

Opinion issued August 13, 2020



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-19-00199-CR

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**JOSE JONATHAN TISCARENO, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Criminal Court at Law No. 6  
Harris County, Texas  
Trial Court Case No. 2191444**

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**OPINION**

A jury found appellant, Jose Jonathan Tiscareno,<sup>1</sup> guilty of the misdemeanor offense of driving while intoxicated (“DWI”),<sup>2</sup> second offense, and the trial court assessed his punishment at confinement for 180 days. In his sole issue, appellant contends that the trial court lacked subject-matter jurisdiction over this case.

We modify the trial court’s judgment and affirm as modified.

### **Background**

Houston Police Department (“HPD”) Officer S. Ratcliff testified that at around 3:00 a.m. on November 19, 2017, while on patrol with HPD Officer A. Nguyen, he conducted a traffic stop near North Main Street and Airline Drive in Harris County, Texas. At the time, Nguyen was driving the officers’ patrol car northbound on North Main Street when appellant, driving a white Jeep sport utility vehicle (“SUV”), “sh[o]t out in front” of the patrol car causing Nguyen to “slam on the brakes.” The Jeep SUV did not have its headlights turned on, and the officers initiated a traffic stop.

When Officer Ratcliff made contact with appellant, he noticed that appellant had slurred speech and glassy eyes and there was a strong odor of alcoholic beverage

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<sup>1</sup> Our style of the case is in accord with the trial court’s modified judgment. *See, e.g., Garcia v. State*, No. 05-17-00584-CR, 2017 WL 6616385, at \*1 (Tex. App.—Dallas Dec. 28, 2017, no pet.) (mem. op., not designated for publication) (modifying trial court’s judgment to correct spelling of defendant’s name; style of case in accord with trial court’s modified judgment).

<sup>2</sup> *See* TEX. PENAL CODE ANN. §§ 49.04(a), 49.09(a).

coming from the Jeep SUV. When Ratcliff asked appellant if he had been drinking, appellant admitted to having “two shots and three beers” after he got off work around 11:00 p.m. or 11:30 p.m. that night. Based on appellant’s slurred speech, glassy eyes, and the smell of alcohol, Ratcliff decided to perform standardized field sobriety tests to test appellant’s level of intoxication.

During the Horizontal Gaze Nystagmus test, Officer Ratcliff sought to determine whether appellant’s eyes were “tracking smoothly” or “jerking,” and he observed “six clues” indicating that appellant was intoxicated. Ratcliff was unable to complete any additional standardized field sobriety tests at the scene because the environment became “almost . . . uncontrollable” due to the behavior of a third-party. Thus, Ratcliff transported appellant to the HPD intoxication center so that further testing could be completed in a safe and controlled environment.

At the HPD intoxication center, Officer Ratcliff watched as a DWI technician guided appellant through two other standardized field sobriety tests—the one-leg-stand test and the walk-and-turn test. Officer Ratcliff observed clues indicating intoxication during the one-leg-stand test, including swaying, use of arms for balance, and appellant dropping his foot. Ratcliff also observed five clues indicating intoxication during the walk-and-turn test. Based on these tests, Ratcliff believed that appellant had lost the normal use of his physical and mental faculties, was intoxicated, and had been driving while intoxicated. Because appellant did not

consent to breath or blood testing, Ratcliff obtained a search warrant so that appellant's blood could be drawn. Ratcliff was present when appellant's blood was drawn by a registered nurse at the HPD intoxication center on November 19, 2017.

C. Rodgers Roseland, a forensic analyst in toxicology at the Houston Forensic Science Center, testified that she analyzed appellant's blood sample to determine the alcohol concentration. Roseland stated that appellant's blood-alcohol concentration ("BAC") was 0.136 grams of ethanol per 100 milliliters of blood, which was greater than the legal limit of 0.080 grams of ethanol per 100 milliliters of blood. A BAC of 0.136 grams is consistent with a loss of judgment and impaired senses.

