CHAPTER 1. GENERAL PROVISIONS

Art. 1.01. Short Title.

This Act shall be known, and may be cited, as the "Code of Criminal Procedure".

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 1.02. Effective Date.

This Code shall take effect and be in force on and after January 1, 1966. The procedure herein prescribed shall govern all criminal proceedings instituted after the effective date of this Act and all proceedings pending upon the effective date hereof insofar as are applicable.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 1.025. Severability.

If any provision of this code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the code that can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.
(Code Crim. Proc., Art. 54.01.)

Added by Acts 2019, 86th Leg., ch. 469, Sec. 1.01, eff. Jan. 1, 2021.

Art. 1.026. Construction.

The articles contained in Chapter 722 (S.B. 107), Acts of the 59th Legislature, Regular Session, 1965, as revised, rewritten, changed, combined, and codified, may not be construed as a continuation of former laws except as otherwise provided in that Act.
(Code Crim. Proc., Art. 54.02, Sec. 2(a) (part).)

Added by Acts 2019, 86th Leg., ch. 469, Sec. 1.01, eff. Jan. 1, 2021.

Art. 1.03. Objects of this Code.

This Code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State, and to make the rules of procedure in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks:

1. To adopt measures for preventing the commission of crime;
2. To exclude the offender from all hope of escape;
3. To insure a trial with as little delay as is consistent with the ends of justice;
4. To bring to the investigation of each offense on the trial all the evidence tending to produce conviction or acquittal;
5. To insure a fair and impartial trial; and
6. The certain execution of the sentence of the law when declared.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 1.04. Due Course of Law.

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Garcia v. State, 787 S.W.2d 957, 958 (Tex. Crim. App. 1990). "[W]e determined [in *McCambridge v. State*, 778 S.W.2d 70 (Tex. Crim. App. 1989)] that for purposes of Art. I, § 10 of the Texas Constitution the right to counsel attaches at the critical stage in the proceedings, that is, at the time formal charges are brought against a suspect. We also determined that [Tex. Const.] Art. I, § 19 and [Tex. Code Crim. Proc.] Arts. 1.04 and 1.05 do not include a right to counsel other than that encompassed by [Tex. Const.] Art. I, § 10."

Art. 1.05. Rights of Accused.

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. No person shall be held to answer for a felony unless on indictment of a grand jury.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Hughes v. State, 691 S.W.3d 504, 2024 Tex. Crim. App. Lexis 402, at *1 (Tex. Crim. App. May 22, 2024). Appellant's "deferred adjudication community supervision was revoked, and he was sentenced to ten years imprisonment, in a teleconference hearing conducted using Zoom. Several times when Appellant tried to speak during the hearing, the trial court ordered that Appellant be muted. On appeal, Appellant argued that his right to be present under the Due Process Clause was violated. The court of appeals reversed, holding that his right to be present under the Confrontation Clause was violated, even though Appellant did not raise the Confrontation Clause in his brief." (At *36-37) "In conclusion, the right to be present under the Fourteenth Amendment's Due Process Clause applies in a hearing on a motion to adjudicate. The Due Process

Clause-based right to be present is waivable, not forfeitable, and Appellant's point of error raising a violation of that right was properly before the court of appeals. To the extent that the court of appeals addressed Appellant's point of error as a matter of the right to be present under the Sixth Amendment's Confrontation Clause, the State is correct that the court of appeals erroneously conflated the Confrontation Clause-based right with the Due Process Clause-based right. (¶) Nevertheless, the court of appeals did not err in finding that Appellant's right to be present was violated and that there was harm. The trial court's action ordering Appellant to be muted when he tried to say a key witness was lying, at a time when the witness was giving crucial evidence, was not harmless. The error impacted Appellant's ability to communicate with counsel, relegating him to being a distant observer and affecting his ability to ultimately defend himself."

Taylor v. State, 667 S.W.3d 809, 809-10 (Tex. Crim. App. 2023). "Appellant was convicted of murder and tampering with evidence. On appeal, he complained that he was denied his right to a speedy trial. The Court of Appeals found that it was unable to review the issue 'as the trial court did not conduct a meaningful hearing.' It found that the balancing test provided for in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), 'requires a full development of the facts,' which did not occur here." (At 810) "The Court of Appeals misunderstood this case law to mean that some type of specially-designated 'Speedy Trial Hearing' is required before an appellate court can weigh the *Barker* factors. But neither this Court nor the lower courts have required that. Instead, the only requirement is that the relevant information be in the record — the length of the delay, reason for the delay, assertion of the right, and prejudice. (¶) In this case, the record shows the length of the delay, the reasons for the delay, and Appellant's assertion of the right. The only thing the record might not show is whether and what type of prejudice Appellant suffered. But that potential deficiency does not prevent an appellate court from weighing the factors; it merely affects how they will be weighed. (¶) The Court of Appeals erred in failing to conduct the *Barker* balancing test and instead requiring some kind of formal speedy trial hearing. This record is sufficient to conduct the balancing test and the appellate court should have done so."

State v. Lopez, 631 S.W.3d 107, 109-10 (Tex. Crim. App. 2021). "Can a four-month delay be enough to violate a defendant's right to a speedy trial in a misdemeanor case? We hold that in this case it cannot." (At 116) "The facts here are not typical. The State used its discretion to dismiss a felony charge and instead file a Class A misdemeanor charge against Appellee. A visiting trial judge ordered a competency evaluation that—for reasons that are not clear on this record—failed to take place between July 20 and August 8. When counsel for Appellee moved for speedy trial, the State announced ready in front of the second visiting judge. But the second visiting judge then stated Appellee was incompetent, and rather than staying the case, which was statutorily required, went on to dismiss it. The limited record before us shows that Appellee was incarcerated for 112 days, but is void of any support for the trial court's implied finding that the delay here violated Appellee's constitutional right to a speedy trial. Our evaluation of the *Barker* [*Barker v. Wingo*, 407 U.S. 514, 530-32, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)] factors leads us to conclude that the delay here did not violate Appellee's constitutional right to a speedy trial."

Turner v. State, 570 S.W.3d 250, 253 (Tex. Crim. App. 2018). "Appellant was convicted of capital murder for killing his wife and mother-in-law during the same criminal transaction. The jury answered the special issues in such a manner that Appellant was sentenced to death . . . On original submission, we remanded this case for a retrospective competency hearing. We later ordered supplemental briefing on the effect, if any, of the Supreme Court's recent decision in *McCoy v. Louisiana* [*McCoy v. Louisiana*, 584 U.S. 414, 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018)]. We now conclude that Appellant was competent to stand trial, but we also conclude that defense counsel conceded Appellant's guilt of murder against Appellant's wishes in violation of *McCoy*. Consequently, we reverse the trial court's judgment of conviction and remand the case for a new trial." (At 276) "The question we confront here, then, is: Does the record show that Appellant, in a timely fashion, made express statements of his will to maintain his innocence? We answer that question 'yes.' (¶) There is no question that Appellant wanted to maintain his innocence. During his testimony, he did so explicitly, stating that he did not kill the victims and that they were killed as part of a conspiracy involving the mayor." (At 277) "[W]e conclude that the record shows that Appellant adequately preserved his *McCoy* claim and that *McCoy* was violated by defense counsel at Appellant's trial. Because the error is structural, we conduct no harm analysis, and a reversal and remand for a new trial is required."

McCoy v. La., 584 U.S. 414, 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018). (At 138 S. Ct. 1505) "In the case now before us, in contrast to *Nixon* [*Florida v. Nixon*, 543 U. S. 175, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004)], the defendant vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt. App. 286-287, 505-506. Yet the trial court permitted counsel, at the guilt phase of a capital trial, to tell the jury the defendant 'committed three murders . . . . [H]e's guilty.' *Id.* at 509, 510. We hold that a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty. Guaranteeing a defendant the right 'to have the *Assistance* of Counsel for *his* defence,' the Sixth Amendment so demands. With individual liberty—and, in capital cases, life—at stake, it is the defendant's prerogative, not counsel's, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt."

Hopper v. State, 520 S.W.3d 915, 918 (Tex. Crim. App. 2017). "In this case, we consider how a court should weigh a defendant's failure to exercise his right to a speedy trial under the Interstate Agreement on Detainers when analyzing a claim that he was denied his Sixth Amendment right to a speedy trial. Appellant was indicted in 1993 for an offense that he committed in Texas, but his trial did not take place until 2015. During most

of that period of time, he was incarcerated in Nebraska for crimes he had committed there. Although he was informed of his right to be transferred to Texas under the Interstate Agreement on Detainers (IAD) for a speedy disposition of his Texas charge, he never invoked that right. The State also had a right to obtain appellant's presence in Texas under the IAD but did not invoke that right until 2013. Appellant contended at trial and on appeal that he was denied his constitutional right to a speedy trial." (At 928) "We conclude that both parties are equally blameworthy for the period of delay from the time appellant was convicted in Nebraska (April 1995) to the time the State filed its IAD demand (September 2013). Because the parties are equally blameworthy for that period of delay, the reasons-for-delay factor is essentially neutral. (¶) We agree with the court of appeals that a finding of bad faith in the speedy trial context requires a showing that the State was trying to gain a tactical advantage in the defendant's case, and the record is devoid of any evidence of that." (At 929) "Any presumptive prejudice due to the passage of time was extenuated by appellant's acquiescence in the delay and even further extenuated by appellant's failure to employ a remedy that would have guaranteed him a speedy trial."

Betterman v. Montana, 578 U.S. 968, 136 S. Ct. 1609, 194 L. Ed. 2d 723 (2016). (At 136 S. Ct. 1612) "The Sixth Amendment to the U. S. Constitution provides that '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . .' Does the Sixth Amendment's speedy trial guarantee apply to the sentencing phase of a criminal prosecution? That is the sole question this case presents. We hold that the guarantee protects the accused from arrest or indictment through trial, but does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges. For inordinate delay in sentencing, although the Speedy Trial Clause does not govern, a defendant may have other recourse, including, in appropriate circumstances, tailored relief under the Due Process Clauses of the Fifth and Fourteenth Amendments." (At 1618) "The course of a criminal prosecution is composed of discrete segments. During the segment between accusation and conviction, the Sixth Amendment's Speedy Trial Clause protects the presumptively innocent from long enduring unresolved criminal charges. The Sixth Amendment speedy trial right, however, does not extend beyond conviction, which terminates the presumption of innocence."

Kansas v. Cheever, 571 U.S. 87, 134 S. Ct. 596, 187 L. Ed. 2d 519 (2013). (At 134 S. Ct. 598) "The Fifth Amendment to the United States Constitution provides that '[n]o person . . . shall be compelled in any criminal case to be a witness against himself . . . .' The question here is whether the Fifth Amendment prohibits the government from introducing evidence from a court-ordered mental evaluation of a criminal defendant to rebut that defendant's presentation of expert testimony in support of a defense of voluntary intoxication. We hold that it does not." (At 603) "We hold that where a defense expert who has examined the defendant testifies that the defendant lacked the requisite mental state to commit a crime, the prosecution may offer evidence from a court-ordered psychological examination for the limited purpose of rebutting the defendant's evidence."

Gonzales v. State, 435 S.W.3d 801, 804 (Tex. Crim. App. 2014). "We granted the State's petition to review the opinion of the court of appeals on remand finding that Appellant's right to a speedy trial was violated. The court of appeals held that Appellant's right to a speedy trial was violated because the factors laid out by the United States Supreme Court to assess speedy-trial claims favored Appellant. It also held that the State failed to persuasively rebut the presumption of prejudice or prove that Appellant acquiesced to the 'extraordinary' delay in this case. We will affirm the judgment of the court of appeals." (At 815) "[T]he State points to no record evidence to show that Appellant acquiesced in a six-year delay in being brought to trial for these charges. Therefore, after reviewing the State's arguments, the findings of the trial court, and the transcript of the speedy-trial hearing, we agree with the court of appeals and hold that the State has failed to vitiate the presumption of prejudice by proving that Appellant acquiesced to the delay. As to whether the State persuasively rebutted the presumption, although we recognize that this is a close decision and that this Court must engage '"in a difficult and sensitive balancing process" in each individual case,' we again agree with the court of appeals that the State has failed to persuasively rebut the presumption of prejudice in this case." (Footnote omitted).

Shaw v. State, 117 S.W.3d 883, 889 (Tex. Crim. App. 2003). "Here, the State offered the trial court two reasons to justify the 38-month delay between appellant's indictment and second trial: appellant's motions for continuance and the crowded court docket. The State offered no evidence in support of its argument, but, given defense counsel's statements to the trial court regarding appellant's motions for continuance, the trial court could have reasonably concluded that appellant himself was responsible for several months of the delay. In addition, the three-month interval between appellant's indictment and first trial may not be counted against the State, since the State was entitled to a reasonable period in which to prepare its case. On the other hand a crowded court docket is not a valid reason for delay and must be counted against the State, although not heavily." (Citations omitted).

Williams v. State, 116 S.W.3d 788, 790 (Tex. Crim. App. 2003). "At his trial for driving while intoxicated, [appellant] sought to introduce an exemplar of his voice without subjecting himself to cross-examination." (At 793) "We hold that a voice exemplar is not testimonial, whether it is offered by the State or the defendant. We therefore conclude that a defendant who offers a voice exemplar into evidence does not waive his Fifth Amendment rights and does not subject himself to cross-examination."

Dragoo v. State, 96 S.W.3d 308, 313 (Tex. Crim. App. 2003). "In determining whether an accused has been denied his right to a speedy trial, a court must use a balancing test 'in which the conduct of both the prosecution and the defendant are weighed.' *Barker v. Wingo*, 407 U.S. 514, 530, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972). The factors to be weighed in the balance include, but are not necessarily limited to, the length of the delay, the reason

for the delay, the defendant's assertion of his speedy trial right, and the prejudice to the defendant resulting from the delay. No single factor is necessary or sufficient to establish a violation of the right to a speedy trial." (At 314) "Although a defendant's failure to assert his speedy trial right does not amount to a waiver of that right, 'failure to assert the right . . . makes it difficult for a defendant to prove he was denied a speedy trial.' This is so because a defendant's lack of a timely demand for a speedy trial 'indicates strongly that he did not really want a speedy trial,' and that he was not prejudiced by lack of one. Furthermore, 'the longer delay becomes, the more likely a defendant who wished a speedy trial would be to take some action to obtain it. Thus inaction weighs more heavily against a violation the longer the delay becomes.'" (Citations omitted).

Zamorano v. State, 84 S.W.3d 643, 654 (Tex. Crim. App. 2002). "We find that all four factors weigh in favor of relief. First, the length of the initial delay—two years and ten months—was presumptively prejudicial, and the additional year of delay after the denial of appellant's original speedy trial motion was clearly prejudicial. Second, the delay was the result of the State's negligence. Third, appellant twice asserted his right to a speedy trial. Finally, appellant produced evidence of prejudice which the State failed—indeed did not attempt—to rebut. At no point did the State challenge the merits of appellant's claim to a speedy trial. The State sat silent on all fronts; it neither offered any evidence, nor cross-examined appellant, nor made any legal argument in the trial court to justify the delay. Because the State's negligence caused a delay which was nearly six times as long as the delay generally considered sufficient to trigger judicial review and it did not rebut, explain, or minimize the presumption of prejudice, appellant is entitled to relief." (Footnotes omitted).

Art. 1.051. Right to Representation by Counsel.

(a) A defendant in a criminal matter is entitled to be represented by counsel in an adversarial judicial proceeding. The right to be represented by counsel includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.

(b) For the purposes of this article and Articles 26.04 and 26.05 of this code, "indigent" means a person who is not financially able to employ counsel.

(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Subject to Subsection (c-1), if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county in which the defendant is arrested shall appoint counsel as soon as possible, but not later than:

(1) the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the defendant is arrested in a county with a population of less than 250,000; or

(2) the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the defendant is arrested in a county with a population of 250,000 or more.

(c-1) If an indigent defendant is arrested under a warrant issued in a county other than the county in which the arrest was made and the defendant is entitled to and requests appointed counsel, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county that issued the warrant shall appoint counsel within the periods prescribed by Subsection (c), regardless of whether the defendant is present within the county issuing the warrant and even if adversarial judicial proceedings have not yet been initiated against the defendant in the county issuing the warrant. However, if the defendant has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of the arrest and if counsel has not otherwise been appointed for the defendant in the arresting county under this article, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the arresting county immediately shall appoint counsel to represent the defendant in any matter under Chapter 11 or 17, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county. If counsel is appointed for the defendant in the arresting county as required by this subsection, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel.

(d) An eligible indigent defendant is entitled to have the trial court appoint an attorney to represent him in the following appellate and postconviction habeas corpus matters:

(1) an appeal to a court of appeals;

(2) an appeal to the Court of Criminal Appeals if the appeal is made directly from the trial court or if a petition for discretionary review has been granted;

(3) a habeas corpus proceeding if the court concludes that the interests of justice require representation; and

(4) any other appellate proceeding if the court concludes that the interests of justice require representation.

(e) An appointed counsel is entitled to 10 days to prepare for a proceeding but may waive the preparation time with the consent of the defendant in writing or on the record in open court. If a nonindigent defendant appears without counsel at a proceeding after having been given a reasonable opportunity to retain counsel, the court, on 10 days' notice to the defendant of a dispositive setting, may proceed with the matter without securing a written waiver or appointing counsel. If an indigent defendant who has refused appointed counsel in order to retain private counsel appears without counsel after having been given an opportunity to retain counsel, the court, after giving the defendant a reasonable opportunity to request appointment of counsel or, if the defendant elects not to request appointment of

counsel, after obtaining a waiver of the right to counsel pursuant to Subsections (f) and (g), may proceed with the matter on 10 days' notice to the defendant of a dispositive setting.

(f) A defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid.

(f-1) In any adversary judicial proceeding that may result in punishment by confinement, the attorney representing the state may not:

(1) initiate or encourage an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel; or

(2) communicate with a defendant who has requested the appointment of counsel, unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:

(A) has been given a reasonable opportunity to retain and has failed to retain private counsel; or

(B) waives or has waived the opportunity to retain private counsel.

(f-2) In any adversary judicial proceeding that may result in punishment by confinement, the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:

(1) has been given a reasonable opportunity to retain and has failed to retain private counsel; or

(2) waives or has waived the opportunity to retain private counsel.

(g) If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently made, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings:

"I have been advised this _____ day of _____, 20___, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)"

(h) A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

(i) Subject to Subsection (c-1), with respect to a county with a population of less than 250,000, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have not been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county in which the defendant is arrested shall appoint counsel immediately following the expiration of three working days after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the three working days, the court or the courts' designee shall appoint counsel as provided by Subsection (c). Subject to Subsection (c-1), in a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection immediately following the expiration of one working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the one working day, the court or the courts' designee shall appoint counsel as provided by Subsection (c).

(j) Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

(k) A court or the courts' designee may without unnecessary delay appoint new counsel to represent an indigent defendant for whom counsel is appointed under Subsection (c), (c-1), or (i) if:

(1) the defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and

(2) good cause to appoint new counsel is stated on the record as required by Article 26.04(j)(2).

Added by Acts 1987, 70th Leg., ch. 979, Sec. 1, eff. Sept. 1, 1987. Subsec. (c) amended by and Subsecs. (i) to (k) added by Acts 2001, 77th Leg., ch. 906, Sec. 2, eff. Jan. 1, 2002. Subsecs. (e), (f) & (g) amended and subsec. (f-1) added by Acts 2007, 80th Leg., ch. 463, sec. 1, eff. Sept. 1, 2007. Subsecs. (c), (i), and (k) amended and (c-1) added by Acts 2015, 84th Leg., ch. 858, Sec. 1, eff. Sept. 1, 2015.

Hughes v. State, 691 S.W.3d 504, 2024 Tex. Crim. App. Lexis 402, *1 (Tex. Crim. App. May 22, 2024). Appellant's "deferred adjudication community supervision was revoked, and he was

sentenced to ten years imprisonment, in a teleconference hearing conducted using Zoom. Several times when Appellant tried to speak during the hearing, the trial court ordered that Appellant be muted. On appeal, Appellant argued that his right to be present under the Due Process Clause was violated. The court of appeals reversed, holding that his right to be present under the Confrontation Clause was violated, even though Appellant did not raise the Confrontation Clause in his brief." (At *36-37) "In conclusion, the right to be present under the Fourteenth Amendment's Due Process Clause applies in a hearing on a motion to adjudicate. The Due Process Clause-based right to be present is waivable, not forfeitable, and Appellant's point of error raising a violation of that right was properly before the court of appeals. To the extent that the court of appeals addressed Appellant's point of error as a matter of the right to be present under the Sixth Amendment's Confrontation Clause, the State is correct that the court of appeals erroneously conflated the Confrontation Clause-based right with the Due Process Clause-based right. (¶) Nevertheless, the court of appeals did not err in finding that Appellant's right to be present was violated and that there was harm. The trial court's action ordering Appellant to be muted when he tried to say a key witness was lying, at a time when the witness was giving crucial evidence, was not harmless. The error impacted Appellant's ability to communicate with counsel, relegating him to being a distant observer and affecting his ability to ultimately defend himself."

Huggins v. State, 674 S.W.3d 538, 539-40 (Tex. Crim. App. 2023). "While representing himself, Appellant pled guilty to possession of methamphetamine and was sentenced by the trial court to 18 years in prison. We granted review to decide whether his right to counsel was violated. We hold that it was not." (At 549) "The admonishments required for self-representation depend on circumstances such as the complexity of the case, the stage of the proceedings, and the background of the defendant. Because the record shows Appellant was aware of the dangers and disadvantages of self-representation, and his waiver of counsel was knowing, voluntary, and intelligent, the warnings given were sufficient under the circumstances of this case. (¶) The statutory right to withdraw a waiver of counsel under Code of Criminal Procedure Article 1.051(h) 'at any time' does not mean under any circumstances. The trial court did not abuse its discretion in denying Appellant's second request to withdraw his waiver of counsel on the cusp of trial."

Osorio-Lopez v. State, 663 S.W.3d 750, 752-53 (Tex. Crim. App. 2022). "The Court of Criminal Appeals granted review to determine whether the court of appeals erred when it held that a criminal defendant can never waive the right to counsel at a retrospective competency hearing and proceed *pro se*. We conclude that it erred in reaching the self-representation issue because the trial court did not deny Appellant's request to represent himself; Appellant was permitted to proceed *pro se*. Therefore, the issue is not whether Appellant had a right to self-representation at a retrospective competency hearing but whether Appellant was competent to waive counsel and whether he voluntarily, knowingly, and intelligently did so after asserting his desire to represent himself. Accordingly, we will reverse the judgment of the court of appeals and remand for the court of appeals to undertake the necessary analysis in the first instance."

