Evidence of a juvenile misdemeanor adjudication punishable by confinement in jail is admissible in an adult punishment hearing, only if the conduct upon which the adjudication is based occurred on or after January 1, 1996. [Lewis v. State](17-4-7)

On October 12, 2017, the Houston Court of Appeals (1st Dist.) held that TCCP art. 37.07, § (3)(i), applies to juvenile adjudications of delinquency only and does not apply to adult convictions.

¶ 17-4-7. **Lewis v. State**, MEMORANDUM, No. 01-16-00485-CR, 2017 WL 4545865 [Tex. App.—Houston (1st Dist.), 10/12/2017].

**Facts**: After he pleaded not guilty, a jury found appellant, LT Lewis, guilty of the offense of assault of a family member, causing bodily injury, and assessed punishment at 365 days’ confinement and a $2,000 fine. During the punishment phase of the trial, the State admitted three exhibits as evidence of appellant’s prior criminal record:1 ( 1) Exhibit 9, a DWI offense from 1992; (2) Exhibit 10, a misdemeanor resisting arrest offense from 1995; and (3) Exhibit 11, a misdemeanor resisting detention offense from 1995.

Appellant contends that these admissions were in violation of article 37.07, section 3(i), which provides that:

*Evidence of an adjudication for conduct that is a violation of a penal law of the grade of misdemeanor punishable by confinement in jail is admissible only if the conduct upon which the adjudication is based on or after January 1, 1996.*

TEX. CODE CRIM. PROC. ANN. art. 37.07, § (3)(i) (West 2017).

**Held:** Affirmed

**Memorandum Opinion:** Appellant contends that the admissions were in violation of article 37.07, section 3(i), which provides that:

*Evidence of an adjudication for conduct that is a violation of a penal law of the grade of misdemeanor punishable by confinement in jail is admissible only if the conduct upon which the adjudication is based on or after January 1, 1996.*

TEX. CODE CRIM. PROC. ANN. art. 37.07, § (3)(i) (West 2017).

This provision, however, applies to juvenile adjudications of delinquency; it does not apply to adult convictions. Hooks v. State, 73 S.W.3d 398, 402 (Tex. App.—Eastland 2002, no pet.); Rodriguez v. State, 975 S.W.2d 667, 687 (Tex. App.—Texarkana 1998, pet. ref’d); see also Bailey v. State, Nos. 05-14-00885/86-CR, 2015 WL 3488886, at \*6 (Tex. App.—Dallas June 2, 1015, per. ref’d)(mem. op., not designated for publication) (holding article 37.07, § (3)(i) applies only to juvenile adjudications); Barker v. State, No. 05-03-01495-CR, 2004 WL 2404540, at \*3 (Tex. App.—Dallas Oct. 28, 2004, no pet.) (mem. op., not designated for publication) (section 3(i) of article 37.07 of the Code of Criminal Procedure “applies to juvenile adjudications; it does not apply to adult convictions”); Cunningham v. State, No. 06-05-00215-CR, 2006 WL 2671626, at \*6 (Tex. App.—Texarkana Sept. 19, 2006, pet. ref’d) (mem. op., not designated for publication) (under section 3(i) or article 37.07 of code of criminal procedure, juvenile adjudication of delinquency which occurred before January 1, 1996 is not admissible as prior adjudication of delinquency unless adjudication was for felony-grade offense).

**Conclusion:** Appellant was not a juvenile when the crimes enumerated in Exhibits 9, 10, and 11 occurred, thus the trial court did not abuse its discretion by admitting those misdemeanor offenses during punishment.

Article 37.07(a) of the Texas Code of Criminal Procedure states that:

“*evidence may be offered by the state [as] to any matter the court deems relevant to sentencing, including the prior criminal record of the defendant.*” TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1).