### **Standard of Review**

Jurisdiction is the power of the court over the "subject matter" of the case, coupled with "personal" jurisdiction over the accused. *See Fairfield v. State*, 610 S.W.2d 771, 779 (Tex. Crim. App. [Panel Op.] 1981) (internal quotations omitted); *see also Martinez v. State*, 5 S.W.3d 722, 725 (Tex. App.—San Antonio 1999, no pet.). "Jurisdiction cannot be 'inherent.'" *State v. Patrick*, 86 S.W.3d 592, 596 (Tex. Crim. App. 2002). A trial court has subject-matter jurisdiction over a criminal case if the Texas Constitution and statutes grant the trial court authority over the case and the State invokes the grant of authority in its pleadings. *See Trejo v. State*, 280 S.W.3d 258, 260 (Tex. Crim. App. 2009) ("[S]ubject-matter jurisdiction requires both a general grant of authority to the trial court and a charging instrument that

invokes that jurisdiction over the particular case.” (emphasis omitted)); *Dailing v. State*, 546 S.W.3d 438, 443 (Tex. App.—Houston [14th Dist.] 2018, no pet.). A judgment of conviction is void if the trial court lacks subject-matter jurisdiction. See *Ex parte Moss*, 446 S.W.3d 786, 789 (Tex. Crim. App. 2014); *Nix v. State*, 65 S.W.3d 664, 668 (Tex. Crim. App. 2001).

A defendant may challenge the trial court’s subject-matter jurisdiction for the first time on appeal. See *Gallagher v. State*, 690 S.W.2d 587, 588–89 (Tex. Crim. App. 1985); *Dailing*, 546 S.W.3d at 443; see also *State v. Roberts*, 940 S.W.2d 655 657 (Tex. Crim. App. 1996) (“Th[e] issue of jurisdiction is fundamental and cannot be ignored.”), *overruled on other grounds by State v. Medrano*, 67 S.W.3d 892 (Tex. Crim. App. 2002). Whether a trial court has subject-matter jurisdiction is a question of law that we review de novo. *Westbrook v. Penley*, 231 S.W.3d 389, 394 (Tex. 2007); *Moss v. State*, 13 S.W.3d 877, 883 (Tex. App.—Fort Worth 2000, pet. ref’d).

We also review de novo a challenge to the constitutionality of a statute. *Vandyke v. State*, 538 S.W.3d 561, 570 (Tex. Crim. App. 2017); *Dailing*, 546 S.W.3d at 443. We afford great deference to the Texas Legislature, and we presume that the statute is constitutional and that the Legislature has not acted unreasonably or arbitrarily. *Vandyke*, 538 S.W.3d at 570; *Dailing*, 546 S.W.3d at 443. The party challenging the statute normally bears the burden of establishing its unconstitutionality. *Vandyke*, 538 S.W.3d at 570–71; *Dailing*, 546 S.W.3d at 443.

Additionally, statutory interpretation presents a question of law that we review de novo. *Bays v. State*, 396 S.W.3d 580, 584 (Tex. Crim. App. 2013); *Dailing*, 546 S.W.3d at 443. In interpreting statutes, we seek to effectuate the Texas Legislature’s collective intent, and we presume that the Legislature intended for the entire statutory scheme to be effective. *Bays*, 396 S.W.3d at 584; *Dailing*, 546 S.W.3d at 443. When we interpret a statute, our constitutional duty is to determine and give effect to the apparent intent of the legislators who voted for it. *Vandyke*, 538 S.W.3d at 569; *Dailing*, 546 S.W.3d at 443. In determining apparent legislative intent, we focus on the text of the statute and discern how ordinary legislators would have understood the text. *See Vandyke*, 538 S.W.3d at 569; *Dailing*, 546 S.W.3d at 443. We determine the plain meaning of a statute by construing its literal text according to the rules of grammar and common usage. *Baird v. State*, 398 S.W.3d 220, 228 (Tex. Crim. App. 2013); *Dailing*, 546 S.W.3d at 443. We presume that the Legislature meant every word to serve a discrete purpose that should be given effect. *Baird*, 398 S.W.3d at 228; *Dailing*, 546 S.W.3d at 443. We are not empowered to substitute what we believe is right or fair for what the Legislature has written. *See Vandyke*, 538 S.W.3d at 569; *Dailing*, 546 S.W.3d at 443.