Hall v. State, 663 S.W.3d 15, 27 (Tex. Crim. App. 2021), *cert. denied*, 143 S. Ct. 581 (2023). "Brazos County entered into a written agreement with Comedy Central in which Brazos County gave Comedy Central permission to film a comedy special [with comedian Jeff Ross] inside the Brazos County Detention Center." (At 28-29) "Appellant argues that the State circumvented Appellant's Sixth Amendment right to counsel when the State, pursuant to a written agreement, allowed Ross to enter the Brazos County Detention Center and elicit incriminating statements from Appellant without his counsel being present. (¶) *In Massiah v. United States*, 377 U.S. 201, 206, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964), the Supreme Court held that the Sixth Amendment prohibits the government from using a defendant's 'own incriminating words' against him in a criminal proceeding if the government or one of its agents 'deliberately elicited' the incriminating statement without the defendant's counsel being present." (At 30) "Based on the trial court's record-supported finding that there was no 'agreement between the State and Jeff Ross' for Ross 'to gather evidence,' as well as our own independent review of the record, we conclude that Ross was not acting as an agent of the State when he spoke with Appellant. That being the case, the manner in which the Comedy Central video originated does not implicate *Massiah*. The trial court did not err to deny Appellant's motion to suppress the Comedy Central video on Sixth Amendment grounds."

Rubalcado v. State, 424 S.W.3d 560, 563 (Tex. Crim. App. 2014). "Appellant, arrested pursuant to an Ector County complaint, made bail and was released from incarceration. Afterwards, at the behest of Midland County law enforcement, the complaining witness in the Ector County case contacted appellant and elicited incriminating statements from him. The question before us is whether appellant's Sixth Amendment right to counsel was violated when these statements were later used as primary evidence of guilt in the Ector County case. We conclude that appellant's right to counsel was violated with respect to the Ector County prosecution, and we reverse the judgment of the court of appeals." (At 578) "[A]ppellant did not initiate the calls to the complaining witness. The complaining witness initiated the calls, and she made statements during the calls that were designed to lull appellant into believing that she was not adverse to him. And unlike the authorities in *Berry* [*State v. Berry*, 658 S.W.2d 476, 478 (Mo. App. 1983)], the Midland police encouraged J.S. to contact appellant for the purpose of eliciting a confession, and they provided recording equipment to her to memorialize any incriminating statements. We conclude that appellant did not waive his right to counsel."

Bowen v. Carnes, 343 S.W.3d 805, 807 (Tex. Crim. App. 2011). "We are called upon in this original mandamus proceeding to determine whether the respondent, the trial court judge in the relators' pending capital murder prosecution, must rescind an order granting the State's motion to disqualify the relators' mutually retained counsel of choice, Robert Phillips. A principal witness in the State's case, a jailhouse informant by the name of William Ballenger, was a former client of Phillips

in an unrelated criminal matter. The State moved to disqualify Phillips from representing the relators in their capital trial on the grounds that Phillips might be hampered in his ability to effectively cross-examine his former client. Even though both the relators and Ballenger had executed waivers of their rights to conflict-free counsel, the respondent nevertheless granted the State's motion out of concern for 'the integrity of the judicial process and the public's perception[.]'" (At 816) "Clearly, before the mere appearance of unfairness may be allowed to defeat the Sixth Amendment presumption in favor of retained counsel, it must be accompanied *at least* by some serious potential for conflict. Here, the respondent allowed his concern about the public's perception of fairness, without more, to override the relators' own perception that the best way they could assure fairness for themselves was to be 'defended by the counsel [they] believe[d] to be best.' Such a concern, untethered to a finding of an actual or serious potential for conflict of interest, cannot suffice to overcome the *Wheat* [*Wheat v. United States*, 486 U.S. 153, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988)] presumption. Nor does it pay sufficient heed to our admonition in *Gonzalez v. State* [*Gonzalez v. State*, 117 S.W.3d 831, 837 (Tex. Crim. App. 2003)] that 'courts must exercise caution in disqualifying defense attorneys, especially if less serious means would adequately protect the government's interests.' We hold that disqualification of retained counsel under these circumstances is an abuse of discretion, and that mandamus relief will lie to remedy the situation." (Footnotes omitted).

Chadwick v. State, 309 S.W.3d 558, 559 (Tex. Crim. App. 2010). "Claude Wayne Chadwick complained on appeal that the trial judge improperly refused to allow him to proceed *pro se* after his competency to stand trial was restored." (At 563) "Given the evidence in the record of Chadwick's behavior before the trial judge, his refusal to come to court the first day of trial, and the incoherent *pro se* motions, and viewing the evidence in the light most favorable to the trial judge's ruling, we conclude that the judge did not abuse his discretion."

McFatridge v. State, 309 S.W.3d 1, 6 (Tex. Crim. App. 2010). "In *Whitehead* [*Whitehead v. State*, 130 S.W.3d 866, 878 (Tex. Crim. App. 2004)], we recognized that the two-step process outlined above [in determining indigency for purposes of a free record for appeal] also applies when determining whether a person is indigent for purposes of appointed counsel." (At 9) "For purposes of a free record, we will uphold a trial court's non-indigency finding if there is credible evidence in the record supporting such a finding. For purposes of appointed appellate counsel, we will uphold a determination of non-indigency if the trial court reasonably believed, based on the record evidence, that the defendant was not indigent. Because we hold that the proper place for an appellant to introduce evidence challenging the State's rebuttal evidence is the initial indigency hearing, not on appeal or in a petition for discretionary review, we hold that the trial court's determinations were reasonably supported by the evidence in both instances (free record and appellate counsel)." (Footnote omitted).

Busby v. State, 253 S.W.3d 661, 668-69 (Tex. Crim. App. 2008), *cert. denied*, 555 U.S. 1050 (2008). "Appellant appears to claim on appeal that he should have been appointed counsel when he was arrested in Oklahoma City on February 1st. He further claims that 'appointment of counsel, coming as it did some 22 days after his arrest for this unusually high-profile crime, was far too late to allow that lawyer an opportunity to assist him in any meaningful way.' The legal basis of appellant's claim (in the trial court and on appeal) that he should have been appointed counsel sooner than he was not clear . . . . We note that appellant had no Sixth Amendment or statutory right to counsel when he voluntarily spoke to the authorities between February 1st and February 3rd because no adversary judicial proceedings in Texas for this capital offense had been initiated against appellant during this period of time. And, assuming attachment of appellant's Sixth Amendment right to counsel to this capital offense at the Texas magistrate hearing on February 19th, suppression of appellant's February 20th statement is not required because appellant initiated contact with the authorities and voluntarily waived any Sixth Amendment right to counsel he may have had at the time. In addition, appellant's February 20th statement did not violate any statutory right to counsel because appellant freely and voluntarily made this statement only one day after his request for appointment of counsel at the Texas magistrate hearing." (Footnotes omitted).

Cooks v. State, 240 S.W.3d 906, 910 (Tex. Crim. App. 2007). (At Note 3) "The Texas Legislature has also established, as a matter of state statutory law, that a criminal defendant is entitled to counsel, not just at trial, but also during the first appeal as of right. *See* Article 1.051(d), Tex. Code Crim. Proc. As a matter of state statutory law, this would seem to apply to the period for filing a motion for new trial, since it comes between trial and appeal."

Villescas v. State, 189 S.W.3d 290, 294 (Tex. Crim. App. 2006). "[W]e also disavow the appellate court's attachment of special significance to the time period of ten days. We have no doubt that statutory time constraints are designed to safeguard constitutional notice rights in a manner that is easy for the parties to follow and for courts to apply, but in a review for constitutional error, the statutes are not controlling. The ultimate question is whether constitutionally adequate notice was given. We likewise reject the appellate court's conclusion that the relevant time period for determining proper notice is the period before trial. Under *Oyler* [*Oyler v. Boles*, 368 U.S. 448, 82 S. Ct. 501, 7 L. Ed. 2d 446 (1962)], due process does not even require that the notice be given before the guilt phase begins, much less that it be given a number days before trial. And limiting the notice period to "before trial" ignores the possibility that the trial court could take measures to cure the notice problem by granting a continuance—an option *Oyler* expressly contemplates. (¶) [W]hen a defendant has no defense to the enhancement allegation and has not suggested the need for a continuance in order to prepare one, notice given at the beginning of the punishment phase satisfies the federal constitution. While this Court also addressed the Texas Constitution's Due Course of Law clause in *Patterson* [*Ex parte Patterson*, 740 S.W.2d 766 (Tex. Crim. App. 1987)], we did not hold that due course of law was more protective than due process with regard to the amount of time required for notice, and we see no reason to do so now." (Citations omitted).

Art. 1.052. Signed Pleadings of Defendant.

(a) A pleading, motion, and other paper filed for or on behalf of a defendant represented by an attorney must be signed by at least one attorney of record in the attorney's name and state the attorney's address. A defendant who is not represented by an attorney must sign any pleading, motion, or other paper filed for or on the defendant's behalf and state the defendant's address.

(b) The signature of an attorney or a defendant constitutes a certificate by the attorney or defendant that the person has read the pleading, motion, or other paper and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry that the instrument is not groundless and brought in bad faith or groundless and brought for harassment, unnecessary delay, or other improper purpose.

(c) If a pleading, motion, or other paper is not signed, the court shall strike it unless it is signed promptly after the omission is called to the attention of the attorney or defendant.

(d) An attorney or defendant who files a fictitious pleading in a cause for an improper purpose described by Subsection (b) or who makes a statement in a pleading that the attorney or defendant knows to be groundless and false to obtain a delay of the trial of the cause or for the purpose of harassment shall be held guilty of contempt.

(e) If a pleading, motion, or other paper is signed in violation of this article, the court, on motion or on its own initiative, after notice and hearing, shall impose an appropriate sanction, which may include an order to pay to the other party or parties to the prosecution or to the general fund of the county in which the pleading, motion, or other paper was filed the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney's fees.

(f) A court shall presume that a pleading, motion, or other paper is filed in good faith. Sanctions under this article may not be imposed except for good cause stated in the sanction order.

(g) A plea of "not guilty" or "no contest" or "nolo contendere" does not constitute a violation of this article. An allegation that an event took place or occurred on or about a particular date does not constitute a violation of this article.

(h) In this article, "groundless" means without basis in law or fact and not warranted by a good faith argument for the extension, modification, or reversal of existing law.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 11, eff. May 21, 1997.

Art. 1.053. Present Ability to Pay.

Except as otherwise specifically provided, in determining a defendant's ability to pay for any purpose, the court shall consider only the defendant's present ability to pay.

Added by Acts 2019, 86th Leg., ch. 1352, Sec. 3.01, eff. Jan. 1, 2020.

Art. 1.06. Searches and Seizures.

The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Lall v. State, 686 S.W.3d 766, 766 (Tex. Crim. App. 2024). "The State charged Appellant with possession with intent to deliver more than 4 but less than 200 grams of methamphetamine based in part upon evidence seized after a canine sniff of Appellant's vehicle during a traffic stop. Tex. Health & Safety Code Ann. § 481.112(a). Appellant filed a motion to suppress arguing that the police officer lacked reasonable suspicion to prolong the traffic stop to conduct the canine sniff of his vehicle. (¶) Appellant argued on appeal that the trial court erred in denying his motion to suppress. In holding that the police officer had reasonable suspicion to prolong the stop for the canine sniff, the court of appeals relied in part on the fact that Appellant refused consent for the officer to search his vehicle even though Appellant was legally entitled to refuse consent at the time of the request." (At 768) "The court of appeals should not have considered Appellant's lawful refusal to consent to the search of his truck when determining if the facts of this case gave rise to reasonable suspicion. Instead, the court of appeals should have considered the facts outside of Appellant's refusal to determine if those facts gave rise to reasonable suspicion, just as we did in *Wade.* [*Wade v. State*, 422 S.W.3d 661 (Tex. Crim. App. 2013)]. Because the court of appeals considered Appellant's lawful refusal to consent as a factor in its reasonable suspicion analysis, we need not reach Appellant's second ground for review. Instead, we vacate the judgment of the court of appeals and remand the case so that the court of appeals may have an opportunity to conduct a reasonable suspicion analysis without considering Appellant's refusal to consent." (Citation omitted).

King v. State, 670 S.W.3d 653, 654-55 (Tex. Crim. App. 2023), *cert. denied*, 144 S. Ct. 386 (2023). "Does an employee retain standing to contest a search or seizure in his work vehicle several days after he was arrested and after the vehicle was returned to his employer? Possibly. In this case, however, we hold that Appellant has not met his burden to establish a reasonable expectation of privacy as would confer standing." (At 659) "From this record, we find that Appellant did not put on any evidence indicating that—at the time of the seizure of the phone—he had any proprietary or possessory interest in the tractor trailer, or, for that matter, any evidence demonstrating a reasonable expectation of privacy in the tractor trailer when [truck owner] took the phone from the truck and mailed it to the detective. Therefore, we hold as a matter of law that Appellant failed to establish standing to assert a Fourth Amendment claim." (Citation omitted).

Massey v. State, 667 S.W.3d 784, 785-86 (Tex. Crim. App. 2023), *cert. denied*, 144 S. Ct. 261 (2023). "After legally detaining Appellant for lack of a proper registration sticker on his truck, an officer conducted an investigative pat-down search of Appellant's person. When Appellant forcefully resisted that search, the officer tased and handcuffed him. The officer subsequently discovered methamphetamine on the ground near where Appellant had been standing. (¶) In the trial court, Appellant filed a motion to suppress the methamphetamine. In response to that motion, the trial court decided that the officer's investigative pat-down search (also known as a *Terry* [*Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)] search) was illegal. But the trial court nevertheless concluded that the taint of the illegal *Terry* search was attenuated by Appellant's commission of the dual offenses of resisting search and evading detention. As a result, the trial court denied his motion." (At 790-91) "Of course, the question in this case is not whether to suppress evidence of Appellant's *new* offenses of resisting arrest and evading detention. Insofar as we know, Appellant has not even been formally charged with either of those offenses. Instead, the question is whether Appellant's commission of those new offenses constitutes an intervening circumstance under *Brown* [*Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975)], so as to attenuate the taint of police misconduct with regard to evidence of still *another*, different offense—possession of a controlled substance—discovered subsequent to the alleged police misconduct." (At 794) "Appellant's 'new offense' of resisting the search was an intervening circumstance. Because we also find no evidence that [Sergeant] Lukowsky purposefully or flagrantly flouted Appellant's Fourth Amendment rights, we conclude that any taint from the illegal *Terry* pat-down search was attenuated. The trial court properly denied Appellant's motion to suppress the methamphetamine."

Igboji v. State, 666 S.W.3d 607, 609 (Tex. Crim. App. 2023). "For exigent circumstances to justify a warrantless seizure of personal property, such as a cell phone, the record must show that law enforcement officers reasonably believed that evidence would be imminently destroyed if they waited to obtain a warrant to seize the property. Affirmative conduct by the suspect is not required, but it is one circumstance in the totality-of-the-circumstances test that may show that the potential destruction of evidence was imminent. However, the absence of such affirmative conduct does not foreclose an exigent-circumstances determination. We agree with the State that the court of appeals erred to hold that it did. We reverse the court of appeals and remand for a proper exigent-circumstances analysis." (At 615) "Given the fact-bound nature of the inquiry, we decline to hold that affirmative conduct by a suspect is always required to show that the destruction of evidence was imminent. To the extent that our language in our holding in *Turrubiate* [*Turrubiate v. State*, 399 S.W.3d 147, 153-55 (Tex. Crim. App. 2013)] requires otherwise, we explicitly disavow it as an unwarranted extension of *King* [*Kentucky v. King*, 563 U.S. 452, 460, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011)]."

State v. Hardin, 664 S.W.3d 867, 870 (Tex. Crim. App. 2022). "Officer Alfaro observed the vehicle in the middle of a three-lane highway. The driver, later determined to be Appellee, had control of the vehicle at that time. The rear passenger-side tire of the truck briefly straddled the lane divider shortly after rounding a curve. The truck moved slowly back towards the opposite lane divider while remaining in its lane. Appellee did not veer or dash toward the other lane. Appellee was not driving erratically. Appellee was not speeding. When she drifted, she did not hit anything or even come close to hitting anything. Office Alfaro then pulled Appellee over. (¶) Appellee filed a motion to suppress. Appellee argued that Officer Alfaro lacked reasonable suspicion to initiate the traffic stop and therefore any subsequent seizure of evidence without a warrant should be suppressed." (At 872) "Here, the question of whether there was reasonable suspicion to detain Appellee is not a function of Officer Alfaro's demeanor or credibility. Instead, it turns on the application of a traffic statute to uncontested facts." (At 876) "[W]e hold that a person only violates Transportation Code § 545.060(a) if the person fails to maintain a single marked lane of traffic in an unsafe manner. (¶) Given these findings, we agree with the court of appeals that the trial court did not err in granting Appellee's motion to suppress because without any evidence suggesting that this movement was unsafe, Officer Alfaro lacked reasonable suspicion to stop her vehicle. At most, the record shows that Appellee drove 'as nearly as practical' entirely within a single lane, which is not a traffic violation."

Monjaras v. State, 664 S.W.3d 921, 924 (Tex. Crim. App. 2022). "On appeal, Appellant argued that the trial court erred in denying his motion to suppress because his interaction with law enforcement was an investigative detention without reasonable suspicion rather than a consensual encounter." (At 932) "Although initially consensual, the encounter between Appellant and the officers became an investigative detention. Appellant was detained when Officer Starks moved very close to Appellant, told Appellant 'manos, manos' while holding his hands out to direct Appellant to follow suit while Officer Sallee had his hand on Appellant's back. At the time this happened one officer had his hand on Appellant's back, the other officer was two or three feet in front of Appellant, the patrol car was within four or five feet from one side of Appellant and the apartment complex was approximately twenty-five feet from Appellant's other side. A reasonable person in Appellant's shoes would not feel free to leave under these circumstances. We conclude the appellate court erred in finding that Appellant was not detained. Accordingly, we reverse the judgment of the court of appeals and remand to that court to determine in accordance with this opinion whether Officer Sallee and Officer Starks had reasonable suspicion to detain Appellant and whether that detention was valid."

Patterson v. State, 663 S.W.3d 155, 156 (Tex. Crim. App. 2022). "The issue before us is whether the particularity requirement of the Fourth Amendment is satisfied if a warrant describes the place to be searched as a fraternity house as a whole without specifying a suspect's actual room in the house, but an incorporated affidavit provides both descriptions. We hold that the particularity requirement is satisfied if an affidavit that is incorporated into the warrant includes, somewhere, a specific description of the place that was searched." (At 159-60) "When

read in a common-sense manner, the affidavit, and therefore the warrant, described Appellant's room with sufficient particularity to establish probable cause to search. Although the search warrant and the affidavit both described the entire fraternity house in the section titled 'suspected place,' the incorporated affidavit proceeded to identify Appellant as 'Said Suspected Party #22' and listed the contraband that officers saw in Appellant's particular room. This portion of the incorporated affidavit established probable cause and satisfied the particularity requirement because it was sufficiently specific to inform the officers of where they were to search and what they should expect to find. To invalidate this search by focusing solely on the section of the warrant and incorporated affidavit titled 'suspected place' would constitute reading the warrant in a 'hyper-technical' manner, rather than the common-sense approach that the law requires."

Holder v. State, 639 S.W.3d 704, 705-06 (Tex. Crim. App. 2022). "In the course of Appellant's capital murder trial, the State admitted evidence of his cell-phone site location information (CSLI) to establish his whereabouts during the weekend in which the offense was committed. This Court ultimately concluded that this evidence was obtained in violation of Article I, Section 9, of the Texas Constitution. The Court also concluded that the evidence should have been suppressed, and it remanded the cause for the court of appeals to determine in the first instance whether Appellant was harmed 'when the trial court failed to suppress the records under [Tex. Code Crim. Proc.] Article 38.23(a).' (¶) Following this Court's lead in *Love v. State*, 543 S.W.3d 835, 846 (Tex. Crim. App. 2016), the court of appeals on remand conducted a constitutional harm analysis under Rule 44.2(a) of the Texas Rules of Appellate Procedure. . . Under that standard of harm, the court of appeals . . . reversed Appellant's conviction[.]" (At 707) "We now conclude that we were mistaken in *Love* to apply Rule 44.2(a), and we disavow that opinion only to the extent that it deemed Subsection (a), rather than Subsection (b), to be the appropriate harm analysis when only a violation of Article 38.23 is involved. (¶) *Exclusion* of evidence obtained only in violation of Article I, Section 9, is exclusively a function of statute: Article 38.23 of our Code of Criminal Procedure. It follows that any error in failing to *suppress* evidence at trial that was illegally obtained under Article I, Section 9, is not error of a constitutional dimension, but simply a statutory violation. The proper harm analysis is therefore the one contained in Texas Rule of Appellate Procedure Rule 44.2(b), not 44.2(a)."

Lange v. Cal., 594 U.S. 295, 141 S. Ct. 2011, 210 L. Ed. 2d 486 (2021). (At 141 S. Ct. 2016) "The Fourth Amendment ordinarily requires that police officers get a warrant before entering a home without permission. But an officer may make a warrantless entry when 'the exigencies of the situation' create a compelling law enforcement need. *Kentucky v. King*, 563 U. S. 452, 460, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011). The question presented here is whether the pursuit of a fleeing misdemeanor suspect always—or more legally put, categorically—qualifies as an exigent circumstance. We hold it does not. A great many misdemeanor pursuits involve exigencies allowing warrantless entry. But whether a given one does so turns on the particular facts of the case." (At 2017) "Courts are divided over whether the Fourth Amendment always permits an officer to enter a home without a warrant in pursuit of a fleeing misdemeanor suspect. Some courts have adopted such a categorical rule, while others have required a case-specific showing of exigency. We granted certiorari, 592 U.S. ___, 141 S. Ct. 617, 208 L. Ed. 2d 227 (2020), to resolve the conflict." (At 2021-22) "Our Fourth Amendment precedents thus point toward assessing case by case the exigencies arising from misdemeanants' flight. That approach will in many, if not most, cases allow a warrantless home entry. When the totality of circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home—the police may act without waiting. And those circumstances, as described just above, include the flight itself. But the need to pursue a misdemeanant does not trigger a categorical rule allowing home entry, even absent a law enforcement emergency. When the nature of the crime, the nature of the flight, and surrounding facts present no such exigency, officers must respect the sanctity of the home—which means that they must get a warrant."

Tilghman v. State, 624 S.W.3d 801, 803 (Tex. Crim. App. 2021). "After hotel management smelled marijuana smoke coming from a guest room, a hotel employee knocked on the door in an attempt to evict the guests. After this attempt was unsuccessful, a manager later requested police assistance with evicting the guests. In assisting with the eviction, police entered the hotel room and witnessed drugs in plain view. Police then arrested the occupants of the room, conducted a search of the room incident to arrest, and seized the drugs. Was there a Fourth Amendment violation such that the drug evidence was subject to suppression? The short answer is no, because once the hotel took affirmative steps to evict the occupants of the room, those occupants no longer had a reasonable expectation of privacy in the room. We reverse the judgment of the court of appeals which held that the trial court erred in failing to grant Appellant's motion to suppress." (At 807) "[T]his case presents a novel question: At what point, under Texas law, does a person lose his reasonable expectation of privacy in a hotel room if the hotel decides to evict him for violating hotel policy? Our answer is that such loss of privacy interest occurs as soon as the hotel staff takes affirmative steps to repossess the room. Thereafter, control of the hotel room reverts to the hotel, such that any entries by hotel staff or police to facilitate the eviction are lawful and do not amount to a violation of the person's Fourth Amendment rights." (At 811) "Here, the hotel staff took affirmative steps to evict the occupants of Room 123 by initially knocking on the door and, when no one replied, manager Chapman called the police to assist in an eviction. Because control of the hotel room reverted to the hotel immediately upon the hotel taking affirmative actions to evict the occupants, Appellant no longer had an expectation of privacy in the hotel room by the time of the police officers' entry. Thus, the officers' entry did not infringe upon his Fourth Amendment rights."

