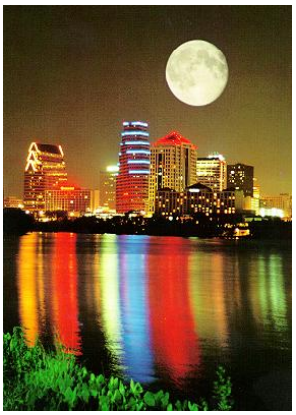

One Fabulous Skyline

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Case Name: ***In re the Expunction of M.T.R.***

- **NATURE OF CASE**: Expunction Proceedings
- **COUNTY**: Fort Bend
- **C/A CASE No**. 01-18-00938-CV
- **DATE OF OPINION**: February 27, 2020 **OPINION**: Justice Hightower
- **DISPOSITION**: Trial Court Reversed
- **TRIAL COURT**: 458th D/C; Hon. Kenneth Cannata
- **LAWYERS**: Austen Hobbs (Defense); Amanda Morrison & Jeanine Hudson (DPS)

602 Expunction Proceedings / Entitlement to Relief: In 2012, M.T.R. was arrested in Montgomery County for boating while intoxicated (BWI). He pleaded guilty to this offense, was convicted, and served his punishment of three days' confinement in the Montgomery County Jail and payment of a $1,400 fine. In October 2015, M.T.R. was arrested and charged with DWI as a second offense in Fort Bend County.3 On April 12, 2018, a jury found M.T.R. not guilty of the DWI charge, resulting in his acquittal. On April 26, 2018, M.T.R. filed a petition for expunction, seeking to have all records of the 2015 DWI arrest expunged. His petition was verified and contained the information required by Article 55.02, C.Cr.P., governing the requirements for a petition for expunction. DPS answered, asserting that M.T.R. "is barred from expunging records of [his] arrest [for the October 2015 DWI,] because [M.T.R.] was convicted of an offense arising out of the same criminal episode and none of the other requirements for expunction are met." DPS provided evidence in connection with its answer, including copies of the court records relevant to both the 2012 BWI conviction and the 2015 DWI arrest and acquittal. Without holding an evidentiary hearing, the trial court granted M.T.R.'s expunction petition on September 26, 2018. In its appeal, DPS asserts that M.T.R. is not entitled to expunge his 2015 DWI arrest under the relevant expunction statue.

Holding: Article 55.01(c), C.Cr.P., provides: "A court may not order the expunction of records and files relating to an arrest for an offense for which a person is subsequently acquitted, whether by the trial court, a Court of Appeals, or the Court of Criminal Appeals, if the offense for which the

person was acquitted arose out of a criminal episode, as defined by Section 3.01, Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode." *** "Criminal episode," as defined by Penal Code section 3.01, means: "the commission of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances: (1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or (2) the offenses are the repeated commission of the same or similar offenses." *** As our sister court has observed in addressing this same argument by DPS, "Section 3.01(2) does not impose a particular time frame within which the same or similar offenses must be repeated." *** Analyzing this statute "as a cohesive, contextual whole with the goal of effectuating the Legislature's intent," we conclude that the plain meaning of section 3.01(2)'s and article 55.01(c)'s statutory language is to prohibit courts from expunging records, even if the person was acquitted, if the acquittal arose out of a criminal episode -- i.e., if it was a "repeated commission of the same or similar offense" to one for which the petitioner was convicted. *** M.T.R.'s 2015 DWI arrest constitutes "the repeated commission of the same or similar offense" as his 2012 BWI conviction. *** Accordingly, article 55.01(c) prohibits the expunction of M.T.R.'s 2015 DWI arrest records.

(**David A. Schulman**) I've said this in my comment to ***Ex parte Rios*** (see 66, Vol. 27, No. 35; 09/16/2019), and I still believe that this interpretation of the statute, which is being accepted by many of the Courts of Appeals, is both "a little too loose and potentially dangerous." I don't think this is what the Legislature had in mind.

(**John G. Jasuta**) As opposed to David, I believe this is precisely what the Legislature had in mind. But then, I think they would mandate branding on the forehead if they thought it would survive scrutiny.