IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-75,479

DEMETRIUS DEWAYNE SMITH, Appellant

v.

THE STATE OF TEXAS

ON DIRECT APPEAL
FROM CAUSE NO. 1021168 IN THE 183RD DISTRICT COURT
HARRIS COUNTY

KEASLER, J., filed a concurring opinion.

CONCURRING OPINION

I join the Court's opinion with the exception of its resolution of points of error eighteen and nineteen.[1] I would hold that State's Exhibits 73 and 74, the TDCJ-ID penitentiary packets containing disciplinary reports and hearing records concerning Demetrius Dewayne Smith's past prison conduct, are business records that do not constitute

[1] *Russeau v. State*, 171 S.W.3d 871, 887-88 (Tex. Crim. App. 2005) (Keasler, J., dissenting.).

testimonial hearsay under *Crawford v. Washington*.[2] The analysis set out in *Ohio v. Roberts*[3] controls, and because the records fall within a firmly rooted hearsay exception, Smith's rights under the Confrontation Clause were not violated.

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[2] 541 U.S. 36 (2004).

[3] 448 U.S. 56 (1980).