Caniglia v. Strom, 593 U.S. 194, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021). (At 141 S. Ct. 1598) "Decades ago, this Court held that a warrantless search of an impounded vehicle for an

unsecured firearm did not violate the Fourth Amendment. *Cady v. Dombrowski*, 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973). In reaching this conclusion, the Court observed that police officers who patrol the 'public highways' are often called to discharge noncriminal 'community caretaking functions,' such as responding to disabled vehicles or investigating accidents. *Id.*, at 441, 93 S. Ct. 2523, 37 L. Ed. 2d 706. The question today is whether *Cady*'s acknowledgment of these 'caretaking' duties creates a standalone doctrine that justifies warrantless searches and seizures in the home. It does not." (At 1599-1600) "*Cady*'s unmistakable distinction between vehicles and homes also places into proper context its reference to 'community caretaking.' This quote comes from a portion of the opinion explaining that the 'frequency with which . . . . vehicle[s] can become disabled or involved in . . . accident[s] on public highways' often requires police to perform noncriminal 'community caretaking functions,' such as providing aid to motorists. 413 U.S., at 441, 93 S. Ct. 2523, 37 L. Ed. 2d 706. But, this recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere. (¶) What is reasonable for vehicles is different from what is reasonable for homes. *Cady* acknowledged as much, and this Court has repeatedly 'declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home.'"

Johnson v. State, 622 S.W.3d 378, 380-81 (Tex. Crim. App. 2021), *cert. denied*, 142 S. Ct. 589 (2021). "An officer activated his emergency lights and approached a parked vehicle at a 'park and ride' lot. We conclude that the officer had reasonable suspicion to conduct an investigative detention because the parking lot had a significant association with criminal activity and because the occupants of the vehicle engaged in activity that appeared secretive and was unusual for the time and place. Consequently, we reverse the judgment of the court of appeals and affirm the judgment of the trial court." (At 388) "There might be an innocent explanation for someone sitting in his car in the dark at the park-and-ride after midnight in a relatively isolated parking spot. And assuming multiple occupants (two, according to Sergeant Cox's testimony), they could be talking or passing the time in some other manner that does not require light. But as we have already explained, reasonable suspicion does not require negating the possibility of an innocent explanation. 'It matters not that all of this conduct could be construed as innocent of itself; for purposes of a reasonable-suspicion analysis, it is enough that the totality of the circumstances, viewed objectively and in the aggregate, suggests the realistic possibility of a criminal motive, however amorphous, that was about to be acted upon.' And as we have also pointed out earlier, reasonable suspicion is a less demanding standard than probable cause. It is a relatively low hurdle. Sergeant Cox was confronted with unusual circumstances that, from an objective standpoint, gave rise to reason to believe that something criminal had occurred, was occurring, or was about to occur. (¶) Consequently, we hold that the court of appeals erred in concluding that Sergeant Cox lacked reasonable suspicion to conduct an investigative detention." (Footnote omitted).

Torres v. Madrid, 592 U.S. 306, 141 S. Ct. 989, 209 L. Ed. 2d 190 (2021). (At 141 S. Ct. 993-94) "The Fourth Amendment prohibits unreasonable 'seizures' to safeguard '[t]he right of the people to be secure in their persons.' Under our cases, an officer seizes a person when he uses force to apprehend her. The question in this case is whether a seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting. The answer is yes: The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person." (At 1003) "We hold that the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued. Of course, a seizure is just the first step in the analysis. The Fourth Amendment does not forbid all or even most seizures—only unreasonable ones. All we decide today is that the officers seized Torres by shooting her with intent to restrain her movement. We leave open on remand any questions regarding the reasonableness of the seizure, the damages caused by the seizure, and the officers' entitlement to qualified immunity."

Martin v. State, 620 S.W.3d 749, 754 (Tex. Crim. App. 2021). "When a firefighter, in the line of duty, asks law enforcement for a safety check after seeing drug paraphernalia, guns, and flammable liquids in an apartment, is the officer's entry into the apartment reasonable under the Fourth Amendment, and can that officer's discovery of drug paraphernalia in plain view provide probable cause for a search warrant? The short answer to this question under the specific facts of this case is yes. We therefore uphold the court of appeals' judgment which affirmed the trial court's denial of Appellant's motion to suppress the drug evidence found pursuant to a search warrant." (At 767) "We agree with the court of appeals' conclusion that Officer Hart had a lawful basis for entering Appellant's apartment without a search warrant. But because we hold that Officer Hart's conduct was justified in response to the firefighters' legitimate safety concerns pursuant to the exigency of the fire and its immediate aftermath, we need not address the court of appeals' broader bright-line rule that would always permit an officer to 'step into the shoes' of a firefighter and seize plain-view contraband. We also conclude that the information in the search-warrant affidavit, after excising the observations of Investigator Versocki, was adequate to establish probable cause, such that we need not consider the lawfulness of the additional entries by other officers after Officer Hart. Accordingly, we affirm the judgment of the court of appeals upholding the trial court's ruling denying Appellant's motion to suppress."

Wheeler v. State, 616 S.W.3d 858, 860 (Tex. Crim. App. 2021). "In applying for a blood-alcohol search warrant, a police officer submitted an unsworn probable-cause affidavit. Finding that the affidavit articulated probable cause but not realizing that it was unsworn, the magistrate signed and returned the search warrant. The same police officer then executed that search warrant. There is no question that the officer's failure to take the oath and swear to his probable-cause affidavit was improper. The question is whether despite this defect and assuming a valid warrant issued, the good-faith exception to the Texas exclusionary rule applies such that the blood-alcohol evidence is admissible.

We hold that, under the facts of this case, the good-faith exception is inapplicable and the evidence is subject to suppression. We agree with the court of appeals that the officer in this case was objectively unreasonable in executing a search warrant he knew was unsupported by a sworn probable-cause affidavit, such that he cannot be said to have acted in objective good-faith reliance upon the warrant." (At 867) "Under the facts here, the court of appeals was correct in its assessment that, given how fundamental the oath requirement is, no objectively-reasonable officer could have believed that an oath was not required to support his probable-cause affidavit; therefore, an officer preparing such an affidavit could not have reasonably believed that the subsequent warrant was not tainted by this defect. This was not a mere procedural irregularity with respect to how the affidavit was sworn. It was not sworn at all. The complete absence of this indispensable constitutional and statutory requirement is nowhere close to the line of valid law enforcement conduct that would bring this situation within the ambit of the good-faith exception."

Foreman v. State, 613 S.W.3d 160, 161 (Tex. Crim. App. 2020), *cert. denied*, 141 S. Ct. 2632 (2021). "Acting on evidence that two men had been tortured and robbed at a business in Houston, the police obtained a warrant to search the business. The warrant authorized the police to seize 'any and all . . . surveillance video and/or video equipment' from the business—and that is precisely what they did. The problem, Appellant Nathan Foreman says, is that the affidavit supporting the warrant said not one word about 'surveillance video and/or video equipment' possibly being at the business. In this opinion, we must decide whether the probable-cause magistrate was nevertheless justified in issuing a warrant authorizing the police to seize that equipment. We conclude that she was." (At 167) "From these concrete indications that the target business had a unique need for security on its premises and had in fact deployed some security measures, it was logical for the magistrate to infer that to the degree of certainty associated with probable cause, the business was equipped with a video surveillance system. This does not mean that based on the articulated facts, we consider it more-than-fifty-percent probable that the target business was using surveillance equipment. That is not what probable cause demands. It means only that based on the totality of the articulated facts, it was not unreasonable for the magistrate to discern a 'fair probability' of such equipment being found."

Crider v. State, 607 S.W.3d 305, 305-06 (Tex. Crim. App. 2020), *cert. denied*, 141 S. Ct. 1384 (2021). "A sample of Appellant's blood was lawfully extracted pursuant to a search warrant which alleged probable cause to believe he had been driving while intoxicated. The warrant, however, did not also expressly authorize the chemical testing of the extracted blood to determine his blood-alcohol concentration. This petition for discretionary review calls upon us now to examine whether introduction of evidence of the result of the chemical testing at Appellant's trial, in the absence of any explicit authorization for such testing in the search warrant (or in a separate search warrant), violated his Fourth Amendment rights. We hold that it did not, and we therefore affirm the judgment of the court of appeals." (At 307) "A neutral magistrate who has approved a search warrant for the extraction of a blood sample, based upon a showing of probable cause to believe that a suspect has committed the offense of driving while intoxicated, has necessarily also made a finding of probable cause that justifies chemical testing of that same blood. Indeed, that is the purpose of the blood extraction. This means that the constitutional objective of the warrant requirement has been met: the interposition of a neutral magistrate's judgment between the police and the citizen to justify an intrusion by the State upon the citizen's legitimate expectation of privacy."

Kansas v. Glover, 589 U.S. 376, 140 S. Ct. 1183, 206 L. Ed. 2d 412 (2020). (At 140 S. Ct. 1186) "This case presents the question whether a police officer violates the Fourth Amendment by initiating an investigative traffic stop after running a vehicle's license plate and learning that the registered owner has a revoked driver's license. We hold that when the officer lacks information negating an inference that the owner is the driver of the vehicle, the stop is reasonable." (At 1191) "This Court's precedents have repeatedly affirmed that 'the ultimate touchstone of the Fourth Amendment is "reasonableness."' Under the totality of the circumstances of this case, Deputy Mehrer drew an entirely reasonable inference that Glover was driving while his license was revoked. (¶) We emphasize the narrow scope of our holding. Like all seizures, '[t]he officer's action must be 'justified at its inception."' 'The standard takes into account the totality of the circumstances—the whole picture.' As a result, the presence of additional facts might dispel reasonable suspicion. For example, if an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is in her mid-twenties, then the totality of the circumstances would not 'raise a suspicion that the particular individual being stopped is engaged in wrongdoing.' Here, Deputy Mehrer possessed no exculpatory information—let alone sufficient information to rebut the reasonable inference that Glover was driving his own truck—and thus the stop was justified." (Citations omitted).

Holder v. State, 595 S.W.3d 691, 693 (Tex. Crim. App. 2020). "Christopher James Holder, Appellant, was charged with capital murder. During the course of the investigation, police accessed 23 days of his CSLI [cell site location information] to corroborate his alibi that he was out of town when the victim was killed. But Appellant lied. The records showed that he was near the victim's house at the time of the murder. After he was arrested and charged, Appellant filed two motions to suppress. In one of them, he alleged that the 'specific and articulable' statutory standard was not met and that the records should have been suppressed because accessing the CSLI violated Article I, Section 9 of the Texas Constitution." (At 701) "The question we must answer now is whether the Supreme Court's analysis in *Carpenter* [*Carpenter v. United States*, 585 U.S. 296, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018)] is persuasive, or whether we should take the position that Texas citizens have less privacy rights under the Texas Constitution than the United States Constitution based on a Supreme Court doctrine that even it has declined to apply to CSLI. We think that it makes more sense to adopt the Supreme Court's reasoning in *Carpenter* and to no longer apply the third-

party doctrine to CSLI records under Article I, Section 9." (At 703) "The Supreme Court exhaustively analyzed the privacy issues implicated by CSLI . . . and we share the Court's grave concerns about the Government's ability to use a continuous, surreptitious, precise, and permeating form of surveillance to continually track its citizens' every move retrospectively for up to five years. The same privacy concerns are implicated regardless of whether CSLI is accessed under the Fourth Amendment or Article I, Section 9." (At 704) "We hold that the third-party doctrine alone cannot defeat a person's expectation of privacy in at least 23 days of historical CSLI under Article I, Section 9."

State v. Ruiz, 581 S.W.3d 782, 784 (Tex. Crim. App. 2019). "Appellee was charged with felony driving while intoxicated after the State took a blood sample from him without a warrant and while he was unconscious. The trial court granted his motion to suppress his blood test results, and the court of appeals affirmed." (At 784-85) "We granted review to decide whether implied consent under [Tex. Transp. Code] Section 724.014 is equivalent to voluntary consent as a recognized exception to the warrant requirement. Is it unreasonable under the Fourth Amendment for an officer to rely on an unconscious driver's implied consent for a blood draw when the unconsciousness prevents the officer from seeking actual consent? We hold that irrevocable implied consent is not free and voluntary and does not satisfy the consent exception to the warrant requirement of the Fourth Amendment." (At 785) "The State argues that Appellee gave his implied consent to alcohol testing when he drove on Texas roadways [Tex. Transp. Code §§ 724.011, 724.014], and because that consent was never limited, withdrawn, or revoked, his consent remained in full effect at the time of the blood draw." (At 786-87) "In this case Appellee was unconscious throughout his encounter with law enforcement and had no capacity for self-determination; he could not make a choice; he could not hear Sgt. McBride read warnings to him; and he could not limit or revoke his consent. Under these circumstances drawing his blood was an unreasonable application of the consent exception to the Fourth Amendment warrant requirement."

Hankston v. State, 582 S.W.3d 278, 279 (Tex. Crim. App. 2019). "Appellant, Gareic Jerard Hankston, was charged with murder for killing Keith Brown on May 29, 2011. He filed a pretrial motion to suppress, arguing that the State violated the Fourth Amendment and Article I, Section 9 of the Texas Constitution when it unreasonably searched his cell-phone call logs and historical cell site location information (CSLI) records. He further argued that, because his constitutional rights were violated, the records should have been suppressed. (¶) We refused to review his Fourth Amendment claim, having already held that a defendant does not have an expectation of privacy in his third-party call logs or CSLI records, but we agreed to review his Article I, Section 9 claim. After concluding that the third-party doctrine also applies to call logs and historical CSLI records under Article I, Section 9, we held that Appellant did not have an expectation of privacy in his call logs or CSLI records. *Hankston v. State*, 517 S.W.3d 112, 121-22 (Tex. Crim. App. 2017)." (At 279-80) "While Appellant's petition was pending, the Supreme Court handed down *Carpenter v. United States*, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018), in which it held that a defendant has an expectation of privacy under the Fourth Amendment in at least seven days of historical CSLI records despite that they are third-party business records. *Id.* at 2217. Considering *Carpenter*, and our reliance on Fourth Amendment principles, the Supreme Court vacated our judgment and remanded this case for further consideration. *Hankston v. Texas*, 138 S. Ct. 2706, 201 L. Ed. 2d 1093 (2018). Because of these developments, we grant Appellant's Fourth Amendment ground on our own motion, dismiss his Article I, Section 9 claim without prejudice, vacate the court of appeals's judgment, and remand this cause for the lower court to reexamine its Fourth Amendment holding in light of *Carpenter*."

Mitchell v. Wis., 588 U.S. 840, 139 S. Ct. 2525, 204 L. Ed. 2d 1040 (2019). (At 139 S. Ct. 2530-31) "In this case, we return to a topic that we have addressed twice in recent years: the circumstances under which a police officer may administer a warrantless blood alcohol concentration (BAC) test to a motorist who appears to have been driving under the influence of alcohol." (At 2531) "Today, we consider what police officers may do in a narrow but important category of cases: those in which the driver is unconscious and therefore cannot be given a breath test. In such cases, we hold, the exigent-circumstances rule almost always permits a blood test without a warrant. When a breath test is impossible, enforcement of the drunk-driving laws depends upon the administration of a blood test. And when a police officer encounters an unconscious driver, it is very likely that the driver would be taken to an emergency room and that his blood would be drawn for diagnostic purposes even if the police were not seeking BAC information. In addition, police officers most frequently come upon unconscious drivers when they report to the scene of an accident, and under those circumstances, the officers' many responsibilities—such as attending to other injured drivers or passengers and preventing further accidents—may be incompatible with the procedures that would be required to obtain a warrant. Thus, when a driver is unconscious, the general rule is that a warrant is not needed." (At 2539) "When police have probable cause to believe a person has committed a drunk-driving offense and the driver's unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may almost always order a warrantless blood test to measure the driver's BAC without offending the Fourth Amendment. We do not rule out the possibility that in an unusual case a defendant would be able to show that his blood would not have been drawn if police had not been seeking BAC information, and that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties. Because Mitchell did not have a chance to attempt to make that showing, a remand for that purpose is necessary."

State v. Martinez, 570 S.W.3d 278, 281 (Tex. Crim. App. 2019). "After Appellee, Juan Martinez, Jr., was indicted for intoxication manslaughter, he filed a motion to suppress challenging the State's seizure and search of vials of his blood which were previously drawn at a hospital for medical purposes." (At 292) "In this case, medical staff at the hospital performed a private search by beginning trauma procedures and drawing

Appellee's blood for medical purposes. The government's actions consisted of subjecting Appellee's blood to testing at the DPS laboratory. As discussed above, testing itself constitutes a search, and this search was not done by the hospital. Appellee's privacy interest vis-a-vis the contents of the blood—the blood's 'informational dimension'—had not been frustrated by the actions of the hospital. The State, and only the State, tested and therefore searched the blood, and, *ipso facto*, the government search went beyond the scope of the private search. (¶) We hold that there is a Fourth Amendment privacy interest in blood that has already been drawn for medical purposes. In this case, Appellee had a subjective expectation of such a privacy interest in his blood, and the State's subsequent testing of the blood was a Fourth Amendment search separate and apart from the seizure of the blood by the State. Because no exception to the warrant requirement applied, the State was required to obtain a warrant before testing Appellee's blood. The trial court properly granted Appellee's motion to suppress, and the court of appeals correctly affirmed."

State v. Garcia, 569 S.W.3d 142, 145 (Tex. Crim. App. 2018). "Following a catastrophic car crash, Appellee Joel Garcia was taken to a nearby hospital. Law-enforcement officers, suspecting that Garcia was intoxicated and concerned that he might soon receive an intravenous treatment, took a sample of his blood without a warrant. The State claimed that this action was necessitated by 'exigent circumstances,' but the trial judge disagreed, suppressing the blood evidence. Deferring to the trial judge's findings of fact, we hold that he did not abuse his discretion in so ruling." (At 146) "Garcia, charged with three counts of intoxication manslaughter, filed a motion to suppress the evidence gathered from the officers' warrantless blood draw." (At 157) "[O]ur holding is based on the sensible notion that 'a warrantless search must be strictly circumscribed by the exigencies which justify its initiation.' Or, as the trial judge rather succinctly put it, '[o]nce the exigency ends, it ends.' The trial judge acted within his discretion to find that, at the time of the search, [Officers] Rodriguez, Lom, and Torres were collectively aware of facts that would lead an objectively reasonable officer to conclude that any exigency presented by the possibility of medical care had passed. Although we might well have dissected the officers' awareness of historical facts differently were we in the trial judge's position, '[t]he trial judge decides that fact. The court of appeals does not. We do not. And appellate courts must view the trial judge's factual findings in the light most favorable to his ultimate conclusion.'" (At 159) "We agree with the State that if an officer holds an objectively reasonable belief that an evidence-destroying medical treatment is about to take place, the Fourth Amendment does not command him to wait until the treatment is mere moments away before he may act. In such a situation, an officer is permitted to take all reasonable measures, up to and including initiating a warrantless blood draw, to preserve the integrity of important evidence. We simply hold that the trial judge's extensive, record-supported findings foreclose any conclusion that this was an objectively reasonable concern in this case. The court of appeals erred to hold otherwise, and its judgment is therefore reversed."

Carpenter v. U.S., 585 U.S. 296, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018). (At 138 S. Ct. 2216) "The question we confront today is how to apply the Fourth Amendment to a new phenomenon: the ability to chronicle a person's past movements through the record of his cell phone signals." (At 2217) "[W]e hold that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI [cell-site location information]. The location information obtained from Carpenter's wireless carriers was the product of a search." (At 2221) "Having found that the acquisition of Carpenter's CSLI was a search, we also conclude that the Government must generally obtain a warrant supported by probable cause before acquiring such records."

Byrd v. U.S., 584 U.S. 395, 138 S. Ct. 1518, 200 L. Ed. 2d 805 (2018). (At 138 S. Ct. 1523-24) "This Court granted certiorari to address the question whether a driver has a reasonable expectation of privacy in a rental car when he or she is not listed as an authorized driver on the rental agreement. The Court now holds that, as a general rule, someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver."

Collins v. Va., 584 U.S. 586, 138 S. Ct. 1663, 201 L. Ed. 2d 9 (2018). (At 138 S. Ct. 1668) "This case presents the question whether the automobile exception to the Fourth Amendment permits a police officer, uninvited and without a warrant, to enter the curtilage of a home in order to search a vehicle parked therein. It does not." (At 1671) "In physically intruding on the curtilage of Collins' home to search the motorcycle, Officer Rhodes not only invaded Collins' Fourth Amendment interest in the item searched, *i.e.,* the motorcycle, but also invaded Collins' Fourth Amendment interest in the curtilage of his home. The question before the Court is whether the automobile exception justifies the invasion of the curtilage. The answer is no."

Lerma v. State, 543 S.W.3d 184, 186 (Tex. Crim. App. 2018). "Appellant, Ernesto Lerma, was charged with possession of four grams or more, but less than 200 grams, of cocaine. After the trial court denied Appellant's motion to suppress the cocaine, he pleaded guilty. The court of appeals reversed, holding that the officer's frisk of Appellant, made during an unjustifiably prolonged traffic stop, was not supported by reasonable suspicion. We disagree. We hold that the initial frisk was supported by reasonable suspicion and the original stop was not unduly prolonged." (At 192) "We find that a reasonable officer in Salinas's situation would be justified in fearing for his safety and thus conducting a pat-down search for weapons." (At 195) "Under the circumstances in this case, we cannot say that Salinas acted unreasonably by questioning Appellant before running the driver's license for a warrant check. In particular, Salinas acted diligently in his investigation into the traffic stop and questioning Appellant, as indicated by the brief amount of time between the initiation of the stop and Appellant's flight and subsequent arrest." (At 197) "By the time Appellant was arrested following his flight, Salinas had observed at least three criminal offenses committed in his presence: failure to identify, possession of synthetic marijuana, and flight from lawful

detention. Peace officers may make an arrest for any offense committed in their presence. Therefore, Appellant's arrest made after Salinas had observed these offenses was justified. The officers were permitted to search Appellant upon his arrest."