If two statutes apply to an issue, courts should construe the statutes, if possible, to give effect to each statute. *See Mayo v. State*, 4 S.W.3d 9, 11 (Tex. Crim. App. 1999); *Dailing*, 546 S.W.3d at 443. If the statutes irreconcilably conflict

and one statute is a general provision and the other is more specific, the specific statute prevails as an exception to the general provision, unless (1) the Texas Legislature enacted the general provision later than the specific statute and (2) the Legislature manifestly intended that the general provision prevail. *See* TEX. GOV'T CODE ANN. § 311.026; *Mayo*, 4 S.W.3d at 11; *Cantu v. State*, 842 S.W.2d 667, 685 n.13 (Tex. Crim. App. 1992); *Dailing*, 546 S.W.3d at 443. If two statutes are irreconcilable and neither statute is more specific than the other, the later-enacted statute prevails. *See* TEX. GOV'T CODE ANN. § 311.025; *Dailing*, 546 S.W.3d at 443.

### **Jurisdiction**

In his sole issue, appellant argues that the trial court, County Criminal Court at Law No. 6 of Harris County, Texas, lacked subject-matter jurisdiction over this case because “[t]he constitutional county court of Harris County has exclusive jurisdiction over most [c]lass A and B misdemeanor[.]” offenses, including the class A misdemeanor offense of DWI, second offense, of which appellant was convicted. (Emphasis omitted.) *See* TEX. PENAL CODE ANN. §§ 49.04(a), 49.09(a).

Constitutional county courts are created by Article V, sections 1 and 15 of the Texas Constitution. *See Dailing*, 546 S.W.3d at 443–44; *In re Marriage of Skarda*, 345 S.W.3d 665, 668–69 (Tex. App.—Amarillo 2011, no pet.). Article V, section 1 states:

The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District

Courts, *in County Courts*, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

TEX. CONST. art. V, § 1 (emphasis added); *see also Sanchez v. State*, 365 S.W.3d 681, 684 (Tex. Crim. App. 2012) (“The Texas Constitution distributes judicial power among several defined courts . . .”). And Article V, section 15 provides: “There shall be established in each county in this State *a County Court*, which shall be a court of record . . .” TEX. CONST. art. V, § 15 (emphasis added). The County Judge presides over the constitutional county court, which has jurisdiction “as provided by law.” TEX. CONST. art. V, § 16; *see also Dailing*, 546 S.W.3d at 444.

The Texas Legislature has enacted statutes establishing the jurisdiction of the constitutional county courts. *See Dailing*, 546 S.W.3d at 448. Related to this jurisdiction, Texas Government Code section 26.045(a) states, generally, that a county constitutional court “has exclusive original jurisdiction of misdemeanors other than misdemeanors involving official misconduct and cases in which the highest fine that may be imposed is \$500 or less.” TEX. GOV’T CODE ANN. § 26.045(a); *see also Dailing*, 546 S.W.3d at 445 (Texas Government Code chapter 26 “outlines the contours of constitutional county court jurisdiction”). And Texas Code of Criminal Procedure article 4.07 provides that “county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is



not given to the justice court,<sup>[3]</sup> and when the fine to be imposed shall exceed [\$500].” TEX. CODE CRIM. PROC. ANN. art. 4.07; *see also Dailing*, 546 S.W.3d at 449–50 (presuming “for the sake of [its] analysis that article 4.07 addresses the jurisdiction of only constitutional county courts”); *Nix v. State*, No. 12-09-00126-CR, 2010 WL 1987515, at \*2 (Tex. App.—Tyler May 19, 2010, pet. ref’d) (mem. op., not designated for publication) (discussing Texas Code of Criminal Procedure article 4.07 in conjunction with Texas Government Code section 26.045(a)). Thus, based on these statutory provisions, the Texas Legislature has decreed that constitutional county courts, including the constitutional county court of Harris County, have exclusive jurisdiction over all misdemeanor offenses with a potential fine of more than \$500, except those offenses involving official misconduct, and have original jurisdiction over all misdemeanor offenses with a potential fine of more than \$500, except those offenses for which exclusive original jurisdiction is given to the justice courts.

