property valued at under \$2,500.00 with two prior theft convictions of any grade, a state jail felony.<sup>1</sup> Posada initially pled not guilty to the theft offense and not true to the two prior theft convictions alleged by the State. After the trial began and before the State rested its case-in-chief, Posada changed his plea on the underlying theft charge from not guilty to guilty; however, he persisted in his not true pleas to the two prior theft convictions. In effect, as a result of Posada's changed plea, he pled guilty to the lesser-included offense of theft, but not to the (greater) charged offense of theft with two prior theft convictions. The trial continued, and after the presentation of evidence, a Hays County<sup>2</sup> jury convicted Posada of the state jail felony of theft with two prior theft convictions.<sup>3</sup>

On appeal, Posada contends that the evidence is insufficient to link him to the two prior theft convictions and that, as a result, his conviction of the state jail felony of theft with two prior theft convictions cannot stand. Because a rational fact-finder could have reasonably determined that Posada was the same person who was convicted of theft on two prior occasions, we affirm the trial court's judgment.

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<sup>1</sup>See TEX. PENAL CODE ANN. § 31.03(e)(4)(D) (West Supp. 2016). The State also alleged that Posada had previously been convicted of three other felony offenses for purposes of enhancing his punishment range from that of a state jail felony to that of a third degree felony, see TEX. PENAL CODE ANN. § 12.425(b) (West 2011). However, Posada raises no complaint on appeal regarding the sufficiency of the evidence to support the trial court's true findings on these other felony convictions.

<sup>2</sup>Originally appealed to the Third Court of Appeals in Austin, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. See TEX. GOV'T CODE ANN. § 73.001 (West 2013). We are unaware of any conflict between precedent of the Third Court of Appeals and that of this Court on any relevant issue. See TEX. R. APP. P. 41.3.

<sup>3</sup>At the conclusion of the punishment phase of the trial, the jury also found that the three other felony convictions alleged by the State were true, thereby elevating the applicable range of punishment from that of a state jail felony to that of a third-degree felony. The jury sentenced Posada to eighteen years' imprisonment.

## **I. Factual and Procedural Background**

The indictment alleged that Posada committed theft of property valued at less than \$2,500.00 and that he had been previously convicted of two prior theft offenses. *See id.* Because Posada pled guilty to the offense of theft of property valued at less than \$2,500.00, the only controverted issue is whether the State proved, beyond a reasonable doubt, that Posada was previously convicted two or more times of theft.<sup>4</sup>

To prove the two prior theft convictions, the State offered four exhibits into evidence. It did not offer live testimony. The first exhibit is a certified copy of the Hays County Sheriff's Office booking report dated December 30, 2015, created in connection with Posada's arrest for the primary theft offense in this case.. The second exhibit consists of a series of three certified copies of judgments of conviction, two of which are for credit card or debit card abuse and one of which is a theft judgment of conviction entered by the 167th Judicial District Court of Travis County, Texas, in cause number D-1-DC-13-300536. The third exhibit consists of a series of four documents: (1) a certified copy of a judgment of conviction for theft,<sup>5</sup> (2) a certified copy of an order to withdraw funds from Posada's inmate trust account, (3) a certified copy of a warrant for Posada's arrest for the offense of theft, with an attached affidavit, and (4) a certified copy of an indictment of Posada for two counts of theft. The fourth exhibit consists of two documents, the first of which is a certified copy of a judgment of conviction for theft from the 167th Judicial

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<sup>4</sup>The two prior convictions alleged in the indictment were (1) a June 12, 2008, conviction in the 167th Judicial District Court of Travis County, Texas, in cause number D-1-DC-06-201089, and (2) an October 15, 2013, conviction in the 167th Judicial District Court of Travis County, Texas, in cause number D-1-DC-13-300536.

<sup>5</sup>This judgment appears to be a duplicate of the judgment of conviction for theft included in State's Exhibit 2. The judgment was rendered by the 167th Judicial District Court of Travis County in cause number D-1-DC-13-300536.

District Court of Travis County, Texas, in cause number D-1-DC-06-201089, and the second of which is a certified copy of an order committing Posada to the custody of the Travis County Sheriff. Following the admission of the foregoing exhibits into evidence, the State rested its case.

## **II. Standard of Review**

In evaluating legal sufficiency, we review all the evidence in the light most favorable to the trial court's judgment to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010) (plurality op.) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *Hartsfield v. State*, 305 S.W.3d 859, 863 (Tex. App.—Texarkana 2010, pet. ref'd). Our rigorous legal sufficiency review focuses on the quality of the evidence presented. *Brooks*, 323 S.W.3d at 917–18 (Cochran, J., concurring). We examine legal sufficiency under the direction of the *Brooks* opinion, while giving deference to the responsibility of the jury “to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

Legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The “hypothetically correct” jury charge is “one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State’s burden of proof or unnecessarily restrict the State’s theories of liability, and adequately describes the particular offense for which the defendant was tried.” *Id.*

## II. Analysis

Pursuant to Section 31.03(e)(4)(D), a theft offense is a state jail felony if the value of the property is less than \$2,500.00 and the defendant has two or more prior theft convictions.<sup>6</sup> In a single issue, Posada contends that the evidence was insufficient during the guilt/innocence phase of trial to prove his two prior theft convictions. Specifically, he argues that the judgments, unaccompanied by independent evidence of corroboration, are insufficient to confirm his identity as the person named in those convictions.

