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⚖ Vol. 13, No. 32 - August 22, 2005

**Case Name:** Michael George Lahood v. The State of Texas

- OFFENSE: Aggravated Kidnapping / Aggravated Sexual Assault
- COUNTY: Harris
- C/A CASE No. 14-04-0442-CR
- DATE OF OPINION: August 9, 2005
- DISPOSITION: Conviction Affirmed
- OPINION: [Hedges, CJ.](#)
- TRIAL COURT: 185th D/C; Hon. Susan Brown
- LAWYERS: Lana Gordon (Defense); Carol Cameron (State)

⚖ **203 Trial Courts / Evidence of Defendant's Competency:** Appellant contends that the trial court erred in failing to sua sponte inquire into his competency to stand trial because he had a history of mental illness, made outbursts during trial, and complained that he had not received his medication and had difficulty understanding the proceedings.

**Holding:** The fact that Appellant made outbursts during trial is not evidence of an inability to communicate with counsel or to appreciate the proceedings against him. Although inappropriate, the outbursts were immediate and logical responses to statements made or questions asked during trial. If such actions were enough to demonstrate incompetency, a defendant could easily avoid prosecution through immature behavior. Similarly, the fact that he may have been on psychiatric medication during trial and had a history of mental problems did not mandate a competency inquiry absent evidence of a present inability to communicate or understand the proceedings. The only time during trial that there was any indication Appellant was having difficulty understanding the proceedings was on his second day of testimony when he stated that he was uncomfortable and seeing the lights blink and had not had his medication. The judge immediately recessed the proceedings. The next day, Appellant continued testifying without any apparent difficulty, and he explained that he was doing much better because he had received his medication the night before. Because it appears from the record that the trial court acted appropriately in dealing with Appellant's difficulty in testifying on the second day, and there is no indication in the record that Appellant did not understand the proceedings or had trouble communicating during any other portion of the trial, we find that the trial court did not abuse its discretion in failing to sua sponte inquire into Appellant's competency to stand trial. Accordingly, Appellant's first issue is overruled.

⚖ **311.01 Cross-Examination & Impeachment / Prior Convictions - Rule 609:** Appellant contends that the trial court erred in permitting the prosecutor to impeach his testimony with felony convictions that were more than ten years old. Specifically, Appellant complains that the State was permitted to introduce evidence that he was convicted in 1987 of burglary of a building and credit card abuse.

**Holding:** The Court of Criminal Appeals has created an exception or interpretation of the general rule such that Rule 609(b)'s "substantially outweighs" test will not be applied to a prior conviction over ten years old if the witness's lack of reformation is shown by evidence of an intervening conviction for a felony or a misdemeanor involving moral turpitude. Here, Appellant acknowledged at trial that he was convicted in 1999 and again in 2003 of misdemeanor theft. Theft is a crime of moral turpitude. Thus, there was evidence of Appellant's lack of reformation, and whether Appellant's burglary and credit card abuse convictions were admissible is properly analyzed under Rule 609(a)'s "outweighs" test. In determining whether the probative value of the evidence outweighs the prejudicial effect, courts look to the factors proffered by the Court of Criminal Appeals in **Theus v. State**, 845 S.W.2d 874 (Tex.Cr.App. 1992): (1) the impeachment value of the prior crime; (2) the temporal proximity of the past crime relative to the charged offense and the witness's subsequent history; (3) the similarity between the past crime and the offense being prosecuted; (4) the importance of the defendant's testimony; and (5) the importance of the credibility issue. Each of the **Theus** factors favors admission of the prior convictions for impeachment purposes. Therefore, the trial court did not err in admitting evidence of the prior convictions.

**Ed. Note:** Appellant also raised an un-preserved claim that he wasn't permitted to fully cross-examine the Complainant, and that he was denied the effective assistance of counsel, which was denied due to a lack of a motion for new trial and hearing at which counsel's reasons for doing (or not doing) things could have been explored.