The Texas Constitution, in addition to establishing constitutional county courts, gives the Texas Legislature the power to “establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof.” TEX. CONST. art. V, § 1; *see also Dailing*, 546 S.W.3d at 444 (“Through this provision,

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<sup>3</sup> *See* TEX. CODE CRIM. PROC. ANN. art. 4.11 (“Jurisdiction of justice courts”); TEX. GOV’T CODE ANN. § 27.031 (“Jurisdiction”).

the people of Texas have distributed judicial power among several defined courts and ‘other courts’ that the Legislature may deem necessary.”). These “other courts” created by the Legislature are known as statutory courts. *See Sanchez*, 365 S.W.3d at 684 (internal quotations omitted); *see also Dailing*, 546 S.W.3d at 444 (Texas Legislature creates statutory county courts through enactment of legislation). One type of statutory court is the statutory county court, which includes county courts at law and county criminal courts at law, including the trial court in this case—County Criminal Court at Law No. 6 of Harris County. *See Sanchez*, 365 S.W.3d at 685; *Dailing*, 546 S.W.3d at 444; *see also* TEX. GOV’T CODE ANN. § 25.1031(b)(6) (establishing County Criminal Court at Law No. 6 of Harris County, Texas).

Article V, section 1 of the Texas Constitution delegates to the Texas Legislature the power to establish the jurisdiction of statutory county courts. TEX. CONST. art. V, § 1; *Sanchez*, 365 S.W.3d at 685; *Dailing*, 546 S.W.3d at 444. Texas Government Code section 25.0003(a) establishes the jurisdiction of statutory county courts, generally, stating: “A statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law *for county courts.*” TEX. GOV’T CODE ANN. § 25.0003(a) (emphasis added); *see also Dailing*, 546 S.W.3d at 444–45 (Texas Government Code chapter 25 establishes jurisdiction for statutory county courts); *Thielemann v. Kethan*, 371 S.W.3d 286, 291 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (“The general grant of

jurisdiction for statutory county courts provides that they have jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for constitutional county courts.”). The term “county courts,” as used in section 25.0003(a), refers to constitutional county courts. *Dailing*, 546 S.W.3d at 444–45, 448 (quoting section 25.0003(a) as follows: “A statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for [constitutional] county courts.” (alteration in original) (internal quotations omitted)); *Thielemann*, 371 S.W.3d at 291 (“[I]n order to determine the extent of the grant of jurisdiction to statutory county courts we must necessarily look at the jurisdiction granted to constitutional county courts.”); *Weeks v. Hobson*, 877 S.W.2d 478, 480 n.1 (Tex. App.—Houston [1st Dist.] 1994, no writ) (“[I]n those counties having statutory county courts, such as Harris County, . . . the county court at law has jurisdiction over all civil and criminal causes prescribed by law for the constitutional county courts.”); *see also Ex parte Schmidt*, 109 S.W.3d 480, 483 (Tex. Crim. App. 2003).

The Texas Legislature also, under Texas Government Code section 25.1033, established the jurisdiction of statutory county criminal courts at law in Harris County, including the trial court—County Criminal Court at Law No. 6 of Harris County, stating:

(a) *A county criminal court at law in Harris County has the criminal jurisdiction provided by law for county courts, concurrent jurisdiction*

with civil statutory county courts for Harris County to hear appeals of the suspension of a driver’s license and original proceedings regarding occupational driver’s licenses, and appellate jurisdiction in appeals of criminal cases from justice courts and municipal courts in the county.

