

**Affirmed and Memorandum Opinion filed March 22, 2018.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-16-00784-CR**

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**CRYSTAL LOGAN STEWART, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 182nd District Court  
Harris County, Texas  
Trial Court Cause No. 1452994**

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**M E M O R A N D U M   O P I N I O N**

A jury convicted appellant Crystal Logan Stewart of the felony offense of aggravated robbery with a deadly weapon. *See* Tex. Penal Code Ann. §§ 29.02(a), 29.03(a)(2) (Vernon 2011), 31.03(a) (Vernon Supp. 2017). The jury sentenced appellant to 22 years' confinement.

Appellant asserts that the trial court erred by admitting into evidence fake police badges found at the apartment where appellant was arrested. We overrule appellant's issue and affirm.

## BACKGROUND

Appellant proceeded to trial in August 2016, for the aggravated robbery of complainant Amilcar Garcia.

Complainant testified at appellant's trial. According to complainant, he was walking from his southwest Houston apartment to a nearby gas station around 6:30 p.m. on October 10, 2014, when he was approached by appellant as she was driving a Ford SUV. Complainant, asserting that he speaks only Spanish, stated that he did not understand appellant's statements to him in English. Complainant testified that he was pushed inside appellant's vehicle and appellant proceeded to drive out of the gas station parking lot. Complainant did not see who pushed him into appellant's vehicle.

Complainant stated that appellant "got a gun out" while she was driving and pointed the gun at complainant's head while demanding money. Complainant told appellant he did not have any money on his person and directed appellant to the apartment he shared with his brother-in-law, Juan Segura, and his sister. When complainant and appellant neared his apartment, complainant stated that appellant showed him a badge and said, "I'm a police officer."

Appellant parked her vehicle at complainant's apartment complex. Segura, testifying at appellant's trial, stated that appellant arrived at the apartment and "pushed [complainant] inside." Segura testified that appellant spoke to him in English and told him she was an "undercover police officer and that [complainant] wanted to have sex with her and to avoid taking him to jail she wanted \$400." Segura recalled seeing a gun inside the back waistband of appellant's pants.

Segura gave appellant \$400. Segura stated that, after he gave appellant the money, appellant returned to her vehicle and wrote a note to Segura. The note

included the name “Officer A. Johnson;” an “ID badge” number; and two additional number sequences that appellant represented were case numbers. As appellant drove away, Segura wrote down the license plate number on appellant’s vehicle.

Houston police officers were called to the apartment after appellant left and Officer Melissa McCracken responded to the scene. Officer McCracken ran the license plate number Segura recorded and appellant’s name returned as owner of the vehicle.

Officer Carol Calabro investigated the robbery reported by complainant. Officer Calabro, working with other Houston police officers, conducted surveillance on an address owned by individuals with whom appellant associated. Seeing appellant’s vehicle parked at the address, officers executed appellant’s arrest warrant on December 31, 2014. Officers entered the home with permission and located appellant in a bedroom; appellant was asleep in the bed with another individual. Officer Calabro testified that appellant was “resigned” and “cooperative” and signed a consent-to-search form.

Officer Calabro searched a purse located next to the bed on which appellant had been sleeping. Officer Calabro found three fake police badges in the purse. The purse did not contain any documentation or other information showing that it belonged to appellant. During the search of the purse, appellant did not indicate whether the purse belonged to her. Appellant told Officer Calabro that she “didn’t know anything about any robberies or police impersonation.” Officers arrested appellant for aggravated robbery.

Before Officer Calabro testified at appellant’s trial, appellant objected to her testimony discussing appellant’s arrest. Appellant also objected to the admission into evidence of the fake police badges. Appellant asserted that this testimony and evidence was irrelevant because appellant’s arrest occurred on December 31, 2014,

more than two months after the incident underlying appellant's charges. According to appellant, "What happened on December 31st ha[d] absolutely nothing to do with [the State's] burden of proof of when, where, and how on October 10th, 2014." This testimony and evidence, appellant asserted, was "remote in time" and "prejudicial."

The trial court overruled appellant's objection to the testimony and evidence addressing appellant's arrest and the fake police badges.