State v. Cortez, 543 S.W.3d 198, 200 (Tex. Crim. App. 2018). "Appellee, Jose Luis Cortez, was stopped by a State Trooper for unlawfully driving on the improved shoulder of the highway because the tires on Cortez's minivan purportedly touched the white painted 'fog line' separating the roadway from the shoulder. Upon searching Cortez's vehicle, the Trooper found drugs and arrested Cortez. Finding that the Trooper did not have a lawful basis for the traffic stop, the trial court granted Cortez's motion to suppress. The court of appeals upheld the trial court's suppression order. We agree that the Trooper did not have a reasonable basis to stop Cortez's vehicle." (At 203) "In affirming the trial court's suppression order, the court of appeals agreed that simply touching the fog line does not constitute driving on the shoulder." (At 206) The State argues that, because the fog line is part of the shoulder itself, then touching the fog line is 'driv[ing] on the improved shoulder.' However, we decline to give such a broad interpretation to [Tex. Transp. Code] section 545.058(a). (¶) Based on the totality of the circumstances in this case, we conclude that the court of appeals did not err in holding that, *if* Cortez's tires touched the fog line at all, which is debatable, his momentary touch of the fog line, without any other indicator of criminal activity, was not enough to justify the stop of Cortez's minivan for driving on an improved shoulder. This decision is consistent with the interpretation given to section 545.058(a) by Texas appellate courts and courts outside this jurisdiction that have addressed this issue and have held that a person drives on the improved shoulder when they *cross over* the fog line." (At 208-09) "The trial court's findings—that Cortez's driving on the improved shoulder was authorized by Transportation Code sections 545.058(a)(3) and (a)(5)—are supported by the record."

State v. Sanchez, 538 S.W.3d 545, 546 (Tex. Crim. App. 2017). "During a traffic stop, Appellee was arrested for outstanding warrants. During that arrest, the officer searched Appellee's person and discovered illegal drugs. The officer then searched Appellee's Jeep and discovered more illegal drugs. The courts below held that the search of the Jeep was not a valid search incident to arrest because there was no reason to believe that the Jeep contained evidence relating to the outstanding warrants for which Appellee had been arrested. The court of appeals further held that the discovery of the illegal drugs on Appellee's person could not supply a new basis for arrest, for the purpose of conducting a search incident to arrest, that would justify the search of the Jeep. We disagree and hold that discovery of drugs on a suspect's person, after an arrest on traffic warrants but before the search of the suspect's vehicle, can supply a new basis for arrest that would justify search of the vehicle as a search incident to arrest." (At 551) "As long as there is probable cause to arrest for the newly-discovered offense, and the search occurs close in time to the defendant's formal arrest, an officer may conduct a search incident to arrest on the basis of an offense discovered after formal arrest for a different crime."

Marcopoulos v. State, 538 S.W.3d 596, 598 (Tex. Crim. App. 2017). "Andreas Marcopoulos walked into a bar known for narcotics activity, stayed for three to five minutes, and then left. A Houston police officer subsequently pulled up behind Marcopoulos's vehicle and saw Marcopoulos make 'furtive gestures' around the center console. When Marcopoulos committed a traffic violation, the officer stopped him, searched his vehicle, and found cocaine. The court of appeals concluded that this search was justified under the automobile exception. We disagree and will reverse." (At 600) "Consequently, the focus of our analysis is whether Marcopoulos's furtive gestures, when considered alongside his brief appearance at a known narcotics establishment, give rise to probable cause." (At 603) "First, the legal significance of furtive gestures, like any other component of probable cause, is fact-dependent. Second, and perhaps more importantly, furtive gestures must be supported by evidence that directly, not just 'vague[ly],' connects the suspect to criminal activity. (¶) Marcopoulos's short visit to Diddy's, unsupported by any details concerning the nature of his visit there, did not sufficiently 'relat[e]' him to any 'evidence of crime.' Furthermore . . . Marcopoulos did not exhibit furtive gestures in response to police action (*e.g.*, wailing sirens or flashing lights), but rather mere police presence." (At 603-04) "Officer Oliver's notions about Marcopoulos, though certainly providing reasonable suspicion justifying a temporary investigative detention, did not rise to the level of probable cause justifying a full-blown search. Although Oliver's suspicion was ultimately vindicated, 'a search cannot be justified by what it uncovers.'"

State v. Ford, 537 S.W.3d 19, 20-21 (Tex. Crim. App. 2017). "We consider whether a police officer had probable cause to arrest a customer for theft from a store (for concealing items in her purse) when she had not yet exited the store and when she claimed, after being confronted by the officer, that she was going to pay for the items she had taken. We conclude that the officer had probable cause to arrest." (At 24) "The trial court and the court of appeals in the present case both seemed to recognize that it was not necessary for appellee to take the items out of the store for her to commit a theft. In fact, appellee's own admission that she placed items inside her purse was sufficient to show an exercise of control over those items so as to constitute 'appropriation.'" (At 25) "The court of appeals indicated that the trial court could doubt or disbelieve the reliability of the information given by the employee. But as the court of appeals itself held, the employee's report was sufficiently reliable to establish reasonable suspicion. The employee's report was then corroborated by appellee's admission that she had placed items in her purse, and other circumstances—other items visible in the cart and the jacket covering the purse—further reinforced the conclusion that appellee intended to deprive the store of the property that she had concealed." (At 26) "We conclude that the courts below erred in concluding that the police officer lacked probable cause to arrest appellee." (Footnotes omitted).

Ramirez-Tamayo v. State, 537 S.W.3d 29, 32 (Tex. Crim. App. 2017). "In this case, we address whether the record supports the trial court's decision that a peace officer had reasonable

suspicion of narcotics possession to continue the detention of a driver beyond the purpose of the stop for a traffic violation." (At 37) "As long as there is some evidence in the record to support the trial court's implied finding that the officer was reasonably capable of making rational inferences and deductions by drawing on his own experience and training, the State does not have an additional burden to include extensive details about the officer's experience and training[.]" (At 39) "We hold that the court of appeals erred by failing to defer to the trial court's implicit determination that the deputy was credible and reliable in explaining why the otherwise apparently innocent behaviors gave rise to reasonable suspicion under the circumstances, and by failing to consider the combined logical force or the totality of the evidence in assessing the existence of reasonable suspicion. Accordingly, the court of appeals erred by reversing the trial court's order denying appellant's pretrial motion to suppress."

State v. Rodriguez, 521 S.W.3d 1, 5 (Tex. Crim. App. 2017). "Resident assistants searched the dorm room of Mikenzie Renee Rodriguez, found drugs, and called their director, who in turn called the police. The police then entered the room and seized the drugs. Rodriguez was indicted for possession of a controlled substance. The trial court granted Rodriguez's motion to suppress and, on the State's appeal, the court of appeals affirmed—holding there is no college dorm room exception to the Fourth Amendment. We granted review because this is an issue of first impression to this Court. We agree with the court of appeals that the officers' physical intrusion into a constitutionally protected area was a search within the meaning of the Fourth Amendment. And because it was done without a warrant, consent, or special needs, the fruits of that search were rightly suppressed." (At 22) "To be sure, we are not asked to weigh in on the legality of the initial search by the RAs pursuant to the student housing agreement. Rather, we are asked to decide whether a subsequent search by law enforcement at the implied invitation of university officials violated the Fourth Amendment. We hold, as the court of appeals did, that Appellee retained an expectation of privacy in her dorm room even after it had been searched by private citizens and that the subsequent entry and search by law enforcement did not fall within any recognized exceptions to the warrant requirement."

Byram v. State, 510 S.W.3d 918, 920 (Tex. Crim. App. 2017). "[P]olice officers do not always need to look for crime to find it. They may encounter crime while engaged in their community-caretaking functions, and when they do, we expect them to take the action necessary to 'protect and serve.' The officer in this case encountered and arrested an intoxicated driver during a traffic stop he initiated to check the welfare of a passenger in the vehicle. The question is whether this particular traffic stop was a reasonable seizure under the community-caretaking doctrine. We hold that it was." (At 925) "Considering the totality of the circumstances surrounding Appellant's passenger at the time Figueroa initiated the traffic stop, a reasonable person would believe she was in need of help. Her incapacitated state, her location in the passenger seat of an unconcerned driver's vehicle in the middle of a bar district on the Fourth of July, and the driver's behavior comprised circumstances in which we would expect a caring police officer to intervene. Figueroa's decision to initiate a traffic stop was reasonable."

[***Note**: Love v. State* was overruled in part by *Holder v. State*, 639 S.W.3d 704 (Tex. Crim. App. 2022).]

Love v. State, 543 S.W.3d 835, 844-45 (Tex. Crim. App. 2016). "All of this leads us to conclude that the content of appellant's text messages could not be obtained without a probable cause-based warrant. Text messages are analogous to regular mail and email communications. Like regular mail and email, a text message has an 'outside address "visible" to the third-party carriers that transmit it to its intended location, and also a package of content that the sender presumes will be read only by the intended recipient.' Further, the State presented no evidence that Metro PCS had any business purpose for keeping records of the contents of its customers' text messages. Therefore, we hold that appellant had a reasonable expectation of privacy in the contents of the text messages he sent. Consequently, the State was prohibited from compelling Metro PCS to turn over appellant's content-based communications without first obtaining a warrant supported by probable cause." (At 845-46) "Instead, under Article 38.23(b), the good faith exception to the statutory exclusionary remedy applies only when the law enforcement officer acted "in objective good faith reliance upon a warrant issued by a neutral magistrate based upon probable cause." Here, because there was no warrant and no showing of probable cause, the statutory good faith exception is not triggered, and the general statutory exclusionary remedy applies. The trial court erred in failing to suppress the content of Appellant's text messages." (Citations omitted).

State v. Copeland, 501 S.W.3d 610, 613 (Tex. Crim. App. 2016). "There is no dispute here that Copeland argued in her motion to suppress that the length of her detention was unreasonable, that the State defended that allegation at the suppression hearing, or that the State failed to raise the issue on appeal. However, the State argues that, because the trial court's findings and conclusions did not address the length-of-detention issue, it was not a theory of law applicable to the case. The State further asserts that it would be unreasonable to require parties to litigate issues that neither the trial court nor the appellate court treated as potentially case dispositive to avoid forfeiture of those issues." (At 614) "[W]e agree with the State that the trial judge had a duty to issue all 'essential' findings and conclusions and that it failed to do so here, but the judge's error does not lead to the conclusion that the State should be relieved of its separate duty to preserve error for review. We hold that the State procedurally defaulted its length-of-detention argument because, although it was a theory of law applicable to the case, the State failed to advance that argument on appeal[.]"

Furr v. State, 499 S.W.3d 872, 875 (Tex. Crim. App. 2016). "We granted Furr's petition for discretionary review to determine whether the court of appeals erred when it held that the stop and frisk of Furr did not violate the Fourth Amendment prohibition on unreasonable searches and seizures." (At 876) "Furr argued on appeal that the anonymous tip did not establish reasonable suspicion to detain and frisk him, but the court of appeals

disagreed." (At 879) "The court of appeals held that Furr's nervousness in combination with [Officer] Ayala's observation that he appeared to be under the influence of a drug corroborated the tip sufficiently to support a brief investigative detention and that Furr's failure to promptly respond to Ayala's question about whether he was armed, in combination with the other circumstances, supported the protective frisk. We agree."

Birchfield v. N.D., 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016). (At 136 S. Ct. 2166) "Drunk drivers take a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year. To fight this problem, all States have laws that prohibit motorists from driving with a blood alcohol concentration (BAC) that exceeds a specified level. But determining whether a driver's BAC is over the legal limit requires a test, and many drivers stopped on suspicion of drunk driving would not submit to testing if given the option. So every State also has long had what are termed 'implied consent laws.' These laws impose penalties on motorists who refuse to undergo testing when there is sufficient reason to believe they are violating the State's drunk-driving laws." (At 2166-67) "In the past, the typical penalty for noncompliance was suspension or revocation of the motorist's license. The cases now before us involve laws that go beyond that and make it a crime for a motorist to refuse to be tested after being lawfully arrested for driving while impaired. The question presented is whether such laws violate the Fourth Amendment's prohibition against unreasonable searches." (At 2184) "Having assessed the effect of BAC tests on privacy interests and the need for such tests, we conclude that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. The impact of breath tests on privacy is slight, and the need for BAC testing is great. (¶) We reach a different conclusion with respect to blood tests. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents have offered no satisfactory justification for demanding the more intrusive alternative without a warrant." (At 2186) "[W]e conclude that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense."

Utah v. Strieff, 579 U.S. 232, 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016). (At 136 S. Ct. 2059) "To enforce the Fourth Amendment's prohibition against 'unreasonable searches and seizures,' this Court has at times required courts to exclude evidence obtained by unconstitutional police conduct. But the Court has also held that, even when there is a Fourth Amendment violation, this exclusionary rule does not apply when the costs of exclusion outweigh its deterrent benefits. In some cases, for example, the link between the unconstitutional conduct and the discovery of the evidence is too attenuated to justify suppression. The question in this case is whether this attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest. We hold that the evidence the officer seized as part of the search incident to arrest is admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest." (At 2063) "Applying these factors, we hold that the evidence discovered on Strieff's person was admissible because the unlawful stop was sufficiently attenuated by the pre-existing arrest warrant. Although the illegal stop was close in time to Strieff's arrest, that consideration is outweighed by two factors supporting the State. The outstanding arrest warrant for Strieff's arrest is a critical intervening circumstance that is wholly independent of the illegal stop. The discovery of that warrant broke the causal chain between the unconstitutional stop and the discovery of evidence by compelling Officer Fackrell to arrest Strieff. And, it is especially significant that there is no evidence that Officer Fackrell's illegal stop reflected flagrantly unlawful police misconduct."

Brodnex v. State, 485 S.W.3d 432, 434 (Tex. Crim. App. 2016). "Appellant was charged with the offenses of tampering with physical evidence and possession of a controlled substance after he was stopped by police and found to be carrying crack cocaine . . . we granted review on our own motion in order to determine whether an officer has reasonable suspicion to detain a suspect based upon observing the suspect walking with another person at 2 a.m. in an area known for narcotics activity and based upon the officer's unsubstantiated belief the suspect is a 'known criminal.'" (At 437) "Officer Chesworth cited the time of day, the area's known narcotic activity, and his belief, based on what other officers had told him, that Appellant was a 'known criminal' as the reasons for detaining Appellant. The court of appeals concluded that the totality of these circumstances was sufficient to provide reasonable suspicion that criminal activity was afoot. However, we disagree that these circumstances were enough to support a conclusion that a reasonable suspicion to stop Appellant existed." (At 438) "When Officer Chesworth stopped Appellant, he had simply seen Appellant walking down the street, at night and in a high-crime location. The only additional information he had when he decided to detain Appellant was Appellant's name and the belief that he was a known criminal. He had limited personal knowledge of Appellant's criminal history or possible linkage to a specific crime, and he did not observe Appellant do anything that would indicate he was engaged in criminal activity . . . we hold that Officer Chesworth's detention of Appellant was not supported by reasonable suspicion. (¶) Thus, Appellant was illegally detained, and the crack cocaine that was found in the subsequent search should have been suppressed."

Ford v. State, 477 S.W.3d 321, 322 (Tex. Crim. App. 2015), *cert. denied*, 578 U.S. 1005 (2016). "Did the State's warrantless acquisition of four days worth of historical cell-site-location information—recorded by Jon Thomas Ford's cell-phone service provider—violate the Fourth Amendment? No. We agree with the San Antonio Court of Appeals that, because a third-party, AT&T, gathered and maintained the information as business records of the service provided to Ford's phone, Ford did not have a

reasonable expectation of privacy in the data. The State did not violate Ford's Fourth Amendment rights when it obtained that information by way of a court order under Article 18.21 § 5(a) of the Texas Code of Criminal Procedure—an order available on a showing short of probable cause." (At 330) "Appellant had no legitimate expectation of privacy in records held by a third-party cell-phone company identifying which cell-phone towers communicated with his cell phone at particular points in the past." (At 334) "We acknowledge that Fourth Amendment concerns might be raised if long-term location information were acquired, if real-time location information were used to track the present movements of individuals in private locations, if the data involved came from a GPS rather than cell-phone towers, or if the data acquired was content information rather than location data. But in the circumstances specific to this case, we do not see a jurisprudential reason to stray from the third-party doctrine as laid down by the Supreme Court." (Footnotes omitted).

State v. Rendon, 477 S.W.3d 805, 806 (Tex. Crim. App. 2015). "In this case, we are asked to decide whether it constitutes a search within the meaning of the Fourth Amendment for law-enforcement officers to bring a trained drug-detection dog directly up to the front door of an apartment-home for the purpose of conducting a canine-narcotics sniff. We hold that it does. Consistent with the reasoning of the Supreme Court's opinion in *Florida v. Jardines* [*Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013)], we conclude that the officers' use of a dog sniff at the front door of the apartment-home of Michael Eric Rendon, appellee, resulted in a physical intrusion into the curtilage that exceeded the scope of any express or implied license, thereby constituting a warrantless search in violation of the Fourth Amendment. We, therefore, affirm the judgment of the court of appeals, which had affirmed the trial court's rulings granting appellee's motions to suppress."

State v. Jackson, 464 S.W.3d 724, 726 (Tex. Crim. App. 2015). "Law enforcement officers, suspecting Appellee of drug trafficking, placed a global positioning system (GPS) tracking device on his car in an attempt to ascertain when and where he was obtaining his supply. They monitored his movement as he traveled at speeds exceeding the posted speed limit . . . Later, another officer who was aware of the narcotics investigation, verified by radar that Appellee was speeding and pulled him over for that traffic offense. Without ever issuing Appellee a speeding citation, the officers obtained his consent to search his car and discovered a quantity of methamphetamine in the trunk. A short time later Appellee confessed that it was his. (¶) The State prosecuted Appellee for possessing methamphetamine with intent to deliver. Appellee moved to suppress both the methamphetamine and his confession. The trial court held that both were rendered inadmissible, pursuant to Article 38.23(a) of the Texas Code of Criminal Procedure, because the search was accomplished through the installation and monitoring of the GPS tracker. It granted Appellee's motion to suppress." (At 730) "[I]t appears here that the installation of the GPS tracking device and its subsequent employment to monitor Appellee's whereabouts constituted a search for Fourth Amendment purposes. The SPA does not presently contest that this search was illegal." (At 731) "In this case, the question boils down to whether the verification by police of Appellee's speeding through 'pacing' and radar constituted a 'means' of obtaining the contraband that was 'sufficiently distinguishable' from the illegal installation and monitoring with the GPS device 'to be purged of the primary taint.'" (At 734) "The parties have agreed and the record supports the proposition that, once Appellee was stopped, he voluntarily consented and confessed. Neither the consent nor the confession was the result of any incremental illegality beyond the non-flagrant primary illegality of installing and monitoring the GPS tracking device in the absence of a warrant obtained on the basis of probable cause. (¶) [T]he taint of the unconstitutional GPS tracking device search had dissipated by the time Appellee consented to the search of his vehicle and confessed that the methamphetamine discovered therein were his."

State v. Cuong Phu Le, 463 S.W.3d 872, 874 (Tex. Crim. App. 2015), *cert. denied*, 577 U.S. 1075 (2016). "This case involves a search warrant based in part upon an alert from a drug-detecting dog. After the execution of the search warrant, but before a hearing on the motion to suppress, the United States Supreme Court held in *Florida v. Jardines* [*Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013)] that law-enforcement officers' use of a drug-sniffing dog on the front porch of a home without a search warrant violated the Fourth Amendment. Consequently, this Court must determine whether the search-warrant affidavit—minus the drug-dog's alert—clearly established probable cause . . . . we find that, when looking at the warrant affidavit as a whole, the independently and lawfully acquired information stated in the affidavit clearly established probable cause." (At 878) "Notably, the tip in this case came from a concerned citizen in good standing in the community. A citizen-informer is presumed to speak honestly and accurately; the criminal snitch who is making a quid pro quo trade enjoys no such presumption. (¶) More importantly, the concerned citizen provided detailed information that Sergeants Clark and Roberts verified over their three-week investigation." (At 879) "Finally, Sergeant Clark verified the smell of raw marijuana at the front door of the residence. After three weeks of surveillance, Sergeant Roberts also smelled raw marijuana on appellee's person and in appellee's car after he observed appellee leave the suspected place." (At 881) "The olfactory and visual observations of Sergeants Clark and Roberts verified a concerned citizen's firsthand description of the atypical activity around the Jubilee residence, activity consistent with the existence of a marijuana growing operation in the residence. Because this untainted information in the search-warrant affidavit clearly established probable cause, we reverse and remand to the trial court."

Grady v. N.C., 575 U.S. 306, 135 S. Ct. 1368, 191 L. Ed. 2d 459 (2015). (At 135 S. Ct. 1369) "Petitioner Torrey Dale Grady was convicted in North Carolina trial courts of a second degree sexual offense in 1997 and of taking indecent liberties with a child in 2006. After serving his sentence for the latter crime, Grady was

ordered to appear in New Hanover County Superior Court for a hearing to determine whether he should be subjected to satellite-based monitoring (SBM) as a recidivist sex offender. Grady did not dispute that his prior convictions rendered him a recidivist under the relevant North Carolina statutes. He argued, however, that the monitoring program—under which he would be forced to wear tracking devices at all times—would violate his Fourth Amendment right to be free from unreasonable searches and seizures." (At 1371) "The State's program is plainly designed to obtain information. And since it does so by physically intruding on a subject's body, it effects a Fourth Amendment search. (¶) That conclusion, however, does not decide the ultimate question of the program's constitutionality. The Fourth Amendment prohibits only *unreasonable* searches . . . . The North Carolina courts did not examine whether the State's monitoring program is reasonable—when properly viewed as a search—and we will not do so in the first instance."

Rodriguez v. U.S., 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015). (At 135 S. Ct. 1612) "In *Illinois v. Caballes*, 543 U.S. 405, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005), this Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop. We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation. The Court so recognized in *Caballes*, and we adhere to the line drawn in that decision." (At 1615) "An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." (Citation omitted).

Heien v. N.C., 574 U.S. 54, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014). (At 135 S. Ct. 534) "But what if the police officer's reasonable mistake is not one of fact but of law? In this case, an officer stopped a vehicle because one of its two brake lights was out, but a court later determined that a single working brake light was all the law required. The question presented is whether such a mistake of law can nonetheless give rise to the reasonable suspicion necessary to uphold the seizure under the Fourth Amendment. We hold that it can. Because the officer's mistake about the brake-light law was reasonable, the stop in this case was lawful under the Fourth Amendment." (At 536) "The question here is whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition. We hold that it can."