TEX. GOV’T CODE ANN. § 25.1033(a) (emphasis added); *see also id.* § 25.1033(b) (“The judge of a county criminal court at law has the same powers, rights, and privileges as to criminal matters as a county judge having criminal jurisdiction.”); *Dailing*, 546 S.W.3d at 445 (“In subchapter C of [Texas] Government Code chapter 25, the Legislature set[] forth specific provisions regarding the jurisdiction of statutory county courts in certain counties . . . .”). The term “county courts,” as used in section 25.1033(a), refers to constitutional county courts. *See Dailing*, 546 S.W.3d at 444–45, 448.

Based on Texas Government Code sections 25.0003(a) and 25.1033(a), the Texas Legislature has directed that statutory county criminal courts at law in Harris County, including the trial court—County Criminal Court at Law No. 6 of Harris County, have the same criminal jurisdiction given to constitutional county courts. *See* TEX. GOV’T CODE ANN. §§ 25.0003(a), 25.1033(a); *cf. Eris v. Giannakopoulos*, 369 S.W.3d 618, 620 (Tex. App.—Houston [1st Dist.] 2012, pet. dism’d) (statutory county court Harris County Civil Court at Law Number 1 has same jurisdiction as constitutional county court). Thus, in effect the Legislature has decreed that the constitutional county courts and the statutory county criminal courts at law in Harris County both have exclusive jurisdiction over all misdemeanor offenses with a

potential fine of more than \$500, except those offenses involving official misconduct, and both have original jurisdiction over all misdemeanor offenses with a potential fine of more than \$500, except those offenses for which exclusive original jurisdiction is given to the justice courts. *See* TEX. CODE CRIM. PROC. ANN. art. 4.07; TEX. GOV'T CODE ANN. §§ 25.0003(a), 25.1033(a), 26.045(a).

Appellant argues that it is illogical for constitutional county courts to have been given exclusive original jurisdiction over most misdemeanor offenses when statutory county courts have likewise been given exclusive original jurisdiction over most misdemeanor offenses because “[t]wo different types of courts cannot both have exclusive jurisdiction over the same kinds of cases.” Appellant asserts that a statutory conflict exists between Texas Government Code section 26.045(a) and sections 25.0003(a) and 25.1033(a).

We note that our sister appellate court has closely examined the relationship of Texas Government Code sections 25.0003, 25.1033, and 26.045 as it relates to the subject-matter jurisdiction of statutory county criminal courts at law in Harris County over most misdemeanor offenses. *See Dailing*, 546 S.W.3d at 448–52. Texas Government Code section 26.045(a) provides that constitutional county courts have exclusive original jurisdiction over most misdemeanor offenses, i.e., misdemeanor offenses with a potential fine of more than \$500 that do not involve official misconduct. *Id.* at 450; *see* TEX. GOV'T CODE ANN. § 26.045(a). Yet, Texas

Government Code section 25.0003(a) states that statutory county courts have jurisdiction over all causes and proceedings prescribed by law for constitutional county courts. *Dailing*, 546 S.W.3d at 450; *see* TEX. GOV'T CODE ANN. § 25.0003(a). And Texas Government Code section 25.1033(a) provides that statutory county criminal courts at law in Harris County have criminal jurisdiction provided by law for constitutional county courts. *Dailing*, 546 S.W.3d at 450; *see* TEX. GOV'T CODE ANN. § 25.1033(a).

However, because “[e]xclusive jurisdiction is a court’s power to adjudicate an action or class of actions to the exclusion of all other courts,” the Fourteenth Court of Appeals noted that constitutional county courts cannot have exclusive jurisdiction of cases over which statutory county courts also have jurisdiction. *Dailing*, 546 S.W.3d at 450; *see also Moon v. State*, 451 S.W.3d 28, 37–38, 38 n.32 (Tex. Crim. App. 2014); *In re CC & M Garza Ranches Ltd. P’ship*, 409 S.W.3d 106, 109 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding) (“By giving the statutory probate court exclusive jurisdiction . . . , the Legislature necessarily deprived all other courts of the power to adjudicate those claims.”); *Exclusive Jurisdiction*, BLACK’S LAW DICTIONARY (11th ed. 2019). If constitutional county courts and statutory county courts both have jurisdiction over most misdemeanor offenses, i.e., misdemeanor offenses with a potential fine of more than \$500 that do not involve office misconduct, this would conflict with Texas Government Code section 26.045(a)’s