Appellant testified after the State rested its case. According to appellant, she was driving in southwest Houston on October 10, 2014, "looking for somebody to pay [her] for sex." Appellant testified that she made contact with complainant and asked him if he wanted to have sex in exchange for money, to which complainant agreed. Appellant testified that she followed complainant to his apartment complex; drove to the back of the apartment complex; and had sex with complainant in her vehicle.

After she had sex with complainant, appellant testified that she asked him for money. Complainant refused to give appellant money and tried to exit her vehicle. Appellant testified that she told complainant, "[y]ou're going to give me my money" and "kept on going off on him." Appellant stated that complainant "was saying he [sic] call police. I don't know what he meant if he's the police officer or he was going to call the police officer." Appellant testified that she told complainant, "I could be the damn police officer, too," and told complainant to "give me my money." Complainant instructed appellant to take him to his apartment.

Complainant went inside his apartment and returned to appellant's vehicle with Segura. According to appellant, complainant told her "[j]ust give me one ticket" and stated that he would pay her money in return. Appellant stated that she wrote "a fake name" on a piece of paper and included a case number that she "made up." Appellant testified that complainant and Segura gave her \$400, after which she

left the apartment complex. Appellant denied threatening complainant with a gun.

Responding to questions about her arrest, appellant testified that the purse in which the fake police badges were found belonged to another individual.

After the parties rested, the jury deliberated and returned a verdict finding appellant guilty of aggravated robbery with a deadly weapon. *See* Tex. Penal Code Ann. §§ 29.02(a), 29.03(a)(2), 31.03(a). Appellant timely appealed.

### STANDARD OF REVIEW

We review a challenge to the admission of evidence for an abuse of discretion. *Weatherred v. State*, 15 S.W.3d 540, 542 (Tex. Crim. App. 2000); *Adkins v. State*, 418 S.W.3d 856, 862 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd). We uphold the trial court's ruling "if it was within the zone of reasonable disagreement." *Weatherred*, 15 S.W.3d at 542.

Relevant evidence has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence," and is generally admissible unless otherwise barred by law. Tex. R. Evid. 401, 402; *see also Casey v. State*, 215 S.W.3d 870, 879 (Tex. Crim. App. 2007) ("[r]elevant evidence is generally admissible"). Irrelevant evidence is inadmissible. Tex. R. Evid. 402.

Relevant evidence may be excluded if its probative value is substantially outweighed by a danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence. Tex. R. Evid. 403; *Distefano v. State*, 532 S.W.3d 25, 31 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd). Texas Rule of Evidence 403 favors the admissibility of relevant evidence and "the presumption is that relevant evidence will be more probative than prejudicial." *Montgomery v. State*, 810 S.W.2d 372, 389 (Tex. Crim. App. 1990).

A Rule 403 analysis considers four factors: (1) the probative value of the evidence; (2) the potential to impress the jury in some irrational yet indelible way; (3) the time needed to develop the evidence; and (4) the proponent's need for the evidence. *State v. Mechler*, 153 S.W.3d 435, 440 (Tex. Crim. App. 2005).

#### ANALYSIS

In a single issue, appellant asserts that the trial court erred by admitting into evidence the fake police badges found at the time of her arrest. Appellant contends that the fake police badges were irrelevant and unfairly prejudicial because the badges were recovered "82 days after the date of the occurrence of the offense." *See* Tex. R. Evid. 402, 403.

The fake police badges found at the time of appellant's arrest were relevant to matters of consequence in the case. *See* Tex. R. Evid. 401, 402; *Casey*, 215 S.W.3d at 879.

Complainant and Segura testified that appellant represented she was an undercover police officer and threatened complainant with jail if he did not give her money. Complainant testified that appellant "got a badge and she showed it" to him. Segura testified that appellant wrote a note that included the name "Officer A. Johnson;" an "ID badge" number; and two additional number sequences that appellant represented were case numbers. The fake police badges recovered at the time of appellant's arrest were relevant to complainant's and Segura's testimony addressing appellant's impersonation of a police officer and assertion that appellant threatened to take complainant to jail. *See* Tex. R. Evid. 401, 402; *Casey*, 215 S.W.3d at 879.