State v. Villareal, 475 S.W.3d 784, 787 (Tex. Crim. App. 2014), *cert. denied*, 579 U.S. 941 (2016). "In this case, we are asked to decide whether the warrantless, nonconsensual drawing of blood from an individual suspected of driving while intoxicated, conducted pursuant to the implied-consent and mandatory-blood-draw provisions in the Texas Transportation Code, violates the Fourth Amendment. *See* U.S. Const. amend. IV; Tex. Transp. Code §§ 724.011(a), 724.012(b), 724.013. This question comes to us in the form of an interlocutory appeal filed by the State challenging the trial court's order granting a motion to suppress in favor of David Villarreal, appellee, who was arrested for felony DWI and subjected to warrantless blood-specimen collection over his objection pursuant to the provisions in the Code. (¶) [W]e conclude that the warrantless, nonconsensual testing of a DWI suspect's blood does not categorically fall within any recognized exception to the Fourth Amendment's warrant requirement, nor can it be justified under a general Fourth Amendment balancing test. Accordingly, we hold that the search in this case violated the Fourth Amendment." (At 800) "To the extent the State suggests that the implied-consent and mandatory-blood-draw provisions in the Transportation Code categorically extinguish a DWI suspect's right to withdraw consent when some aggravating circumstance is present, that suggestion cannot be squared with the requirement that, to be valid for Fourth Amendment purposes, consent must be freely and voluntarily given based on the totality of the circumstances, and must not have been revoked or withdrawn at the time of the search." (At 807) "[W]e conclude that the special-needs doctrine is inapplicable in the present context, when the search of a DWI suspect's blood is undertaken by law-enforcement officers for the primary purpose of generating evidence to be used in a criminal prosecution." (At 813) "We hold that the provisions in the Transportation Code do not, taken by themselves, form a constitutionally valid alternative to the Fourth Amendment warrant requirement."

McClintock v. State, 444 S.W.3d 15, 19-20 (Tex. Crim. App. 2014). "The magistrate made his assessment of probable cause based upon a warrant affidavit that included far more than [Officer] Arthur's own detection of the odor of marijuana. He also had the drug dog's alert to rely on, and made his probable cause determination accordingly. When part of a warrant affidavit must be excluded from the calculus, as *Jardines* [*Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013)] establishes that the information deriving from the drug-dog sniff in this case must, then it is up to the reviewing courts to determine whether 'the independently acquired and lawful information stated in the affidavit nevertheless clearly established probable cause.' Arthur's reference to 'the location' from which he smelled the marijuana is sufficiently ambiguous that it cannot be said that, even taken together with the other independently acquired information stated in the warrant affidavit, it *clearly* established probable cause."

Riley v. Cal., 573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014). (At 134 S. Ct. 2480) "These two cases raise a common question: whether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested." (At 2494-95) "Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life[.]' The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our

answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant." (Citation omitted).

Matthews v. State, 431 S.W.3d 596, 599-600 (Tex. Crim. App. 2014). "Appellant was charged with possession with intent to deliver cocaine. He filed a pre-trial motion to suppress the crack cocaine that officers found during a warrantless search of a van that appellant had borrowed. (¶) We granted review to determine (1) whether a person who legitimately borrows a vehicle has standing to challenge its search, and (2) if appellant's initial and continued detention was supported by reasonable suspicion. We conclude that, although appellant originally had standing to challenge the search of the borrowed van, he abandoned any expectation of privacy (and hence his standing) when he fled from the officers and the van. Second, the officers had reasonable suspicion to detain appellant that was not based solely on the anonymous tip, and appellant's act of fleeing increased their suspicion and further justified his continued detention to await the arrival of a drug dog."

Navarette v. Cal., 572 U.S. 393, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (2014). (At 134 S. Ct. 1686) "After a 911 caller reported that a vehicle had run her off the road, a police officer located the vehicle she identified during the call and executed a traffic stop. We hold that the stop complied with the Fourth Amendment because, under the totality of the circumstances, the officer had reasonable suspicion that the driver was intoxicated." (At 1691) "The 911 caller in this case reported more than a minor traffic infraction and more than a conclusory allegation of drunk or reckless driving. Instead, she alleged a specific and dangerous result of the driver's conduct: running another car off the highway. That conduct bears too great a resemblance to paradigmatic manifestations of drunk driving to be dismissed as an isolated example of recklessness . . . . As a result, we cannot say that the officer acted unreasonably under these circumstances in stopping a driver whose alleged conduct was a significant indicator of drunk driving."

Fernandez v. Cal., 571 U.S. 292, 134 S. Ct. 1126, 188 L. Ed. 2d 25 (2014). (At 134 S. Ct. 1129-30) "Our cases firmly establish that police officers may search jointly occupied premises if one of the occupants consents. In *Georgia v. Randolph*, 547 U.S. 103, 126 S. Ct. 1515, 164 L. Ed. 2d 208 (2006), we recognized a narrow exception to this rule, holding that the consent of one occupant is insufficient when another occupant is present and objects to the search. In this case, we consider whether *Randolph* applies if the objecting occupant is absent when another occupant consents. Our opinion in *Randolph* took great pains to emphasize that its holding was limited to situations in which the objecting occupant is physically present. We therefore refuse to extend *Randolph* to the very different situation in this case, where consent was provided by an abused woman well after her male partner had been removed from the apartment they shared." (Citation, footnote omitted).

Wade v. State, 422 S.W.3d 661, 664-65 (Tex. Crim. App. 2013). "The Supreme Court has consistently held that a person's refusal to cooperate with a police request during a consensual encounter cannot, by itself, provide the basis for a detention or *Terry* [*Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)] frisk. Because appellant's refusal to cooperate was accompanied only by his extreme nervousness and a game warden's hunch he was up to no good, the warden's stop-and-frisk of appellant violated the Fourth Amendment." (At 666) "Appellant's petition for review asks whether a reasonable-suspicion determination that criminal activity and potential danger may be derived—almost wholly—from a citizen's refusal to answer questions about what he has in his truck or to permit a search of his truck." (At 676) "Neither nervousness nor a refusal to cooperate with an officer during a consensual encounter are sufficient by themselves to constitute reasonable suspicion. Nor were they sufficient in combination with appellant's statements about his reasons for coming to the boat launch to provide the basis for the detention and frisk. Appellant's statement about the pipe in his truck was derived from the warden's illegal detention and was 'fruit of the poisonous tree,' and therefore that statement could not provide probable cause for searching appellant's truck. The trial judge erred in denying the motion to suppress, and the court of appeals erred in upholding that denial."

Arguellez v. State, 409 S.W.3d 657, 659 (Tex. Crim. App. 2013). "On direct appeal, appellant's sole issue asked, 'Does merely taking photographs at a public pool give police reasonable suspicion to stop appellant's vehicle?' The court of appeals overruled that single issue and affirmed the trial court's judgments. (¶) We granted review of one of two grounds that appellant raised in his petition for discretionary review: 'Is "crime afoot" when a person takes pictures at a public pool permitting a police officer to conduct an investigative detention?' We conclude that crime was not afoot, sustain that ground, and reverse the court of appeals's judgments." (At 664) "The totality of circumstances, including the cumulative information known to the cooperating officers at the time of the stop, was that an unknown male in a described vehicle was taking photographs at a public pool. Photographs are routinely taken of people in public places, including at public beaches, where bathing suits are also commonly worn, and at concerts, festivals, and sporting events. Taking photographs of people at such public venues is not unusual, suspicious, or criminal. (¶) The generally matching description of the vehicle simply connects appellant to the 'suspicious' photography, but does not in any way suggest that, by taking pictures in a public place, appellant was, had been, or soon would be, engaged in criminal activity. And since there was no indication of crime being afoot, leaving the scene of such photography does not constitute flight or evasion. Likewise, the fact that the pool manager remained in contact with the dispatcher and confirmed that the initial officer was behind the suspect vehicle does not in any way indicate that crime was afoot. (¶) Given the record before us, we hold both that there was insufficient evidence to establish reasonable suspicion for the stop of appellant's vehicle and that the investigatory detention of appellant was not supported by reasonable suspicion."

Maryland v. King, 569 U.S. 435, 133 S. Ct. 1958, 186 L. Ed. 2d 1 (2013). (At 133 S. Ct. 1965) "In 2003 a man concealing his face and armed with a gun broke into a woman's home in Salisbury, Maryland. He raped her. The police were unable to identify or apprehend the assailant based on any detailed description or other evidence they then had, but they did obtain from the victim a sample of the perpetrator's DNA. (¶) In 2009 Alonzo King was arrested in Wicomico County, Maryland, and charged with first- and second-degree assault for menacing a group of people with a shotgun. As part of a routine booking procedure for serious offenses, his DNA sample was taken by applying a cotton swab or filter paper—known as a buccal swab—to the inside of his cheeks. The DNA was found to match the DNA taken from the Salisbury rape victim. King was tried and convicted for the rape. Additional DNA samples were taken from him and used in the rape trial, but there seems to be no doubt that it was the DNA from the cheek sample taken at the time he was booked in 2009 that led to his first having been linked to the rape and charged with its commission. (¶) The Court of Appeals of Maryland, on review of King's rape conviction, ruled that the DNA taken when King was booked for the 2009 charge was an unlawful seizure because obtaining and using the cheek swab was an unreasonable search of the person. It set the rape conviction aside. This Court granted certiorari and now reverses the judgment of the Maryland court." (At 1980) "[T]he Court concludes that DNA identification of arrestees is a reasonable search that can be considered part of a routine booking procedure. When officers make an arrest supported by probable cause to hold for a serious offense and they bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment."

Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013). (At 133 S. Ct. 1556) "In *Schmerber v. California*, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966), this Court upheld a warrantless blood test of an individual arrested for driving under the influence of alcohol because the officer 'might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence.' The question presented here is whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases. We conclude that it does not, and we hold, consistent with general Fourth Amendment principles, that exigency in this context must be determined case by case based on the totality of the circumstances." (At 1568) "We hold that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant." (Citation omitted).

Florida v. Harris, 568 U.S. 237, 133 S. Ct. 1050, 185 L. Ed. 2d 61 (2013). (At 133 S. Ct. 1053) "In this case, we consider how a court should determine if the 'alert' of a drug-detection dog during a traffic stop provides probable cause to search a vehicle. The Florida Supreme Court held that the State must in every case present an exhaustive set of records, including a log of the dog's performance in the field, to establish the dog's reliability. We think that demand inconsistent with the 'flexible, common-sense standard' of probable cause." (At 1058) "In short, a probable-cause hearing focusing on a dog's alert should proceed much like any other. The court should allow the parties to make their best case, consistent with the usual rules of criminal procedure. And the court should then evaluate the proffered evidence to decide what all the circumstances demonstrate. If the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, then the court should find probable cause. If, in contrast, the defendant has challenged the State's case (by disputing the reliability of the dog overall or of a particular alert), then the court should weigh the competing evidence. In all events, the court should not prescribe, as the Florida Supreme Court did, an inflexible set of evidentiary requirements. The question—similar to every inquiry into probable cause—is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime. A sniff is up to snuff when it meets that test." (At 1059) "Because training records established Aldo's reliability in detecting drugs and Harris failed to undermine that showing, we agree with the trial court that [Officer] Wheetley had probable cause to search Harris's truck." (Citations omitted).

Florida v. Jardines, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013). (At 133 S. Ct. 1413) "We consider whether using a drug-sniffing dog on a homeowner's porch to investigate the contents of the home is a 'search' within the meaning of the Fourth Amendment. (¶) [T]he Florida Supreme Court quashed the decision of the Third District Court of Appeal and approved the trial court's decision to suppress, holding (as relevant here) that the use of the trained narcotics dog to investigate Jardines' home was a Fourth Amendment search unsupported by probable cause, rendering invalid the warrant based upon information gathered in that search." (At 1417) "[W]e need not decide whether the officers' investigation of Jardines' home violated his expectation of privacy under *Katz* [*Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)]. One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred." (At 1417-18) "The government's use of trained police dogs to investigate the home and its immediate surroundings is a 'search' within the meaning of the Fourth Amendment. The judgment of the Supreme Court of Florida is therefore affirmed."

Bailey v. U.S., 568 U.S. 186, 133 S. Ct. 1031, 185 L. Ed. 2d 19 (2013). (At 133 S. Ct. 1035) "The instant case involves the search of a place (an apartment dwelling) and the seizure of a person. But here, though it is acknowledged that the search was lawful, it does not follow that the seizure was lawful as well. The seizure of the person is quite in question. The issue to be resolved is whether the seizure of the person was reasonable when he was

stopped and detained at some distance away from the premises to be searched when the only justification for the detention was to ensure the safety and efficacy of the search." (At 1038) "In *Summers* [*Michigan v. Summers*, 452 U.S. 692, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981)] and later cases the occupants detained were found within or immediately outside a residence at the moment the police officers executed the search warrant. In *Summers*, the defendant was detained on a walk leading down from the front steps of the house. Here, however, petitioner left the apartment before the search began; and the police officers waited to detain him until he was almost a mile away." (At 1041) "The categorical authority to detain incident to the execution of a search warrant must be limited to the immediate vicinity of the premises to be searched." (At 1042-43) "Detentions incident to the execution of a search warrant are reasonable under the Fourth Amendment because the limited intrusion on personal liberty is outweighed by the special law enforcement interests at stake. Once an individual has left the immediate vicinity of a premises to be searched, however, detentions must be justified by some other rationale." (Citations omitted).

State v. Copeland, 399 S.W.3d 159, 159-60 (Tex. Crim. App. 2013). "Is a vehicle a mobile 'castle' so that passengers are treated the same as tenants who may disallow police to search a residence after a fellow tenant has consented to the search? Concluding that it is not, we decline to extend the holding in *Georgia v. Randolph*, 547 U.S. 103, 123, 126 S. Ct. 1515, 164 L. Ed. 2d 208 (2006), from residences to vehicles. Because the trial court applied *Randolph* to vehicles, the court of appeals erred by upholding the suppression ruling on that basis." (At 165) "[O]ther than the general observation that a driver is the hierarch of a vehicle as it ordinarily travels along a road, a 'regular scheme' with respect to vehicles is difficult to ascertain after the stage of tendering of driver's licence and insurance. The fluid nature of traffic stops and the lack of clarity about the relationship of the passengers to the driver make the social expectations described in *Randolph* inapplicable to vehicles." (At 166-67) "[I]t does not appear that the Supreme Court intended for *Randolph* to apply to vehicles because the social expectations for occupants of vehicles are unlike co-tenants in residences; people have a lessened expectation of privacy in vehicles as compared to residences; and *Randolph* was intended to narrowly apply only to the present, objecting co-tenant in a residence."

Ex parte Moore, 395 S.W.3d 152, 160-61 (Tex. Crim. App. 2013). "Synthesizing this case law, it is clear that the rationale behind *Minnesota v. Olson* [*Minnesota v. Olson*, 495 U.S. 91, 110 S. Ct. 1684, 109 L. Ed. 2d 85 (1990)] compels the conclusion that overnight guests of a registered hotel guest share the registered guest's reasonable expectation of privacy in the hotel room. However, whether a temporary guest may share in the registered guest's reasonable expectation of privacy is to be evaluated by the totality of the circumstances. This holding is consistent with the holdings of other jurisdictions. And, in *Rakas v. Illinois*, 439 U.S. 128, 99 S. Ct. 421, 58 L. Ed. 2d 387, the Supreme Court rejected the phrase 'legitimately on premises' as too broad a gauge for measuring Fourth Amendment rights, illustrating its point by noting that the phrase would allow even a 'casual visitor' invited into a home for a presumably brief stay to have standing. (¶) Turning to the case at hand, when viewed in the light most favorable to the trial court's ruling, the record of the hearing on the motion to suppress established only that Applicant was in the motel room at the time the search warrant was executed. The evidence does not show that Applicant's subjective expectation of privacy was one that society was prepared to recognize as objectively reasonable under the circumstances. This conclusion is grounded on the totality of the circumstances established by the evidence. There was no evidence that Applicant was the registered guest of the room or that he had any property or possessory interest in the room. Nor was there evidence that he had any personal belongings in the room or that he intended to stay overnight." (Footnote omitted).

[***Note:*** *Turrubiate v. State* was overruled in part by *Igboji v. State*, 666 S.W.3d 607, 609 (Tex. Crim. App. 2023).]

Turrubiate v. State, 399 S.W.3d 147, 149 (Tex. Crim. App. 2013). "In deciding this petition for discretionary review filed by the State, we address what constitutes exigent circumstances permitting police officers to enter a home without a warrant. We agree with the holding by the court of appeals that probable cause to believe that illegal drugs are in a home coupled with an odor of marijuana from the home and a police officer making his presence known to the occupants do not justify a warrantless entry." (At 153) "In light of *King* [*Kentucky v. King*, 563 U.S. 452, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011)], we conclude that the five *McNairy* [*McNairy v. State*, 835 S.W.2d 101 (Tex. Crim. App. 1991)] factors no longer adequately assist a court in determining whether the record shows an exigent circumstance. The first circumstance—the degree of urgency involved and the amount of time necessary to obtain a warrant—and the third circumstance—the possibility of danger to police officers guarding the site of the contraband while a search warrant is sought—are now immaterial to the exigent-circumstances evaluation. The second circumstance, which permits consideration of whether there is a reasonable belief that the contraband is about to be removed, essentially allows the court to consider the ultimate question at issue, which asks whether there is proof that the officer reasonably believed that removal or destruction of evidence was imminent. Although it remains appropriate for a court to consider *McNairy's* fourth and fifth circumstances regarding whether occupants know the police are 'on their trail' and whether the evidence is readily destructible, these factors are merely aids in a court's assessment of the entire record in determining whether the officer reasonably believed that the removal or destruction of evidence was imminent." (Citations omitted).

State v. Betts, 397 S.W.3d 198, 201 (Tex. Crim. App. 2013). "Appellee was arrested and indicted for the felony offense of cruelty to animals after law enforcement officers seized approximately thirteen of his dogs that were located on the property of his aunt, Deanna Hall, in Kerens, Texas. *See* Tex. Penal Code § 42.09. Appellee filed a motion to suppress, complaining of the warrantless search and seizure." (At 204) "The record supports the trial court's conclusion that Appellee had a reasonable

expectation of privacy. The property where the search and seizure occurred was owned by Deanna Hall. While he no longer lived at the residence, Appellee had permission from his aunt to keep his dogs in the backyard and to enter the premises in order to water and feed his dogs, which he did on a daily basis. The backyard was fenced on three sides with two-wire fencing, and the fourth side was enclosed by the neighbor's wood privacy fence. The dogs were kept approximately 70 yards from the road, behind the house, in a central part of the back yard. Some of the dogs were chained to the ground near dog-house structures, and others were in pens surrounded by chainlink. Certainly the housing and shelter of animals is a common private use for one's backyard. (¶) Consequently, based upon the totality of the circumstances, and viewing the evidence in the appropriate light, the record supports that Appellee had a reasonable expectation of privacy in his aunt's backyard." (At 207) "The officers did not have a warrant to enter the yard, and the State does not argue that an exception to the warrant requirement existed. Therefore, the police were not authorized by the plain view doctrine to make a warrantless entry into the yard to seize the dogs." (Footnote omitted).

State v. Duran, 396 S.W.3d 563, 566-67 (Tex. Crim. App. 2013). "When Anthony Duran made a left-hand turn in front of a speeding police car, the police officer braked, turned to follow, pulled Mr. Duran's car over, and eventually arrested him for DWI. Mr. Duran filed a motion to suppress, claiming that the officer did not have reasonable suspicion to stop him. The trial judge granted the motion, the State appealed, and the court of appeals reversed the trial judge's ruling. The issue before us is whether an appellate court must defer to a trial judge's factual findings which, when viewed piecemeal and in isolation, may be ambiguous, but, when read in their totality, reasonably support his legal conclusion. It must. A reviewing court must apply the same non-technical, commonsense deference—not only to the trial judge's individual factual findings, but also to the totality of those findings—that it uses to assess a magistrate's determination of probable cause. This case depends upon a single fact, not any legal issue: Did the police officer actually see a traffic violation before he detained Mr. Duran? The trial judge's findings indicate that he did not. We must defer to that determination of fact." (At 573-74) "The State is correct that there is 'indisputable visual evidence' that the center stripe violation occurred before Officer Candia stopped Mr. Duran. But there is no indisputable visual evidence that Officer Candia saw that violation. And that is what matters. Because the record supports the trial judge's conclusion—based upon the totality of his factual findings—that Officer Candia did not see the 'center stripe violation,' and that he stopped Mr. Duran solely on the basis of his left-hand turn in front of the speeding patrol car, we uphold the trial court's ruling." (Footnotes omitted).

Bonds v. State, 403 S.W.3d 867, 876 (Tex. Crim. App. 2013). "Considering the warrant's four corners and the additional facts adduced in the motion-to-suppress hearing, we find that the warrant's description of the location to be searched was sufficiently particular within the Fourth Amendment's command. The description of the location to be searched described the location actually searched to a sufficient degree that enabled the officers to locate and distinguish the property intended to be searched from another in the community. The trial judge found the warrant's description of the location to be searched was erroneous in only two respects: the color of the roof and the address. The remaining descriptive factors accurately described the house that was searched." (At 877) "[DPS Sergeant] Ashburn's familiarity with the location to be searched and that he was both the affiant and participated in the warrant's execution are circumstances which resolve any ambiguity created by the description's errors and render the warrant sufficiently particular." (At 878) "We hold that the warrant was supported by probable cause, and the location to be searched, while incorrect in part, was described with sufficient particularity."

State v. Kerwick, 393 S.W.3d 270, 271 (Tex. Crim. App. 2013). "In a motion to suppress evidence, Stacie Kerwick asserted that the officer who detained her lacked reasonable suspicion to conduct the investigatory detention which led to her arrest for driving while intoxicated. The trial judge granted Kerwick's motion and the court of appeals affirmed the ruling. We hold that Kerwick's detention was supported by reasonable suspicion and reverse the court of appeals's judgment." (At 274) "By focusing on what the record and the findings did not contain, the court [of appeals] ventured beyond its role in ensuring that the trial judge's findings were supported by the record. Instead, the court's review of the record, as well as its ultimate conclusion concerning its adequacy, centered on what it believed the record and the trial judge's findings should have contained. Based on our review of the record, we hold that the findings of fact that the trial judge entered are supported by the record. Indeed, the findings of fact essentially mirror Officer Bradford's suppression-hearing testimony in its entirety, indicating that the trial judge found Officer Bradford credible. The court of appeals failed to grant the trial judge's factual findings almost total deference and review *de novo* the trial judge's legal conclusion that Officer Bradford lacked reasonable suspicion based on those factual findings." (Footnotes omitted).

State v. Duarte, 389 S.W.3d 349, 351 (Tex. Crim. App. 2012). "Appellee, Gilbert Duarte, was charged with possession of cocaine found during a search of his house that was made pursuant to a warrant. The affiant police officer relied upon information provided by a first-time informant who was providing information with the expectation of leniency on his pending criminal charges. We agree with the trial judge, who found that the affidavit in this case failed to provide the magistrate with a substantial basis for concluding that probable cause existed to search Mr. Duarte's home." (At 355) "The present affidavit is based almost entirely on hearsay information supplied by a first-time confidential informant." (At 358) "But tips from anonymous or first-time confidential informants of unknown reliability must be coupled with facts from which an inference may be drawn that the informant is credible or that his information is reliable." (At 360) "We agree with the State that 'an affiant's basis for finding the informant reliable need not be of any certain nature.' But, whatever its nature, it must be demonstrated within the four corners of the affidavit. Here, the affiant-officer believed that the confidential informant was

credible largely because he was a 'confidential informant'—a 'snitch' with pending criminal charges who wanted to trade a tip for leniency. We decline to equate the reliability of a first-time, unnamed informant with that of a named citizen-informant. (¶) The trial judge correctly identified the problem with this boilerplate affidavit: it contained insufficient particularized facts about appellee's alleged possession to allow the magistrate to determine probable cause to issue a search warrant. The trial judge did not err in granting Mr. Duarte's motion to suppress." (Footnotes omitted).