Where, as here, proof of a prior conviction is a jurisdictional element, the fact of the prior conviction, including the accused's identity, must be proved beyond a reasonable doubt. *See Gibson v. State*, 995 S.W.2d 693, 696 (Tex. Crim. App. 1999); *Zimmer v. State*, 989 S.W.2d 48, 50 (Tex. App.—San Antonio 1998, pet. ref'd). “To establish that a defendant has been convicted of a prior offense, the State must prove beyond a reasonable doubt that (1) a prior conviction exists, and (2) the defendant is linked to that conviction.” *Flowers v. State*, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007). “Regardless of the type of evidentiary puzzle pieces the State offers to establish the existence of a prior conviction and its link to a specific defendant, the trier of fact determines if these pieces fit together sufficiently to complete the puzzle.” *Id.* at 923.

The State's evidence included two certified judgments of conviction for theft allegedly committed by Posada. Nevertheless, because “a certified judgment on its own is insufficient to prove a prior conviction,” the State was required to produce additional evidence other than the certified judgments to link Posada to the prior convictions. *Henry v. State*, 509 S.W.3d 915, 919

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<sup>6</sup>The two prior theft convictions are jurisdictional elements of the offense. *See Tamez v. State*, 11 S.W.3d 198, 201 (Tex. Crim. App. 2000).

(Tex. Crim. App. 2016); *Beck v. State*, 719 S.W.2d 205, 210 (Tex. Crim. App. 1986).<sup>7</sup> This link may be proved in a variety of ways. The State can admit certified copies of a judgment and a sentence and authenticated copies of fingerprint records, “supported by expert testimony identifying them as identical with known prints of the defendant.” *Paschall v. State*, 285 S.W.3d 166, 174–75 (Tex. App.—Fort Worth 2009, pet. ref’d) (citing *Beck*, 719 S.W.2d at 209). The State may also rely on

(1) the defendant’s admission or stipulation, (2) testimony by a person who was present when the defendant was convicted of the specified crime and can identify the defendant as that person, or (3) documentary proof (such as a judgment) that contains sufficient information to establish both the existence of a prior conviction and the defendant’s identity as the person convicted. Just as there is more than one way to skin a cat, there is more than one way to prove a prior conviction.

*Flowers*, 220 S.W.3d at 921–22 (citations omitted). A defendant can also be identified through photographs in a penitentiary packet, which includes the defendant’s complete and detailed physical description. *Yeager v. State*, 737 S.W.2d 948, 952 (Tex. App.—Fort Worth 1987, no pet.); *Carr v. State*, 715 S.W.2d 419, 421 (Tex. App.—San Antonio 1986, no pet.). We now examine the pieces of the puzzle brought to us in this appeal to determine if a reasonable trier of fact could find that they fit together sufficiently to complete the puzzle. See *Flowers*, 220 S.W.3d at 923.

In this case, the jury had before it a certified copy of the booking report created in connection with Posada’s theft of the Gucci purse. The report lists Posada’s date of birth, his age, his Texas driver’s license number, and his social security number. The report lists Posada’s State

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<sup>7</sup>This is true “even if the name on the judgment and sentence and in the pen packet is the same as the defendant in trial.” *Beck*, 719 S.W.2d at 210.

Identification (SID) Number as 07012392, and also includes a front and side view photograph of Posada. The report indicates that Posada is five feet, ten inches tall, weighs 195 pounds, is of medium build, and has brown eyes and black hair with a medium-brown complexion. The fact-finder could have compared these photographs to the person in the courtroom to determine that the defendant on trial was the same person described and photographed in the booking report. There can be no dispute that the booking report documents the arrest of the defendant—Leon Posada—for the initial theft.<sup>8</sup>

The certified copy of the judgment of conviction for theft in the 167th Judicial District Court of Travis County in cause number D-1-DC-13-300536, included as a part of the State’s Exhibit 2, identifies “Leon Posada” as the defendant. Directly below Posada’s name in this judgment is SID number “TX07012392,” which is the same SID number listed for Leon Posada in the booking report. The ten-print fingerprint card attached to this judgment lists Posada’s date of birth as May 30, 1978, the date of birth listed on Posada’s booking report. The card also lists the same social security number for Posada as does the booking report, and both list Posada’s place of birth as California.

The certified copy of the judgment of conviction for theft in the 167th Judicial District Court of Travis County in cause number D-1-DC-06-201089, included as a part of the State’s Exhibit 4, identifies “Leon Posada” as the defendant. This judgment of conviction does not include a SID number. Exhibit 4, however, includes a certified copy of an order committing Leon Posada

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<sup>8</sup>The booking report is dated March 15, 2016. The report contains Hays County District Court cause number CR-16-0328 and the offense date of December 30, 2015, which is the same date listed on the indictment in the primary theft charge in this case.

to the custody of the Travis County Sheriff in connection with the theft in cause number D-1-DC-06-201089. This order lists Posada’s birth date as May 30, 1978, and describes Posada as a Hispanic male. This is the same birthdate listed on the booking report documenting Posada’s arrest for the theft of the Gucci purse, which likewise describes Posada as a Hispanic male. Both the booking report and the order list Posada’s address as 1400 Scheider, Austin, Texas 78754.

Included within Exhibit 2, the components of which were included in a penitentiary packet provided by the Texas Department of Criminal Justice, are front and side view photographs of “Posada, Leon,” dated November 21, 2013, bearing the heading of the Texas Department of Criminal Justice—Correctional Institutions Division. The fact-finder was entitled to examine these “pen packet” photographs of Posada, as well as those photographs included in State’s Exhibit 1, and compare them to the person they saw in the courtroom. *See Flowers*, 220 S.W.3d at 919.

#### **IV. Conclusion**

We conclude that a reasonable trier of fact could view the exhibits offered at trial and, based on the information therein, find beyond a reasonable doubt that both alleged prior theft convictions existed and both were linked to Posada. *See id.* at 924–25.

We affirm the trial court’s judgment.

Ralph K. Burgess  
Justice

Date Submitted: March 28, 2017

Date Decided: May 19, 2017

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