Although appellant acknowledged that she wrote down a "fake" officer's name and "made up" case numbers on a note she left with Segura, she denied

presenting a badge to complainant and Segura and denied ownership of the badges found at the time of her arrest. The fake police badges therefore were admissible to prove a disputed fact relevant to the charged offense. *See Montgomery*, 810 S.W.2d at 376 (evidence is relevant if it “provides a small nudge toward proving or disproving some fact of consequence” (internal quotation omitted)).

The fake police badges were not unfairly prejudicial under Rule 403 for several reasons.

First, the fake police badges found at the time of appellant’s arrest were probative of appellant having committed the charged offense. *See Mechler*, 153 S.W.3d at 440. The badges corroborated complainant’s and Segura’s testimony that appellant impersonated a police officer and presented a badge in furtherance of the robbery. Moreover, the badges were relevant to the elements of the charged offense of aggravated robbery: the badges were probative of appellant’s intent and the means by which appellant obtained or maintained control of complainant’s money. *See Tex. Penal Code Ann. §§ 29.02, 29.03, 31.03.*

Second, the evidence did not have the potential to impress the jury in an irrational yet indelible way. *See Mechler*, 153 S.W.3d at 440. Although this evidence was prejudicial, it was not unfairly prejudicial and provided evidence of a disputed fact relevant to the charged offense. *See id.*; *see also Casey*, 215 S.W.3d at 883 (because “[v]irtually all evidence that a party offers will be prejudicial to the opponent’s case,” evidence is unfairly prejudicial “only when it tends to have some adverse effect upon a defendant beyond tending to prove the fact or issue that justifies its admission into evidence”).

Third, the time needed to develop the evidence was relatively short. *See Mechler*, 153 S.W.3d at 440. The time involved in the introduction of the badges

was minimal and was unlikely to distract the jury from considering the charged offense.

Fourth, the State's need for the evidence was relatively high. *See id.* Appellant denied presenting a badge to complainant and Segura and denied ownership of the badges found at the time of her arrest. And, as discussed above, the badges were probative of appellant's intent and the means by which she carried out the charged offense. *See* Tex. Penal Code Ann. §§ 29.02, 29.03, 31.03

In sum, the fake police badges' probative value was not substantially outweighed by a danger of unfair prejudice, and the trial court's admission of this evidence was not outside the zone of reasonable disagreement. *See* Tex. R. Evid. 403; *Mechler*, 153 S.W.3d at 440; *Weatherred*, 15 S.W.3d at 542.

Appellant has not cited any authority to support her assertion that the 82 days that elapsed between the date of the offense and the discovery of the fake police badges warranted excluding the badges as unfairly prejudicial. This passage of time does not discount the relevance and prejudice analyses above and does not render the fake police badges inadmissible. Moreover, the significance of the 82-day delay goes to the evidence's weight and credibility, issues left to the jury's consideration. *See Mathis v. State*, 930 S.W.2d 203, 206 (Tex. App.—Houston [14th Dist.] 1996, no pet.) (once evidence is admitted “the trier of fact determines the weight to give the evidence”).

Finally, appellant asserts that “her name was not associated with ownership or lease of the apartment” where she was arrested, and that “[t]here was nothing in the purse where the badges were found that indicated that the purse belonged to Appellant.”

Appellant did not present these arguments to the trial court. Appellant's



objection to the admission of the fake police badges asserted only that the evidence was irrelevant and unfairly prejudicial because it was “remote in time” from the date of the incident underlying appellant’s charges. Because appellant’s ownership arguments were not presented to the trial court, we will not address them for the first time on appeal. *See* Tex. R. App. P. 33.1(a)(1); *Harris v. State*, 475 S.W.3d 395, 400 (Tex. App.—Houston [14th Dist.] 2015, pet ref’d) (citing *Bekendam v. State*, 441 S.W.3d 295, 300 (Tex. Crim. App. 2014)) (“the error on appeal must comport with the objection made at trial”).

### CONCLUSION

We overrule appellant’s issue on appeal and affirm the trial court’s judgment.

/s/ William J. Boyce  
Justice

Panel consists of Chief Justice Frost and Justices Boyce and Jewell.  
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