Gonzales v. State, 369 S.W.3d 851, 853 (Tex. Crim. App. 2012). "Before trial, Jimmy Gonzales filed a motion to suppress asserting that his seizure violated the Fourth Amendment of the U.S. Constitution and the Texas Constitution. The trial judge overruled the motion. The court of appeals affirmed and held the seizure was a reasonable exercise of the officer's community-caretaking function." (At 855-56) "[T]he focus of his argument is whether Officer Becker's exercise of his community-caretaking function was reasonable, and it centers on the court of appeals's alleged misapplication of the *Wright* [*Wright v. State*, 7 S.W.3d 148, 151 (Tex. Crim. App. 1999)] factors. Gonzales asserts that, 'Officer Becker's belief that [he] needed help was unreasonable because [Officer Becker] did not have sufficient information to reach that conclusion.'" (At 856) "[T]he proper analysis—as cast by *Wright*—is an objective one focusing on what the officer observed and whether the inference that the individual was in need of help was reasonable." (At 857) "We hold that Officer Becker reasonably exercised his community-caretaking function in seizing Gonzales because, under the totality of the circumstances, it was reasonable to believe Gonzales was in need of help. Gonzales's motion to suppress was properly denied." (Footnote omitted).

State v. Mazuca, 375 S.W.3d 294, 302 (Tex. Crim. App. 2012), *cert. denied*, 569 U.S. 906 (2013). "The instant case involves the proper application of the attenuation of taint doctrine, not to a confession, as in *Brown* [*Brown v. Illinois*, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975)], but to contraband that is seized immediately following an unconstitutional detention or arrest. Will the discovery of an outstanding arrest warrant in the relatively few moments that ensue between the illegal stop and the seizure of the contraband invariably serve as an intervening event sufficient to purge the taint of the primary illegality?" (At 306-07) "When police find and seize physical evidence shortly after an illegal stop, in the absence of the discovery of an outstanding arrest warrant in between, that physical evidence should ordinarily be suppressed, even if the police misconduct is not highly purposeful or flagrantly abusive of Fourth Amendment rights. Under this scenario, temporal proximity is the paramount factor. But when an outstanding arrest warrant *is* discovered between the illegal stop and the seizure of physical evidence, the importance of the temporal proximity factor decreases. Under this scenario, the intervening circumstance is a necessary but never, by itself, wholly determinative factor in the attenuation calculation, and the purposefulness and/or flagrancy of the police misconduct, *vel non*, becomes of vital importance. To the extent that our pre-*Brown* analysis on direct appeal in *Johnson* [*Johnson v. State*, 496 S.W.2d 72 (Tex. Crim. App. 1973)] placed practically exclusive emphasis on the intervening circumstance of an arrest warrant to justify the admission of evidence following an illegal stop, we disapprove it." (At 310) "The court of appeals adopted an approach that would effectively *presume* purposeful and/or flagrant police misconduct from the fact of the primary illegality alone rather than assessing the character of that illegality, and of any subsequent police conduct, to determine whether it indicates that they *actually* behaved purposefully or flagrantly in the particular case. We hold that the court of appeals erred to rely upon this de facto presumption to affirm the trial court's ruling on the appellee's motion to suppress. Applying the appropriate analysis today, we hold that the trial court should have denied that motion."

Jones v. State, 364 S.W.3d 854, 855 (Tex. Crim. App. 2012), *cert. denied*, 568 U.S. 889 (2012). "The search-warrant affidavit in this case was imprecise as to the timing of the events it described. We hold that the affidavit nevertheless sufficiently supported the issuance of the search warrant, primarily because it suggested a continuing criminal operation." (At 860) "We have suggested that time is a less important consideration when an affidavit recites observations that are consistent with ongoing drug activity at a defendant's residence." (At 862) "[T]he affidavit in the present case permitted the magistrate to infer a definite outer limit for when the events giving rise to probable cause took place: the events must have happened sometime in 2007, a maximum of a little over ten months before the issuance of the warrant. The controlled buy, combined with the previous information from at least two informants that drugs were being sold from the address, was sufficient to establish probable cause that a continuing drug business was being operated from the residence, a secure operational base. (¶) In any event, we think the magistrate could infer that the controlled buy had occurred much more recently than ten months ago. The affidavit did not refer to appellant's evading and resisting arrest incidents as 'recent.' It referred to them as 'past.' The magistrate could reasonably infer from the affidavit that the 'recent' acquisition of information about drug selling was far closer in time to the warrant process than the 'past' evading or resisting arrest incident that occurred sometime in 2007." (At 863) "We conclude that the courts below did not err in determining that the affidavit provided adequate information regarding the timing of the events giving rise to probable cause to support the issuance of the warrant."

United States v. Jones, 565 U.S. 400, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012). (At 132 S. Ct. 948) "We decide whether the attachment of a Global-Positioning-System (GPS) tracking device to an individual's vehicle, and subsequent use of that device to monitor the vehicle's movements on public streets, constitutes a search or seizure within the meaning of the Fourth Amendment." (At 949) "The Fourth Amendment provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." It is beyond dispute that a vehicle is an 'effect' as that term is used in the Amendment. We hold that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements,

constitutes a 'search.' (¶) It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted. (¶) The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to 'the right of the people to be secure against unreasonable searches and seizures'; the phrase 'in their persons, houses, papers, and effects' would have been superfluous." (Citation, footnote omitted).

State v. Weaver, 349 S.W.3d 521, 523 (Tex. Crim. App. 2011). "Four police officers came to Mr. Weaver's welding shop looking for a person wanted in another county. Mr. Weaver gave the officers consent to search for that person. The officers, over Mr. Weaver's objection, ended up searching a van on his property and finding drugs in it. The trial judge granted Mr. Weaver's motion to suppress because he found that the search of the van exceeded the scope of Mr. Weaver's consent." (At 532-33) "The record, viewed in the light most favorable to the trial judge's ruling, supports an implicit fact finding that the van was parked in a protected, non-public area of the business premises rather than in a parking lot open to the public. And the record also supports the trial judge's legal conclusion that the officers had worn out their welcome and lingered beyond the scope of Mr. Weaver's consent before the initiation of the dog sniff. We recognize that this case is a close call—but it is in the 'close call' cases that the need for giving discretion to the trial judge and deferring to his factual findings is greatest, especially when the State must prove positive consent by clear and convincing evidence. We therefore affirm the court of appeals's judgment that upheld the trial judge's ruling."

Kentucky v. King, 563 U.S. 452, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011). (At 131 S. Ct. 1853-54) "It is well established that 'exigent circumstances,' including the need to prevent the destruction of evidence, permit police officers to conduct an otherwise permissible search without first obtaining a warrant. In this case, we consider whether this rule applies when police, by knocking on the door of a residence and announcing their presence, cause the occupants to attempt to destroy evidence. The Kentucky Supreme Court held that the exigent circumstances rule does not apply in the case at hand because the police should have foreseen that their conduct would prompt the occupants to attempt to destroy evidence. We reject this interpretation of the exigent circumstances rule. The conduct of the police prior to their entry into the apartment was entirely lawful. They did not violate the Fourth Amendment or threaten to do so. In such a situation, the exigent circumstances rule applies."

York v. State, 342 S.W.3d 528, 543 (Tex. Crim. App. 2011), *cert. denied*, 565 U.S. 1156 (2012). "As we have already noted, the validity of a detention or arrest was an element of the failure-to-identify offense with which appellant was previously charged. As an element, it must be proven beyond a reasonable doubt. In a motion to suppress setting, however, the propriety of an arrest or detention need not be proven beyond a reasonable doubt. We do not often say what standard applies in a motion-to-suppress setting, and we are unaware of any cases explicitly stating the State's standard of proof in establishing reasonable suspicion, but we conclude that the appropriate standard is the one that applies to most constitutional suppression issues: preponderance of the evidence." (Footnotes omitted).

Martinez v. State, 348 S.W.3d 919, 921 (Tex. Crim. App. 2011). "In two cases stemming from the same incident, the state charged appellant with driving while intoxicated (DWI) and possession of marijuana. Appellant filed his motion to suppress based upon claims that the initial investigatory detention was without probable cause or reasonable suspicion and that the subsequent arrest and search of appellant's person and vehicle was without probable cause." (At 923) "When an officer's suspicion of criminal activity arises from an anonymous caller rather than from the officer's own observations, the tip seldom provides reasonable suspicion for an investigatory stop." (At 926) "Based on our review of the totality of the circumstances, including the unknown reliability of the anonymous caller and the lack of specific, articulable facts suggesting that criminal activity was afoot, we find that Officer Hurley's investigatory detention of appellant was not supported by reasonable suspicion." (Footnote omitted).

Limon v. State, 340 S.W.3d 753, 758 (Tex. Crim. App. 2011). "[W]e find no ambiguity with respect to A.S.'s apparent authority. Under the facts available to Officer Perez at the moment, a mature teenager, possibly an adult, opened the front door to him at 2:00 a.m. and, after hearing that he was investigating a shooting, gave him consent to enter through the front door. We find that a person of reasonable caution could reasonably believe that A.S. had the authority to consent to mere entry under those circumstances." (At Note 22) "Whether A.S. had apparent authority to consent to a search of the house, as distinguished from a mere entry, might be a closer question. However, that question is not presented for review. There is no evidence that Perez asked for or received consent from A.S. to search further. Rather, Perez's testimony indicates that the search of the house was conducted on his own initiative after smelling marijuana upon entering through the door."

Meekins v. State, 340 S.W.3d 454, 455-56 (Tex. Crim. App. 2011). "An officer stopped appellant's car for a traffic offense and, during that stop, asked if he could search the car. The officer said that appellant consented. During a consensual search of appellant's pocket, the officer found a pill bottle containing marijuana. Appellant filed a motion to suppress that evidence, arguing that he did not voluntarily consent to the search of his car and therefore his constitutional rights were violated." (At 463-464) "Appellant argues that . . . 'the only reasonable conclusion to be made is that Appellant *relented* to Officer Williams's repeated requests to search his car as opposed to *consented*.' Not all compliance is mere acquiescence to official authority, however. 'Mere acquiescence' may constitute a finding of consent. Furthermore, repeatedly asking for consent does not result in coercion, particularly when the person refuses to answer or is otherwise evasive in his response. Appellant has presented

no evidence of factors that would tend to show coercion, such as an officer's display of a weapon, threats, promises, deception, physical touching, or a demanding tone of voice or language. Officer Williams's action of merely repeating his question several times and asking for a specific 'yes or no' response in the face of appellant's evident evasiveness does not rise to the level of official coercion. Indeed, there is indication from the Supreme Court that asking repeated questions or talking at a non-responsive, uncooperative suspect is not a coercive technique." (Footnotes omitted).

Hereford v. State, 339 S.W.3d 111, 113-14 (Tex. Crim. App. 2011). "Appellant was arrested for misdemeanor traffic warrants. After the police placed appellant in the back of the police car, officers noticed that he was hiding something that they assumed was cocaine in his mouth. Officers were able to remove crack cocaine from appellant's mouth and hand after repeated use of Tasers and with the assistance of medical personnel." (At 126) "This Court finds that the circumstances presented by this case show an excessive use of force that violated the Fourth Amendment prohibition against unreasonable seizures. Officer Arp deliberately chose to administer numerous electrical shocks to an area of appellant's body chosen by him because of its exceptional sensitivity, long after the initial arrest was made, when there admittedly was no ongoing attempt by appellant to destroy the evidence, little concern about a drug overdose, and while appellant was restrained in handcuffs behind his back. The unreasonableness of this behavior is shown by comparison with the decisions made by his fellow officers, who stopped using the Taser when its use failed to effect compliance. While those officers could have chosen to continue to shock appellant in order to recover the crack, they chose to pursue other methods. Officer Arp should have done the same."

State v. Elias, 339 S.W.3d 667, 675 (Tex. Crim. App. 2011). "The trial court in this case failed to apply the standard for reasonable suspicion objectively. Instead of asking whether the objective facts would have justified an officer in Sanchez's shoes in detaining the appellee, the trial court asked whether Sanchez's subjective justification for stopping the appellee was legitimate . . . . The State is entirely correct that, measured by the appropriately objective legal standard, Sanchez's testimony supports a legal conclusion that there existed at least a reasonable suspicion that a traffic infraction had occurred."

State v. McLain, 337 S.W.3d 268, 272 (Tex. Crim. App. 2011). "The court of appeals violated the prohibition on 'hypertechnical' review of a warrant affidavit when it strictly applied rules of grammar and syntax in its analysis. Further, the court of appeals reviewed the affidavit by focusing on what the officer 'implied' rather than on what the magistrate could have reasonably inferred. The words 'implies' and 'inference' speak to information not specifically stated. However, it is the reasonableness of the magistrate's conclusions based on facts and inferences which is the proper standard." (At 274) "Reviewing courts should only be concerned with whether the magistrate's determination in interpreting and drawing reasonable inferences from the affidavit was done in a commonsensical and realistic manner. And reviewing courts should defer to all reasonable inferences that the magistrate could have made."

State v. Johnston, 336 S.W.3d 649, 651 (Tex. Crim. App. 2011), *cert. denied*, 565 U.S. 866 (2011). "The court of appeals held that the unrecorded compelled draw of Christi Lynn Johnston's blood by a police officer, who was also a seasoned EMS provider, in the police station's blood-draw room while Johnston was restrained violated the Fourth Amendment's reasonable manner requirement. Under the facts here, which demonstrate that the test chosen was reasonable and that it was performed in a reasonable manner, we disagree."

Lujan v. State, 331 S.W.3d 768, 769 (Tex. Crim. App. 2011). "The court of appeals held that the checkpoint where drugs were discovered in Appellant's vehicle was illegal because it was not for the sole purpose of checking drivers' licenses and insurance. We reverse." (At 771-72) "A vehicle stop at a highway checkpoint is a seizure for Fourth Amendment purposes. A checkpoint to verify drivers' licenses and vehicle registration is permissible, but a checkpoint whose primary purpose is to detect evidence of ordinary criminal wrongdoing is not. The legality of the checkpoint in this case turns on whether its primary purpose was to check drivers' licences and insurance, or whether the primary purpose was general crime control. The primary purpose of the checkpoint is a mixed question of law and fact since the question turns on an evaluation of the credibility of the officers who testified at the suppression hearing." (At 773) "If the primary purpose of the checkpoint is lawful—a license check as opposed to general law enforcement—police can act on other information that arises at the stop. The checkpoint's primary purpose of license and insurance verification does not prohibit police from considering other unrelated offenses that they discover during the stop. In *Edmond* [*City of Indianapolis v. Edmond*, 531 U.S. 32, 48, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000)], the Supreme Court made clear that officers are not required to conduct the license and registration check wearing blinders and ignoring any other violations of the law that they observe. Officers can still act on what they learn during a checkpoint stop, even if that results in the arrest of the motorist for an offense unrelated to the purpose of the checkpoint. (¶) A brief suspicionless stop at a checkpoint is constitutionally permissible if its primary purpose is to confirm drivers' licenses and registration and not general crime control. In denying the motion to suppress, the trial court implicitly found that the primary purpose of this checkpoint was a permissible license and insurance check. This finding was supported by the record." (Citations omitted).

Derichsweiler v. State, 348 S.W.3d 906, 916-17 (Tex. Crim. App. 2011), *cert. denied*, 565 U.S. 840 (2011). "Unlike the case with probable cause to justify an arrest, it is not a *sine qua non* of reasonable suspicion that a detaining officer be able to pinpoint a particular penal infraction. The reason is simple but fundamental. A brief investigative detention constitutes a significantly lesser intrusion upon the privacy and integrity of the person than a full-blown custodial arrest. For this reason, a warrantless investigative detention may be deemed 'reasonable' for Fourth Amendment purposes on the basis of a lesser quantum or quality

of information—reasonable suspicion rather than probable cause. Likewise, because a detention is less intrusive than an arrest, the specificity with which the articulable information known to the police must demonstrate that a particular penal offense has occurred, is occurring, or soon will occur, is concomitantly less. It is, after all, only an 'investigative' detention. So long as the intrusion does not exceed the legitimate scope of such a detention and evolve into the greater intrusiveness inherent in an arrest-*sans*-probable-cause, the Fourth Amendment will tolerate a certain degree of police proaction. Particularly with respect to information suggesting that a crime is *about* to occur, the requirement that there be 'some indication that the unusual activity is related to crime' does not necessarily mean that the information must lead inexorably to the conclusion that a particular and identifiable penal code offense is imminent. It is enough to satisfy the lesser standard of reasonable suspicion that the information is sufficiently detailed and reliable—*i.e.*, it supports more than an inarticulate hunch or intuition—to suggest that *something* of an apparently criminal nature is brewing. (Footnotes omitted).

Foster v. State, 326 S.W.3d 609, 614 (Tex. Crim. App. 2010). "Keeping in mind that the Fourth Amendment totality-of-the-circumstances test requires only 'some minimal level of objective justification' for the stop in this case, we hold there was reasonable suspicion for the police to have believed that appellant may have been intoxicated. In light of the time of night, the location, [detective] Thomas's training and experience, and [appellant] Foster's aggressive driving, it was rational for Thomas to have inferred that appellant may have been intoxicated, thus justifying a temporary detention for further investigation." (Citation, footnote omitted).

State v. Dobbs, 323 S.W.3d 184, 185 (Tex. Crim. App. 2010). "While executing a lawful search of the appellee's residence pursuant to a warrant, police officers in this cause came upon items in plain view that they lacked probable cause to believe were connected to any crime. While still lawfully on the premises, however, they conducted further investigation and determined that the items were stolen property, seizing them accordingly. The Fifth Court of Appeals held, on the strength of this Court's opinion in *White v. State* [*White v. State*, 729 S.W.2d 737 (Tex. Crim. App. 1987)], that the seizure violated the Fourth Amendment to the United States Constitution because it had not been 'immediately apparent' to the officers that the items were stolen. We granted the State's petition for discretionary review to re-examine our holding in *White*. We now hold that, so long as probable cause to believe that items found in plain view constitute contraband arises while police are still lawfully on the premises, and any further investigation into the nature of those items does not entail an additional and unjustified search of, or unduly prolonged police presence on, the premises, the seizure of those items is permissible under the Fourth Amendment. We disavow *White* to the extent that it is inconsistent with our present holding." (Footnotes omitted).

Crain v. State, 315 S.W.3d 43, 49 (Tex. Crim. App. 2010). "[A]n investigative detention occurs when a person yields to the police officer's show of authority under a reasonable belief that he is not free to leave. When the court is conducting its determination of whether the interaction constituted an encounter or a detention, the court focuses on whether the officer conveyed a message that compliance with the officer's request was required. The question is whether a reasonable person in the citizen's position would have felt free to decline the officer's requests or otherwise terminate the encounter." (At 53-54) "Viewing the totality of the circumstances in the light most favorable to the trial court's ruling, we hold that the trial court erred in concluding that a reasonable person in the appellant's position would have felt free to leave or terminate the interaction with Griffin. We hold that Officer Griffin detained the appellant without reasonable suspicion and the trial court therefore abused its discretion in denying the appellant's motion to suppress." (Footnotes omitted).

Flores v. State, 319 S.W.3d 697, 698 (Tex. Crim. App. 2010). "In this case, we must determine whether the magistrate who issued the search warrant for Felix Flores's residence had a substantial basis for concluding that probable cause existed. We hold that the magistrate did have a substantial basis." (At 703) "Given what the magistrate could find directly from Farkas's affidavit, the magistrate could also reasonably infer the following additional facts: (1) The anonymous informer had some familiarity with Flores and his affairs. (2) The items that Farkas found in the garbage can on March 5, 2007, were in fact marihuana stems, seeds, and residue. (3) The garbage can in question was from the Ramona Circle residence and not from a neighboring residence. (4) The marihuana residue in the garbage can on March 1, 2007, and on March 5, 2007, originated from the Ramona Circle residence and not from a neighbor or passer-by. The magistrate could reasonably draw that last inference because, under the 'doctrine of chances,' it was objectively unlikely that a person or persons unconnected to the Ramona Circle residence would have placed marihuana in that residence's garbage can twice within a five-day period. (¶) Finally, given that the magistrate could reasonably infer that the anonymous informer had some familiarity with Flores and his affairs, the magistrate could reasonably conclude that the informer's tip regarding illegal drugs at the Ramona Circle residence, although perhaps insufficient in itself to establish probable cause to search, was nevertheless a circumstance to be considered, along with all of the other circumstances, in the determination of whether probable cause existed." (Citations omitted).

Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 1714, 173 L. Ed. 2d 485 (2009). (At 129 S. Ct. 1714) "After Rodney Gant was arrested for driving with a suspended license, handcuffed, and locked in the back of a patrol car, police officers searched his car and discovered cocaine in the pocket of a jacket on the backseat. Because Gant could not have accessed his car to retrieve weapons or evidence at the time of the search, the Arizona Supreme Court held that the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement, as defined in *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969), and applied to vehicle searches in *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981), did not justify the search in this case. We agree with that conclusion." (At 1719) We "hold that the *Chimel* rationale authorizes police to

search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. (¶) Although it does not follow from *Chimel*, we also conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'"

Vennus v. State, 282 S.W.3d 70, 73 (Tex. Crim. App. 2009). "We decide that appellant invited the claimed error that he raised on appeal regarding the State's failure to prove articulable facts (the 'basis articulated') that led Gill to believe that there was contraband in appellant's car. The suppression-hearing record reflects that appellant prevented the State from fully presenting these articulable facts with general, nonspecific, and meritless objections in particular the objection, that, when sustained, prevented Gill from testifying as to why he believed that appellant 'had some kind of contraband in his car.'"

Baldwin v. State, 278 S.W.3d 367, 370-71 (Tex. Crim. App. 2009). "We do not need to decide whether Deputy Smith effectuated an arrest or an investigative detention, nor do we need to decide whether reasonable suspicion existed to support an investigative detention. There was no valid basis for an arrest, and, assuming arguendo that there was a valid basis for an investigative detention, there was no valid basis for reaching into appellant's pocket to procure his wallet." (At 371-72) "A valid investigative detention can confer upon an officer the authority to pat down the suspect for weapons. Under the 'plain feel' doctrine, an officer conducting a pat-down may seize an object 'whose contour or mass makes its identity immediately apparent' as contraband. But when the conditions of the 'plain feel' doctrine (or the 'plain view' doctrine) are not present, an officer conducting a valid investigative detention must have probable cause in order to conduct a search for non-weapon contraband or other evidence . . . . Though an officer may ask a defendant to identify himself during a valid investigative detention, that does not automatically mean that the officer can search a defendant's person to obtain or confirm his identity. Consequently, the officer's conduct of reaching into appellant's pocket—even under a valid investigative detention—was an illegal search unless there existed some exception to the usual probable cause requirement." (Footnotes omitted).

