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Case Name: [The State of Texas v. T.S.N.](#)

- **OFFENSE:** Expunction Proceedings
- **COUNTY:** Collin
- **COURT OF APPEALS:** Dallas
- **C/A CITATION:** 523 S.W.3d 171
- **C/A RESULT:** Trial Court Affirmed
- **CCA. CASE No.** 17-0323 **DATE OF OPINION:** May 11, 2018
- **DISPOSITION:** Court of Appeals Affirmed
- **OPINION:** [Justice Johnson](#) **VOTE:** 9-0
- **TRIAL COURT:** 366th D/C; Hon. Raymond Wheless
- **LAWYERS:** [Jeremy Rosenthal](#), [Morgan McPheeters](#), & [Thad Spalding](#) (Defense); [John Rolater](#) & [Andrea Westerfeld](#) (State); [John Sullivan](#) (Solicitor General); [Daniel Olds](#) & [Jeanine Hudson](#) (DPS as Amicus)

(Background Facts): On October 15, 2010, T.S.N. was charged by information for the misdemeanor offense of theft by check, and a warrant for her arrest issued on November 16, 2010. She was not arrested until June 11, 2013. On that date, she was arrested for the felony offense of aggravated assault with a deadly weapon. During the arrest process, the officer also executed the 2010 warrant and arrested T.S.N. on the theft by check charge as well as the assault charge. The theft and assault charges were filed in different courts with different cause numbers. T.S.N. pleaded guilty to the theft charge but not guilty to the assault charge. The assault charge was tried to a jury and she was acquitted.

 602 Expunction Proceedings / Entitlement to Relief (“Arrest-Based” Calculation): Following her acquittal, T.S.N. filed a petition pursuant to article 55.01 of the Texas Code of Criminal Procedure, seeking expungement of the records and files relating to the assault charge. The State opposed T.S.N.’s petition. It argued that she was not entitled to expunction because she was convicted of the theft charge for which she was simultaneously arrested. The State asserted that article 55.01 entitles an individual to expunction of arrest records only if the results of the prosecutions as to all of the charges underlying the arrest meet the statutory requirements for

expunction. It reasoned that T.S.N. did not meet the statutory requirements because her arrest resulted in both an acquittal and a conviction. The trial court disagreed with the State and granted T.S.N.'s petition. The State appealed, arguing that the trial court abused its discretion in granting the expunction. It asserted that the statute is "arrest-based" and T.S.N. was only entitled to expunction of records relating to the arrest for assault if she was also entitled to expunction of records relating to the arrest for theft. T.S.N. countered that article 55.01(a)(1)(A) is "offense-based," so her acquittal of the assault charge entitled her to expunction of the assault-related records, regardless of the outcome on the theft charge. The court of appeals affirmed. It concluded that the statute linked "arrest" to a single "offense," permitting expunction under the facts of this case, where the charge T.S.N. was acquitted of, and the charge she pleaded guilty to, did not relate to a single episode of criminal conduct. [State v. T.S.N.](#), 523 S.W.3d 171 (Tex.App. - Dallas 2017).

Holding: [Where] an arrest is made pursuant to a charge or charges for multiple related offenses as part of a criminal episode, the statute just as clearly does not entitle the person to expunction of any files and records relating to the episode if the person either is convicted of one of the offenses or charges for one of the offenses remain pending. *** But this case differs from either scenario. Here, a single arrest occurred for multiple unrelated offenses. *** Reading the statute as T.S.N. proposes requires expunction only as to those parts of the records and files relating to the offense for which the accused was acquitted, and what those parts are will depend on the outcome of each offense charged as a result of the arrest. Further, T.S.N. claims that an arrest-based approach, as the State urges, renders the multiple offense, criminal episode provision in subsection (c) superfluous -- an improper manner of interpreting statutory language. *** We agree. If the Legislature intended that all the offenses underlying a single arrest must meet the requirements for expunction under article 55.01(a)(1)(A) in order for expunction to be permitted, then the exception under subsection (c) would be unnecessary. *** We recognize that there are practical difficulties posed by partial expunctions and redactions. But given the Legislature's demonstrated acceptance of selective redaction and expunction of records as valid remedial actions, the arguments of the State and DPS do not convince us. *** And article 55.02(5) explains that when an official or agency or other governmental entity named in the expunction order is unable to practically return all of the records and files subject to the order, obliteration (i.e., redaction) is required as to those portions of the record or file that identify the individual.

[\(David A. Schulman\)](#) I do not get involved in expunction work, but I do follow the case law. My bet is that Justice Johnson has just opened up an entirely new revenue stream for lawyers who handle expunctions.