grant of exclusive jurisdiction to the constitutional county courts. *Dailing*, 546 S.W.3d at 450; *see* TEX. GOV'T CODE ANN. § 26.045(a). Further, construing Texas Government Code section 26.045(a) to give constitutional county courts exclusive original jurisdiction over most misdemeanor offenses would render meaningless the unambiguous text of Texas Government Code sections 25.0003(a) and 25.1033(a), under which the Texas Legislature provided that statutory county courts have the same original criminal jurisdiction as constitutional county courts. *Dailing*, 546 S.W.3d at 450; *see* TEX. GOV'T CODE ANN. §§ 25.0003(a), 25.1033(a). Thus, the Fourteenth Court of Appeals concluded that the statutes addressing the subject-matter jurisdiction of statutory county criminal courts at law in Harris County over most misdemeanor offenses clashed and could not be reconciled. And the court was required to determine which statutes prevailed. *Dailing*, 546 S.W.3d at 450–52.

As our sister appellate court explained, when statutes irreconcilably conflict and one statute is a general provision and the other is more specific, the specific statute prevails as an exception to the general provision, unless (1) the Texas Legislature enacted the general provision later than the specific statute and (2) the Legislature manifestly intended that the general provision prevail. *See Dailing*, 546 S.W.3d at 443; *see also* TEX. GOV'T CODE ANN. § 311.026; *Mayo*, 4 S.W.3d at 11; *Cantu*, 842 S.W.2d at 685 n.13. Thus, in *Dailing*, the Fourteenth Court of Appeals

first considered whether Texas Government Code section 26.045(a) should control over Texas Government Code sections 25.0003(a) and 25.1033(a) because the defendant asserted that a statute granting exclusive jurisdiction must prevail over a statute granting general jurisdiction.<sup>4</sup> *See Dailing*, 546 S.W.3d at 450–52. In doing so, the court noted that a statute granting exclusive jurisdiction is not a special or a more specific statute and neither section 26.045(a) nor section 25.0003(a) is more specific than the other. *Id.* at 450–51.

However, the court explained that Texas Government Code section 25.1033(a) addresses the jurisdictional breakdown of statutory county courts in Harris County, specifically, and it states that a statutory county criminal court at law in Harris County has the criminal jurisdiction provided by law for constitutional county courts. *Id.* at 451–52; *see* TEX. GOV'T CODE ANN. § 25.1033(a). Thus, the Fourteenth Court of Appeals concluded that section 25.1033(a) is a local, more specific provision than section 26.045(a), and it must apply section 25.1033(a) unless the Texas Legislature enacted section 26.045(a) after section 25.1033(a) and the Texas Legislature manifestly intended that section 26.045(a) prevail over section 25.1033(a). *See Dailing*, 546 S.W.3d at 451–52; *see also* TEX. GOV'T CODE ANN. § 311.026; *Mayo*, 4 S.W.3d at 11; *Cantu*, 842 S.W.2d at 685 n.13.

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<sup>4</sup> Appellant makes the same argument in this case.



Related to whether Texas Government Code section 25.1033(a) must apply, the Fourteenth Court of Appeals noted that the Texas Legislature enacted section 25.1033, in 1987, two years after it enacted Texas Government Code section 26.045. *See Dailing*, 546 S.W.3d at 452. And “[n]othing in section 26.045 suggests that the Legislature manifestly intended that section 26.045 should prevail over section 25.1033.” *Id.* Thus, the court held, related to the subject-matter jurisdiction of statutory county criminal courts at law in Harris County, that section 25.1033(a) prevails over section 26.045(a). *Id.*; *see also In re Mem’l Hermann Hosp. Sys.*, 464 S.W.3d 686, 718–19 (Tex. 2015).