Keehn v. State, 279 S.W.3d 330, 334 (Tex. Crim. App. 2009). The court considered whether "the warrantless entry into the van in Keehn's driveway was justified under the plain view or automobile exceptions to the Fourth Amendment's warrant requirement. (¶) A seizure of an object is lawful under the plain view exception if three requirements are met. First, law enforcement officials must lawfully be where the object can be 'plainly viewed.' Second, the 'incriminating character' of the object in plain view must be 'immediately apparent' to the officials. And third, the officials must have the right to access the object." (At 335) "Plain view, in the absence of exigent circumstances, can never justify a search and seizure without a warrant when law enforcement officials have no lawful right to access an object. (¶) Under the automobile exception, law enforcement officials may conduct a warrantless search of a vehicle if it is readily mobile and there is probable cause to believe that it contains contraband. There are two justifications behind this exception. First, the 'ready mobility' of a vehicle creates 'an exigency . . . .' Second, an individual has a reduced expectation of privacy in a vehicle because it is subject to 'pervasive [government] regulation.'" (Footnotes omitted).

Amador v. State, 275 S.W.3d 872, 878 (Tex. Crim. App. 2009). "'Probable cause' for a warrantless arrest exists if, at the moment the arrest is made, the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a prudent man in believing that the person arrested had committed or was committing an offense. The test for probable cause is an objective one, unrelated to the subjective beliefs of the arresting officer, and it requires a consideration of the totality of the circumstances facing the arresting officer. A finding of probable cause requires 'more than bare suspicion' but 'less than . . . would justify . . . conviction.'" (At 880) "The court of appeals erred in focusing on the evidence of [Trooper] Fountain's administration of the field sobriety tests and appellant's performance thereon, rather than considering the totality of the circumstances facing Fountain. The court of appeals further erred in concluding that '[d]etermining whether a reasonable police officer would conclude that Amador was intoxicated would likely require the trooper to articulate at least some of the relevant details about Amador's performance on the field sobriety test [sic].' The record contains abundant evidence . . . from which the trial court could have reasonably determined that a reasonable police officer could have concluded that appellant was intoxicated." (Citations, footnote omitted).

State v. Sheppard, 271 S.W.3d 281, 283 (Tex. Crim. App. 2008). "The specific question before us is whether a person is 'arrested' for purposes of the Fourth Amendment if he is temporarily handcuffed and detained, but then released. The answer is no—a person who has been handcuffed has been 'seized' and detained under the Fourth Amendment, but he has not necessarily been 'arrested.' The trial judge was mistaken in his belief that a temporary investigative detention equals an arrest under federal or Texas search and seizure law." (Footnote omitted).

Shepherd v. State, 273 S.W.3d 681, 683-84 (Tex. Crim. App. 2008). "The Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Any such search, however, must be 'strictly circumscribed by the exigencies which justify its initiation.' If a search is justified under the emergency doctrine, the police may seize any evidence that is in plain view during the course of their legitimate emergency activities. (¶) Unlike the exigent-circumstances exception to the Fourth Amendment's warrant requirement, the emergency doctrine does not apply when the police are carrying out their 'crime-fighting' role by conducting a search based on probable cause to gather evidence of a crime. Rather, the doctrine allows the police to engage in conduct that would otherwise violate the Fourth Amendment if they are acting on a reasonable belief that doing so is immediately necessary 'to protect or preserve life or

avoid serious injury.' To determine whether this objective standard of reasonableness is met, we look at the facts that were known to the officers at the time. When assessing whether officers' inference from facts is objectively reasonable, we may consider their training and experience in similar situations." (Footnotes omitted).

Harris v. State, 227 S.W.3d 83, 85 (Tex. Crim. App. 2007). "Under *Franks* [*Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978)], a defendant who makes a substantial preliminary showing that a false statement was made in a warrant affidavit knowingly and intentionally, or with reckless disregard for the truth, may be entitled by the Fourth Amendment to a hearing, upon the defendant's request. This hearing is required only where the false statement is essential to the probable cause finding. If at the hearing the defendant establishes the allegation of perjury or reckless disregard by a preponderance of the evidence, the affidavit's false material is set aside. If the remaining content of the affidavit does not then still establish sufficient probable cause, the search warrant must be voided and the evidence resulting from that search excluded. (¶) [S]pecific allegations and evidence must be apparent in the pleadings in order for a trial court to even entertain a *Franks* proceeding. (At 85) Nor was any evidence presented at the hearing to establish even a *prima facie* violation under *Franks.* The main thrust of defense counsel's argument during both testimony and closing arguments at the hearing concerned whether [Officer] Morton had sufficiently corroborated and verified the information he received before seeking the search warrant. That is an entirely different complaint than that Morton misrepresented the information to the magistrate with at least reckless disregard for the truth. This is a far more serious allegation, and from the record it is clear that none of the parties even suggested such a thing at the hearing." (Footnote omitted).

Rodriguez v. State, 232 S.W.3d 55, 64 (Tex. Crim. App. 2007). "We agree with what the court of appeals is implying: the more information in an affidavit the better. In this case, the addition of a single sentence, 'Cantu told the arresting officers that there was at least ten kilos more of cocaine in the Goddard Street garage,' would have made the reviewing courts' task much easier. But that fact was not crucial to establish probable cause. In this case, the affiant was sent from the Goddard Street location to draft an affidavit, find a magistrate, present the affidavit and warrant to that magistrate, and wait for the magistrate's review and issuance of the warrant, all while the other officers were at the Goddard Street garage detaining three men and awaiting further instructions. It is not surprising that, in his haste, the affiant did not compose a polished document that 'dotted every i and crossed every t.'" (At 64) "The proper analysis of the sufficiency of a search-warrant affidavit is not whether as much information that could have been put into an affidavit was actually in the affidavit. As reviewing courts, we are obliged to defer to the magistrate and uphold his determination based upon all reasonable and commonsense inferences and conclusions that the affidavit facts support. (¶) We must defer to the magistrate's finding of probable cause if the affidavit demonstrates a substantial basis for his conclusion. It is not necessary to delve into all of the facts that were omitted by the affiant, facts that could have been included in the affidavit, or contrary inferences that could have been made by the magistrate. The only issue is whether the facts that actually were in the affidavit, combined with all reasonable inferences that might flow from those facts, are sufficient to establish a 'fair probability' that more cocaine would be found at the Goddard Street garage." (Footnotes omitted).

Dixon v. State, 206 S.W.3d 613, 616 (Tex. Crim. App. 2006). "Probable cause to search exists when the totality of the circumstances allows a conclusion that there is a fair probability of finding contraband or evidence at a particular location. '[P]robable cause is a fluid concept-turning on the assessment of probabilities in particular factual contexts[.]' To avoid 'rigid' legal rules when dealing with information obtained from informants, the Supreme Court changed the 'two-pronged test' of *Aguilar v. Texas* [378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964)], into a totality of the circumstances test in *Illinois v. Gates* [462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)]. Under the *Gates* test, the 'veracity' and 'basis of knowledge' prongs of *Aguilar* for assessing the usefulness of an informant's tips, are not independent. 'They are better understood as relevant considerations in the totality-of-the-circumstances analysis that traditionally has guided probable-cause determinations: a deficiency in one may be compensated for . . . by a strong showing as to the other[.]'" (Footnotes omitted).

Davis v. State, 202 S.W.3d 149, 156 (Tex. Crim. App. 2006). "If an affiant seeking a search warrant attests to the presence of an odor and a magistrate finds the affiant qualified to recognize the odor, this information is considered persuasive in obtaining a warrant. The affiant in this case, properly relying on facts supplied by another officer, asserted that on the day the affidavit was prepared, an officer drove past the residence, identified it by address, and smelled an odor that he has associated with the manufacture of methamphetamine. On these facts alone, without any other information, the magistrate was authorized to issue the warrant as long as the officer was 'qualified to recognize the odor.' That is the only relevant inquiry. (¶) At the outset, could the magistrate reasonably have inferred that Westervelt is a trained, commissioned police officer? We think this was a reasonably available inference. The affidavit identified Westervelt as an 'Officer . . . on patrol in Nocona.' It does not distort common sense or read additional facts into the affidavit to infer from this information that Westervelt was a local police officer. This inference, in turn, lends credibility to his assertion that he identified the odor of the making of methamphetamine, because it is much more probable that a peace officer would have experience with that odor than an average citizen. Westervelt's statement that 'he has associated' the odor he detected with the manufacture of methamphetamine reasonably may be read to imply past experience with the odor generated by the process of cooking methamphetamine." (At 157) "We are compelled to remark, however, that the affidavit in this case was far from exemplary. Indeed, we would just as readily conclude that it was within the magistrate's discretion to deny this search warrant,

had he originally done so. A magistrate should not have to resort so much to inferences and 'common sense' conclusions that skirt the boundaries of what constitutes a substantial basis, as they do here." (Footnotes omitted).

Handy v. State, 189 S.W.3d 296, 299 (Tex. Crim. App. 2006). "In the instant case, appellant never established his standing to challenge the search in question, i.e., he never established that he personally had a reasonable expectation of privacy in the premises that were searched . . . . Although appellant asserted in his boilerplate motion to suppress that his residence was the place searched, he presented no proof of such claim to the trial court. In addition, appellant never established that the search in question was on its face unreasonable. Under these circumstances, the State had no duty to exhibit the search warrant and its supporting affidavit to the trial court." (Citations omitted).

Parker v. State, 182 S.W.3d 923, 927 (Tex. Crim. App. 2006). "We disagree with the court of appeals' use of a bright-line rule stating that only those listed on a rental agreement as authorized drivers have an expectation of privacy in the vehicle and standing to contest a search. Instead, the court should have considered the circumstances surrounding the use of the vehicle, as well as the nature of the relationship between the driver and the lessee, to determine whether the driver had a legitimate expectation of privacy that society would recognize as reasonable . . . . We conclude that, given the evidence in this particular case, society would recognize as reasonable Appellee's expectation of privacy in the use of his girlfriend's rental car with her permission even though he was not listed as an authorized driver on the rental agreement."

Glazner v. State, 175 S.W.3d 262, 265 (Tex. Crim. App. 2005). "A pat-down search is permitted if the police officer can 'point to specific and articulable facts, which, taken with rational inferences from those facts, reasonably warrant the intrusion.' Moreover, there is no requirement that a police officer feel personally threatened or be 'absolutely certain' that the suspect is armed in order to conduct a pat-down search . . . .' The issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his or her safety or that of others was in danger.' . . . Deputy Martin indicated that he did not immediately perceive appellant to be a threat, but that he believed, based on observation and experience, that appellant had a knife. The pat-down search in this case was justified because Deputy Martin reasonably concluded that appellant might be armed." (Citations omitted).

Threadgill v. State, 146 S.W.3d 654, 660 (Tex. Crim. App. 2004). "[P]olice may examine and test clothing validly within their control and custody, regardless of the existence of probable cause or exigent circumstances . . . . In the absence of any evidence that the appellant harbored a subjective expectation of privacy in his clothing that was in police custody or any evidence that society would deem such belief reasonable, we held that the appellant's clothing did not fall under the protection of the Fourth Amendment and therefore the warrantless search was valid and reasonable."

Kothe v. State, 152 S.W.3d 54, 57 (Tex. Crim. App. 2004). "First, does Mr. Kothe have standing to challenge the deputy's search of the passenger? We hold that, because Mr. Kothe had a reasonable expectation of privacy in not being subjected to an unduly prolonged detention, he has standing to challenge the seizure of evidence obtained by exploiting that detention. Second, is the continued detention of a driver for an additional three to twelve minutes while waiting for the results of a routine computer driver's license check 'reasonable' if the officer's original articulable suspicion had already been resolved? We hold that, viewed in the totality of the circumstances, the additional short detention period was not a violation of the Fourth Amendment."

Swearingen v. State, 101 S.W.3d 89, 101 (Tex. Crim. App. 2003). "Abandonment of property occurs if: (1) the defendant intended to abandon the property, and (2) his decision to abandon the property was not due to police misconduct. When the police take possession of property that has been abandoned independent of police misconduct, no seizure occurs under the Fourth Amendment. Further, when a defendant voluntarily abandons property, he lacks standing to contest the reasonableness of the search of the abandoned property . . . . Because Swearingen voluntarily abandoned his trailer prior to January 6, 1999, he lacks standing to complain about any search conducted of the trailer or trash removed from the trailer on that date." (Citations omitted).

Welch v. State, 93 S.W.3d 50, 52 (Tex. Crim. App. 2002). "A less common variation of the standard consent case is that of third-party consent . . . . In line with *Matlock* [*United States v. Matlock*, 415 U.S. 164, 170, 39 L. Ed. 2d 242, 94 S. Ct. 988 (1974)], we have stated that, in order for a third person to validly consent to a search, that person must have equal control and equal use of the property searched. And we have recently emphasized that the third party's legal property interest is not dispositive in determining whether he has the authority to consent to a search, saying that 'common authority derives from the mutual use of the property, not the ownership or lack thereof.' . . . The State has the burden of establishing common authority." (At 55) "[A] defendant's mere absence or presence is irrelevant to the analysis. A defendant's privacy interest relative to the third party is not controlling. What matters is whether the third party has mutual access to and control over the property for most purposes." (Citations omitted).

Corbin v. State, 85 S.W.3d 272, 277 (Tex. Crim. App. 2002). "Once it is determined that an officer is primarily motivated by his community caretaking function, it must then be determined whether the officer's belief that the defendant needs help is reasonable . . . . [C]ourts may look to a list of four non-exclusive factors: (1) the nature and level of the distress exhibited by the individual; (2) the location of the individual; (3) whether or not the individual was alone and/or had access to assistance other than

that offered by the officer; and (4) to what extent the individual, if not assisted, presented a danger to himself or others." (Citations omitted).

Art. 1.07. Right to Bail.

Any person shall be eligible for bail unless denial of bail is expressly permitted by the Texas Constitution or by other law. This provision may not be construed to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 2021, 87th Leg., 2nd C.S., ch. 11, Sec. 2, eff. Jan. 1, 2022.

McKenzie v. State, 777 S.W.2d 746, 749 (Tex. App.—Beaumont 1989, no pet.). Tex. Code Crim. Proc. art. 1.07 provides "that a defendant charged with a crime is entitled to bail except those charged with a capital offense 'when the proof is evident.' The phrase 'proof is evident' means the evidence is clear and strong leading a well guarded and dispassionate judgment to the conclusion that a capital murder has been committed; that the accused is a guilty party; and that the accused will be convicted of capital murder with the jury returning findings which will require the imposition of a death sentence."

Art. 1.08. Habeas Corpus.

The writ of habeas corpus is a writ of right and shall never be suspended.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 1.09. Cruelty Forbidden.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 1.10. Jeopardy.

No person for the same offense shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Sledge v. State, 666 S.W.3d 592, 593 (Tex. Crim. App. 2023). "When the trial court grants a motion for new trial based only on the bare recitation that 'the verdict is contrary to the law and evidence,' without more, may the accused be tried again for the same offense without violating principles of double jeopardy? No. This case serves as a cautionary tale. Because the record is void of explanation for the trial court's decision to grant Appellant's motion for new trial and because our precedent is clear that the language 'contrary to the law and evidence,' without additional context, raises a legal sufficiency challenge, Appellant's second trial violated double jeopardy and acquittal is the required result." (At 598-99) "This case thus pivots on this Court's interpretation of silence and the bare language, 'the verdict is contrary to the law and evidence.'" (At 602) "Because we cannot address any alternate intention of the parties on such an absent record, the plain language of the motion raises a sufficiency challenge. The Supreme Court of the United States has been clear that findings as to legal sufficiency in favor of the accused constitute acquittal, thus the Fifth Amendment precludes a second trial. Importantly, this opinion does not stand for the proposition that the language 'the verdict is contrary to the law and evidence' always raises a legal sufficiency challenge. Rather, we merely hold that a contrary interpretation cannot be reached beyond the confines of an absent record. Further, the propriety of such a vague motion for new trial and corresponding order cannot be addressed beyond the State's opportunity to appeal it. Tex. Code. Crim. Proc. art. 44.01(a)(3)."

Nawaz v. State, 663 S.W.3d 739, 741 (Tex. Crim. App. 2022). "In a single trial, Appellant was convicted of two instances of injury to a child. His convictions were for conduct prohibited under two different subsections of Section 22.04(a) of the Texas Penal Code. *See* Tex. Penal Code § 22.04(a)(1) & (2) . . . Appellant argued on appeal that his two convictions constituted the imposition of multiple punishments for the 'same' offense, in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution." (At 746) "Having found the various 'theories of criminal liability' set out in the subsections of Section 22.04(a) to constitute 'different offenses' for jury unanimity purposes in *Stuhler* [*Stuhler v. State*, 218 S.W.3d 706 (Tex. Crim. App. 2007)], we perceive no basis to construe the statute any differently for purposes of double jeopardy." (At 748) "We conclude that punishing Appellant in the same trial for causing serious bodily injury, under Section 22.04(a)(1), and also for causing serious mental deficiency, impairment, or injury, under Section 22.04(a)(2), did not violate the Double Jeopardy Clause. There was some evidence that, by whatever act or acts Appellant inflicted the 'whip-lash-type' injuries to the victim, those injuries included both 'serious bodily injury' in the form of retinal bleeding that caused her blindness, and 'serious mental deficiency' in the form of diffuse brain bleeding that has caused her developmental delays."

Ramos v. State, 636 S.W.3d 646, 649 (Tex. Crim. App. 2021). "In a single trial, Appellant was convicted both of continuous sexual abuse of a child, under Section 21.02(b) of the Texas Penal Code, and of prohibited sexual conduct under Section 25.02(a)(2). The latter conviction was for an act he committed against the same victim (his stepdaughter) as in the continuous sexual abuse of a child offense. It was also committed within the same timeframe during which he committed the acts comprising the continuous

sexual abuse. (¶) On appeal, Appellant argued that punishment for both offenses violated the Double Jeopardy Clause[.]" (At 657-58) "What this all means is that each statute at issue in this case has a different and discretely identifiable element that must be present before any penetration becomes part of an actionable offense: repeated sexual abuse of a child over time, on the one hand, versus sexual conduct in the context of a familial relationship, on the other. (¶) The *Ervin* [*Ervin v. State*, 991 S.W.2d 804, 814 (Tex. Crim. App. 1999)] factors—including the focus/gravamen factor—ultimately militate in favor of concluding that continuous sexual abuse of a child and prohibited sexual conduct are not the same offense for purposes of a multiple-punishments double-jeopardy analysis. . . We therefore reverse the judgment of the court of appeals to the extent that it vacated Appellant's conviction and punishment for the offense of prohibited sexual conduct[.]"

Ex parte Rion, 662 S.W.3d 890, 892-93 (Tex. Crim. App. 2022). "Appellant, crashed his vehicle into another vehicle, leading to injuries to the other vehicle's driver and the eventual death of its passenger. For that death, Appellant was charged with manslaughter, but the jury found him 'not guilty' of that offense and of the lesser included offense of criminally negligent homicide. The State then proceeded to prosecute Appellant for the injuries to the driver on a charge of aggravated assault for intentionally, knowingly, or *recklessly* causing bodily injury with a deadly weapon. Appellant challenged the second prosecution as barred by collateral estoppel. (¶) The court of appeals held that collateral estoppel applied and barred the subsequent prosecution for reckless aggravated assault because the jury in the manslaughter trial decided that Appellant was not reckless in causing the collision, which would be an essential element in the aggravated assault trial. (¶) We reverse. Although both trials involve the issue of whether Appellant was reckless, manslaughter and aggravated assault causing bodily injury are 'result of conduct' offenses. The results—death and bodily injury—are different, and the culpable mental state of recklessness attaches to those results. By its verdict of 'not guilty' in the first trial, the jury necessarily determined that Appellant was not reckless and therefore necessarily determined that Appellant was not aware of a risk of death as a result of his conduct. But the jury did not necessarily determine that Appellant lacked awareness of a risk of bodily injury as a result of his conduct. Collateral estoppel does not prohibit the subsequent prosecution for reckless aggravated assault causing bodily injury."

Kuykendall v. State, 611 S.W.3d 625, 626 (Tex. Crim. App. 2020). "Appellant was charged, in a single indictment, with two separate instances of the third-degree felony offense of failure to appear. Tex. Penal Code § 38.10(a), (f). He was convicted of both counts and sentenced to concurrent ten-year sentences. On appeal, he argued that punishing him for both offenses violated the Double Jeopardy Clause of the Fifth Amendment, applicable to the states through the Fourteenth Amendment. Appellant argued that, because he had been required to appear on a single occasion to answer for both charges against him, he can only have committed one offense when he failed to appear." (At 630) "We conclude that the failure to appear statute actually creates as many actionable offenses as there are conditional releases according to the terms of which the actor failed to appear. In other words, the 'allowable unit of prosecution' for the offense of failure to appear under Section 38.10(a) is the number of discrete conditional releases for which he was required to appear and did not; it is not simply the number of times he failed to show up before some adjudicative body. In this case, when Appellant failed to appear at the combined setting, he committed two distinct offenses. (¶) The Double Jeopardy Clause of the Fifth Amendment was not violated."

Philmon v. State, 609 S.W.3d 532, 534 (Tex. Crim. App. 2020). "Appellant was convicted of and sentenced for aggravated assault with a deadly weapon and family-violence assault. On appeal, Appellant argued that a conviction and sentence for both offenses violated his right against double jeopardy. The court of appeals disagreed and affirmed the trial court's judgment on this issue. We granted Appellant's petition to determine whether the court of appeals was correct in ruling that Appellant was properly convicted of and sentenced for both counts. Because each offense required proof of an element the other offense did not and a showing cannot be made that the Legislature clearly intended only one punishment for these two offenses, we affirm the court of appeals on this issue." (At 538-39) "Because the current interpretation of 'impeding' under the family-violence assault statute is such a low bar, we cannot agree with Appellant that any time one has used their hands or some object to impede another's breathing or blood circulation they have necessarily used their hands or that object in a manner sufficient to support a deadly weapon finding." (At 539) "We now turn to the State's argument, relating to the court of appeals's determination that the aggravated assault with a deadly weapon count differed from the family-violence assault count because one offense requires proof of a threat of imminent bodily injury while the other offense requires actual bodily injury. We agree with the court of appeals's decision on this element. (¶) We are not persuaded that one punishment for both aggravated assault with a deadly weapon and family-violence assault was clearly intended by the Legislature."