Still yet, the Fourteenth Court of Appeals stated that even if Texas Government Code section 25.1033 was not the more specific statute, it would still prevail over Texas Government Code section 26.045 because the Texas Legislature enacted section 25.1033 two years after it enacted section 26.045.<sup>5</sup> *See Dailing*, 546 S.W.3d at 452; *see* TEX. GOV’T CODE ANN. § 311.025 (if two statutes are irreconcilable, later-enacted statute prevails); *Byrum v. State*, 762 S.W.2d 685, 691 (Tex. App.—Houston [14th Dist.] 1988, no pet.); *Skruck v. State*, 740 S.W.2d 819, 822 (Tex. App.—Houston [1st Dist.] 1987, pet. ref’d). Thus, the court held that under Texas Government Code section 25.1033(a) a statutory county criminal court

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<sup>5</sup> The Texas Legislature also enacted Texas Government Code section 25.0003 two years after it enacted section 26.045. *See Dailing v. State*, 546 S.W.3d 438, 452 n.4 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

at law in Harris County has original jurisdiction over misdemeanor offenses with a potential fine of more than \$500 that do not involve official misconduct. *Dailing*, 546 S.W.3d at 452. Such misdemeanor offenses include the misdemeanor offense of DWI. *Id.*; *see also* TEX. PENAL CODE ANN. §§ 49.04, 49.09(a). And the Fourteenth Court of Appeals held that the trial court in *Dailing*—a statutory county criminal court at law in Harris County—had jurisdiction over the defendant’s case. *Dailing*, 546 S.W.3d at 441–42, 452 (defendant in *Dailing* convicted of misdemeanor offense of DWI).

Although appellant asserts that *Dailing* was wrongly decided, we cannot agree. And we see no reason to depart from our sister court’s decision in *Dailing*. Thus, we hold, like the court in *Dailing*, that, under Texas Government Code section 25.1033(a), the trial court, County Criminal Court at Law No. 6 of Harris County, had subject-matter jurisdiction over appellant’s case.<sup>6</sup> *See* TEX. GOV’T CODE ANN. § 25.1033(a).

We overrule appellant’s sole issue.

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<sup>6</sup> We note that appellant also argues that because Texas Government Code sections 25.0003(a) and 25.1033(a) conflict with section 26.045(a), they violate the Texas Constitution. Our sister appellate court in *Dailing* addressed and refuted this argument. *See Dailing*, 546 S.W.3d at 446–48.

## Modification of Judgment

The trial court's written judgment does not accurately comport with the record in this case in that it lists appellant's name as "Jose Jonatan Tiscareno." The record shows that appellant's name is "Jose Jonathan Tiscareno."

"[A]ppellate court[s] ha[ve] the power to correct and reform a trial court judgment 'to make the record speak the truth when [they] ha[ve] the necessary data and information to do so, or make any appropriate order as the law and nature of the case may require.'" *Nolan v. State*, 39 S.W.3d 697, 698 (Tex. App.—Houston [1st Dist.] 2001, no pet.) (quoting *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet ref'd)). Although neither party has requested that this Court modify the trial court's judgment, appellant and the State both point out the erroneous spelling of appellant's name in the trial court's written judgment. We, based on our review, also conclude that the spelling of appellant's name in the judgment does not accurately comport with the record in this case. *See Asberry*, 813 S.W.2d at 529–30 (authority to correct incorrect judgment not dependent upon request of any party).

Thus, we modify the trial court's judgment to state appellant's name as "Jose Jonathan Tiscareno." *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (courts of appeals have authority to modify a judgment); *Garcia v. State*, No. 05-17-00584-CR, 2017 WL 6616385, at \*1 (Tex.

App.—Dallas Dec. 28, 2017, no pet.) (mem. op., not designated for publication)  
(modifying trial court’s judgment to list correct spelling of defendant’s name).

**Conclusion**

We affirm the judgment of the trial court as modified. We dismiss any pending motions as moot.

Julie Countiss  
Justice

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

Publish. TEX. R. APP. P. 47.2(b).