Simpson v. State, 591 S.W.3d 571, 572 (Tex. Crim. App. 2020). "While on probation, Robvia Simpson struck her roommate with an ashtray. She maintains that she did so in self-defense. But at the hearing to determine whether her probation would be revoked, Simpson did not claim self-defense. Instead, she simply pleaded 'true' to the allegation that she assaulted her roommate. Did Simpson's plea of 'true' preclude her from claiming self-defense in a subsequent criminal trial? We conclude that it did not." (At 575) "[N]either a probationer's plea of 'true' nor a revoking judge's finding of 'true' should give rise to an offensive claim of collateral estoppel in a subsequent criminal trial." (At 577) "A trial judge's finding that a criminal-offense allegation is legally 'true,' even if it is based on the probationer's own plea, is not inconsistent with a jury's determination that she is 'not guilty' of that offense." (At 578) "[W]e hold that Texas common law does not support the State's use of collateral estoppel in these circumstances. A criminal defendant may, consistent with her plea

of 'true' in an earlier revocation proceeding, plead 'not guilty' in a subsequent criminal trial. And in that trial, the defendant's earlier plea of 'true' will not preclude her from receiving any defensive instruction she is otherwise legally entitled to."

Ex parte Adams, 586 S.W.3d 1, 2 (Tex. Crim. App. 2019). "This case involves the doctrine of collateral estoppel embodied in the Double Jeopardy Clause of the Fifth Amendment. At issue is whether the State can prosecute Appellant, Brandon Joseph Adams, for aggravated assault for stabbing Joe Romero after Appellant was acquitted in an earlier trial of aggravated assault for stabbing Joe's brother, Justin Romero, in the same incident. We find that collateral estoppel is inapplicable to the facts of this case, and the State is not barred from prosecuting Appellant." (At 8) "From the evidence of the first trial, the jury could not have rationally found that Appellant did not commit aggravated assault or that Justin was not the victim of that assault. The evidence of Appellant's aggravated assault against Justin, along with Appellant's defensive strategy of admitting assault but justifying it as necessary to defend Hisey from Justin, lead to the conclusion that the jury's 'Not Guilty' verdict could have only come about because the jury accepted Appellant's defense that he needed to step in to protect Hisey. (¶) Plainly, the jury's 'Not Guilty' verdict meant it determined that Appellant was justified in his use of force against 'Justin Paul Romero,' specifically. The issue submitted to the jury did not ask the jury to determine whether Appellant was justified in his use of force against Joe. (¶) Therefore, the jury's determination in favor of Appellant on the defensive issue does not mean that the jury necessarily decided that Appellant was justified in using force against Joe . . . . Because the issue in regard to Joe was not necessarily decided in the first trial, the State was not barred from litigating the issue in a second trial." (Citation omitted).

Gamble v. U.S., 587 U.S. 678, 139 S. Ct. 1960, 204 L. Ed. 2d 322 (2019). (At 139 S. Ct. 1963-64) "We consider in this case whether to overrule a longstanding interpretation of the Double Jeopardy Clause of the Fifth Amendment. That Clause provides that no person may be 'twice put in jeopardy' 'for the same offence.' Our double jeopardy case law is complex, but at its core, the Clause means that those acquitted or convicted of a particular 'offence' cannot be tried a second time for the same 'offence.' But what does the Clause mean by an 'offence'? (¶) We have long held that a crime under one sovereign's laws is not 'the same offence' as a crime under the laws of another sovereign. Under this 'dual-sovereignty' doctrine, a State may prosecute a defendant under state law even if the Federal Government has prosecuted him for the same conduct under a federal statute. (¶) Or the reverse may happen, as it did here. Terance Gamble, convicted by Alabama for possessing a firearm as a felon, now faces prosecution by the United States under its own felon-in-possession law. Attacking this second prosecution on double jeopardy grounds, Gamble asks us to overrule the dual-sovereignty doctrine. He contends that it departs from the founding-era understanding of the right enshrined by the Double Jeopardy Clause. But the historical evidence assembled by Gamble is feeble; pointing the other way are the Clause's text, other historical evidence, and 170 years of precedent. Today we affirm that precedent, and with it the decision below."

Traylor v. State, 567 S.W.3d 741, 742 (Tex. Crim. App. 2018). "During Appellant's trial for first-degree burglary with a deadly weapon, the jury sent out a note stating that it unanimously agreed that Appellant was not guilty of the offense. However, the jury also indicated in this note that it was deadlocked on the issue of guilt for the lesser-included offense of burglary without a deadly weapon. The trial court instructed the jury to keep deliberating and ultimately declared a mistrial when the jury could not reach a unanimous decision. This appeal requires us to decide whether the jury's initial note was a final verdict of acquittal on the charged offense. Appellant argues that it was, and therefore his conviction at his second trial violates the Double Jeopardy Clause. We disagree." (At 746) "We agree with the State that the jury note here lacks 'the finality necessary to constitute an acquittal' on the first-degree burglary offense. We disagree with the court of appeals that the facts presented here are significantly distinguishable from *Blueford* [*Blueford v. Arkansas*, 566 U.S. 599, 132 S. Ct. 2044, 182 L. Ed. 2d 937 (2012)]. We hold that the jury note in question did not indicate that the jury had finally resolved to acquit Appellant of the first-degree burglary."

State v. Waters, 560 S.W.3d 651, 653-64 (Tex. Crim. App. 2018). "In this case, we are asked to revisit our precedent in *Ex parte Tarver*, 725 S.W.2d 195 (Tex. Crim. App. 1986), to determine whether that decision remains good law. More than thirty years ago in *Tarver*, we held that the doctrine of collateral estoppel bars the State from prosecuting an offense following a trial judge's finding of 'not true' as to the commission of that same offense at an earlier probation revocation hearing . . . We conclude that *Tarver* meets the narrow criteria for overruling our prior precedent, and we now abandon the rule of that decision." (At 659) "[I]n a revocation proceeding, the central question is whether the probationer has violated the terms of her community supervision and whether she remains a good candidate for supervision, rather than being one of guilt or innocence of the new offense. Moreover, because guilt or innocence is not the central issue at a revocation hearing, a defendant does not face punishment for the newly alleged offense in that proceeding. As we correctly recognized in *Tarver*, any punishment she would receive as a result of the revocation hearing relates back to the original offense for which she was placed on community supervision, not to the newly alleged offense. Thus, because there is no possibility of a new conviction and punishment arising from a revocation hearing, jeopardy does not attach for any offense that is alleged as a violation of the terms of community supervision in a revocation hearing, and double jeopardy protections are inapplicable." (Citation omitted).

Ex parte Garrels, 559 S.W.3d 517, 519 (Tex. Crim. App. 2018). "A defendant has a constitutional right to have her fate determined 'before the first trier of fact.' A trial judge may violate this right by ordering a mistrial over her objection; but if she consented to it, double jeopardy will not prevent her re-prosecution. Today we reiterate that, although consent may be 'implied' from the totality of the circumstances, it must nevertheless be supported by

record-based evidence." (At 522) "We granted Garrels's petition for discretionary review to address the only ground she raised before this Court: 'Has a defendant who did not object to a trial court's declaration of mistrial, despite an adequate opportunity to do so, impliedly consented to the mistrial?'" (At 526-27) "A trial court's characterization of a mistrial as a *sua sponte* act does not preclude the State from carrying its burden on the issue of consent; as the State points out, a defendant may consent to a mistrial without expressly moving for one. But, in this case, the lack of record-based evidence affirmatively showing how Garrels 'impliedly' consented to the mistrial defeats the State's position. The State had ample opportunity, both at the initial trial and at the hearing on Garrels's pretrial application for a writ of habeas corpus, to adduce evidence supporting its claim that Garrels had impliedly consented to the mistrial. It failed to do so, and so the claim is without merit."

Currier v. Va., 585 U.S. 493, 138 S. Ct. 2144, 201 L. Ed. 2d 650 (2018). (At 138 S. Ct. 2148) "About to face trial, Michael Currier worried the prosecution would introduce prejudicial but probative evidence against him on one count that could infect the jury's deliberations on others. To address the problem, he agreed to sever the charges and hold two trials instead of one. But after the first trial finished, Mr. Currier turned around and argued that proceeding with the second would violate his right against double jeopardy. All of which raises the question: can a defendant who agrees to have the charges against him considered in two trials later successfully argue that the second trial offends the Fifth Amendment's Double Jeopardy Clause?" (At 2151) "[C]onsenting to two trials when one would have avoided a double jeopardy problem precludes any constitutional violation associated with holding a second trial. In these circumstances, our cases hold, the defendant wins a potential benefit and experiences none of the prosecutorial 'oppression' the Double Jeopardy Clause exists to prevent."

Bien v. State, 550 S.W.3d 180, 182 (Tex. Crim. App. 2018), *cert. denied*, 139 S. Ct. 646 (2018). "Appellant hired an undercover officer to kill his ex-wife's brother. Based on his efforts in this regard, Appellant was charged with and convicted of two crimes: attempted capital murder and criminal solicitation of capital murder. The court of appeals found that Appellant's convictions on both charges violated the Double Jeopardy Clause's prohibition against multiple punishments for the 'same offense.' The court, deeming criminal solicitation the 'most serious' offense, upheld that conviction and vacated the conviction for attempted capital murder. We agree with the court of appeals that conviction for these two offenses violated double jeopardy, but disagree with the court of appeals that these offenses each required proof of a different element. Applying the cognate-pleadings test we determine that the elements of the offense of attempted capital murder are functionally equivalent to the elements of solicitation of capital murder. We affirm the court of appeals because we agree that criminal solicitation was the most serious offense." (At 188) "Though we arrive at the same location by a different path, we ultimately agree with the court of appeals that Appellant was convicted in a single criminal trial of two offenses that are considered the same for double jeopardy purposes. (¶) When a defendant is convicted in a single criminal trial of two offenses that are considered the same for double jeopardy purposes, the remedy is to vacate one of the convictions." (At 188-89) "[T]he practical impossibility of determining in some cases which offense is really the most serious has convinced me that it would be preferable to simply give the local prosecutor the option to choose which conviction to retain. Making the matter a function of prosecutorial discretion seems to be most consistent with our prior recognition that a prosecutor in this type of situation is entitled to 'submit both offenses to the jury for consideration' and receive 'the benefit of the most serious punishment obtained.' If a subjective decision is to be made, let the local prosecutor who exercised the decision to bring the case make it."

Ex parte Macias, 541 S.W.3d 782, 783 (Tex. Crim. App. 2017), *cert. denied*, 584 U.S. 939 (2018). "The trial court granted a motion to suppress evidence, and the State appealed. After the court of appeals handed down its opinion on the State's appeal, but before mandate issued, a trial occurred. The trial was terminated by the trial court when the State discovered that the appellate mandate had not yet issued. The question before us is: Did the trial court have jurisdiction to conduct the trial? We answer that question 'no,' because the appellate mandate had not yet issued." (At 785) "The Fifth Amendment protects a defendant against being placed twice in jeopardy for the same offense. This protection is implicated only when jeopardy has attached. In a jury trial, jeopardy ordinarily attaches when the jury is empaneled and sworn. But jeopardy does not attach at that time if the trial court lacks jurisdiction over the case." (At 786) "Consequently, we hold that the trial court was correct in concluding that it lacked jurisdiction over the case because the appellate mandate had not yet issued."

Ex parte St. Aubin, 537 S.W.3d 39, 41 (Tex. Crim. App. 2017), *cert. denied*, 584 U.S. 1014 (2018). "Applicant claims that the Double Jeopardy Clause was violated when the State obtained multiple convictions against him in a single trial. He raises this claim for the first time in this subsequent habeas application under Article 11.07. We hold that this *multiple-punishments* double-jeopardy claim does not satisfy the innocence-gateway exception. Furthermore, because the double-jeopardy principles used to resolve the 'new' case upon which applicant relies were not new, he has not satisfied the new-legal-basis exception." (At 43) "The reasoning that applies to a successive-prosecutions double-jeopardy claim does not apply to a multiple-punishments double-jeopardy claim. When the convictions occur at a single criminal trial, the role of the double-jeopardy guarantee 'is limited to assuring that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense.' The Supreme Court has explicitly recognized that the State has the right to prosecute and *obtain jury verdicts* on two offenses in a single trial, even if the offenses are the same for double jeopardy purposes."

Stevenson v. State, 499 S.W.3d 842, 851 (Tex. Crim. App. 2016). "We begin with the statute's language to determine the offense's gravamen. Looking to the three types of crimes

explained above, according to the statute's language, we hold a civil-commitment order violation is a circumstances-surrounding-the-conduct crime. (¶) Having determined above that the evidence sufficiently supported Stevenson's guilty verdict because the State demonstrated Stevenson was adjudicated a sexually violent predator, was subject to a civil-commitment order, and then violated that order, we conclude that the entry of three judgments violated Stevenson's double-jeopardy right against multiple punishments. Therefore, Stevenson's two additional judgments should be vacated because the statute creates a single offense for violating [TEX. HEALTH & SAFETY CODE] § 841.082's requirements, not a separate, punishable offense for each alleged way that a violation occurred."

Maldonado v. State, 461 S.W.3d 144, 145-46 (Tex. Crim. App. 2015). "Appellant was convicted of twelve counts of aggravated sexual assault of a child and indecency with a child and sentenced to life in prison. The court of appeals vacated two of the convictions for indecency with a child on double jeopardy grounds and modified the judgment of the trial court. The State filed a petition for discretionary review, which we granted to consider whether the subsumption theory of *Patterson v. State*, 152 S.W.3d 88 (Tex. Crim. App. 2004) is still valid and if so, whether a single count alleging sexual contact is subsumed by a count alleging penetration when there is evidence of multiple incidents of penetration which could have formed the basis for each count." (At 148) "The State asks us whether the subsumption theory from *Patterson v. State* is still valid. We hold that it is." (At 149-50) "While it is true that penetration cannot physically occur in the absence of contact, the contact offenses here are not factually subsumed because there was evidence that separate and distinct indecency-by-contact offenses occurred at other times in addition to the contact associated with the penetration offenses. Thus, subsumption does not apply in this case. Here, there were many separate acts of both contact and penetration. Because the focus of sex offenses is the prohibited conduct and the legislature intended to allow separate punishments for each prohibited act, the multiple convictions do not violate the Double Jeopardy Clause."

Ex parte Benson, 459 S.W.3d 67, 70 (Tex Crim. App. 2015). "The question in this case is whether intoxication assault and felony DWI (driving while intoxicated) are the same offense for double-jeopardy purposes when they arise out of the same transaction. We hold that they are not. (¶) The felony DWI count was based on the fact that applicant had two prior DWI convictions." (At 76) "[I]t is abundantly clear that the offenses of felony DWI and intoxication assault are different under the *Blockburger* [*Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)] same-elements test." (At 88-89) "The prior convictions are currently considered elements of the offense of felony DWI. The status of the prior convictions as 'elements' has significant procedural and substantive consequences. The legislature could easily have crafted 'serious bodily injury' and 'prior convictions' as statutory alternatives but did not. Felony DWI and intoxication assault do not have the same *type* of focus, much less the same actual focus or gravamen, and the offenses do not have the same unit of prosecution. (¶) When the *Blockburger* same-elements test indicates that the offenses are different, the evidence that the legislature intended only one punishment must be clear in order to rebut that presumption. Whatever else one might say, one cannot say that the legislature clearly intended only one punishment for the offenses of felony DWI and intoxication assault."

Shelby v. State, 448 S.W.3d 431, 434 (Tex. Crim. App. 2014). "Does the Double Jeopardy Clause of the United States Constitution disallow dual convictions for aggravated assault with a deadly weapon against a public servant and intoxication assault stemming from the same criminal act? Suggesting that this question should be answered in the affirmative, John Richard Shelby, appellant, argues that the court of appeals erred by permitting both convictions under these circumstances. We agree. We conclude that the Legislature did not intend to authorize separate punishments for the offenses of aggravated assault with a deadly weapon against a public servant and intoxication assault when the convictions for those offenses are based upon the same assaultive conduct against a single person, and, therefore, we hold that appellant's dual convictions for both offenses violate double jeopardy. We reverse the judgment of the court of appeals and vacate Shelby's conviction for the less serious offense, intoxication assault." (At 440) "[W]e conclude that the Legislature did not intend to permit dual convictions for aggravated assault against a public servant and intoxication assault under the circumstances in this case because these offenses share the same gravamen, share similar names, and have some elements that are the same under an imputed theory of liability."

Aekins v. State, 447 S.W.3d 270, 272 (Tex. Crim. App. 2014). "A jury found appellant . . . guilty of three counts of sexual assault. The court of appeals held that his convictions for both contacting and penetrating the adult victim's sexual organ with his mouth violated his right against multiple punishments for the same offense because the contact and penetration were based on the same act. We granted the State Prosecuting Attorney's petition for discretionary review to clarify that (1) when a single exposure or contact offense is 'incident to and subsumed by' a penetration offense, the offenses are the 'same' for double-jeopardy purposes, and (2) the Texas Legislature has not manifested its intent to allow multiple punishments for those 'same' offenses, so (3) multiple convictions for those 'same' offenses violate double-jeopardy principles. We conclude that the court of appeals properly vacated the conviction for the 'contact' sexual-assault count, and we affirm its judgment." (At 274) "The correctness of the appellate court's holding depends on the validity of what has become known as the *Patterson* [*Patterson v. State*, 152 S.W.3d 88 (Tex. Crim. App. 2004)] 'incident to and subsumed by' doctrine. We reaffirm this doctrine (which, in some jurisdictions is called 'the merger doctrine') and reiterate that it is well grounded in the Fifth Amendment guarantee against double jeopardy." (At 283) "We agree with the court of appeals that the jury in this case could not have found two separate acts of the defendant's mouth contacting and penetrating Jessica's sexual organ. Two convictions, based

on a hypertechnical division of what was essentially a single continuous act, are barred under the Double Jeopardy Clause."

Cooper v. State, 430 S.W.3d 426, 427 (Tex. Crim. App. 2014). "Appellant was convicted of five counts of aggravated robbery pursuant to an indictment that named three different complainants, with all counts arising from a single home invasion. (¶) In his petition to this Court, appellant raises two grounds, both of which challenge the court of appeals's holding that the Double Jeopardy Clause of the United States Constitution was not violated when he was convicted of both aggravated robbery by causing bodily injury and aggravated robbery by threat to the same victim during a single robbery. (¶) After reviewing the opinion of the court of appeals, the record, and the briefs of the parties, we conclude that appellant's challenged convictions do violate the double-jeopardy clause. Accordingly, we sustain appellant's grounds for review."

Pierson v. State, 426 S.W.3d 763, 765 (Tex. Crim. App. 2014), *cert. denied*, 574 U.S. 885 (2014). "Appellant, Leonard Pierson, Jr., was charged with indecency with a child and aggravated sexual assault of a child. After the victim completed her direct-examination testimony, the defense's first question on cross-examination was, 'Did you also make an allegation that [Appellant] did these same things to his own daughter?' After a hearing, the trial court granted the State's request for a mistrial. Appellant then filed a pretrial habeas-corpus application seeking to prevent a second trial on the basis of double jeopardy. The court denied that application because it again found (as it did at trial) that the mistrial was the fault of the defense and that there was no other appropriate remedy under the circumstances; thus there was a manifest necessity to retry Appellant, and his second trial was not precluded by double-jeopardy principles. (¶) Appellant was convicted at his second trial of one count of indecency with a child and seven counts of aggravated sexual assault of a child . . . . On appeal, Appellant argued that his second trial violated double-jeopardy principles[.]" (At 775) "The court of appeals correctly concluded that the trial court was within its discretion to declare a mistrial based on manifest necessity due to the actions of defense counsel. Therefore, Appellant's second trial was not barred by double jeopardy."

Ex parte Denton, 399 S.W.3d 540, 542 (Tex. Crim. App. 2013). "In each of two causes, a grand jury indicted applicant for both aggravated robbery and aggravated assault of a named complainant. (¶) Applicant asserts that convictions for both aggravated robbery and aggravated assault of each complainant violate the prohibition against double jeopardy." (At 547) "Here, the indictments alleged both threatening with a firearm and threatening with the firearm while committing theft, both offenses based on the same continuous transaction. Neither indictment alleged bodily injury. (¶) As plead in the indictments, the counts for both aggravated robbery and aggravated assault assert that applicant intentionally or knowingly threatened another person with imminent bodily injury and used or exhibited a deadly weapon during the commission of that offense. The counts for aggravated robbery further allege that applicant committed theft. Thus, as plead, aggravated assault is a lesser-included offense of aggravated robbery because 'it is established by proof of the same or less than all the facts required to establish the commission of the offense charged[.]' Tex. Code Crim. Proc. art. 37.09(1). 'If . . . the prosecution, in proving the elements of one charged offense, also necessarily proves another charged offense, then that other offense is a lesser-included offense.' If there is no clear legislative intent to punish the offenses separately, multiple punishments for the criminal act that is the subject of the prosecution is barred. No such intent has been shown here. We conclude that applicant has shown that two of his four convictions are in violation of his constitutional double-jeopardy protections that preclude multiple punishments for the same offense. (¶) We therefore retain the aggravated-robbery convictions and set aside the aggravated-assault convictions." (Citations omitted).

Evans v. Mich., 568 U.S. 313, 133 S. Ct. 1069, 185 L. Ed. 2d 124 (2013). (At 133 S. Ct. 1073) "When the State of Michigan rested its case at petitioner Lamar Evans' arson trial, the court entered a directed verdict of acquittal, based upon its view that the State had not provided sufficient evidence of a particular element of the offense. It turns out that the unproven 'element' was not actually a required element at all. We must decide whether an erroneous acquittal such as this nevertheless constitutes an acquittal for double jeopardy purposes, which would mean that Evans could not be retried. This Court has previously held that a judicial acquittal premised upon a 'misconstruction' of a criminal statute is an 'acquittal on the merits . . . [that] bars retrial.' Seeing no meaningful constitutional distinction between a trial court's 'misconstruction' of a statute and its erroneous addition of a statutory element, we hold that a midtrial acquittal in these circumstances is an acquittal for double jeopardy purposes as well." (At 1081) "We hold that Evans' trial ended in an acquittal when the trial court ruled the State had failed to produce sufficient evidence of his guilt. The Double Jeopardy Clause thus bars retrial for his offense and should have barred the State's appeal." (Citation omitted).

Ex parte Chaddock, 369 S.W.3d 880, 882 (Tex. Crim. App. 2012). "The applicant challenges his conviction for aggravated assault on the grounds that it was the product of a successive prosecution following a judgment of conviction for a greater-inclusive offense, in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. (¶) On December 10, 2004, in cause number F-0485746-K, the applicant was indicted for the offense of engaging in organized criminal activity . . . . Also on December 10, 2004, the applicant was indicted for aggravated assault, in cause number F-0401705-RE . . . . The only difference in the two indictments is that in cause number F-0485746-K, the applicant is alleged to have committed the assault 'as a member of a criminal street gang.' (¶) On April 6, 2005, after a jury trial, the applicant was convicted in cause number F-0485746-K, the engaging-in-organized-criminal-activity offense and sentenced to nineteen years' imprisonment and a $10,000 fine. On May 26, 2005, he pled guilty and was convicted in cause number F-0401705-RE, the aggravated assault offense, and sentenced to ten years' confinement. The applicant now contends that his conviction for the aggravated assault offense in cause number F-0401705-RE should be set aside because his prosecution for that offense, after he was convicted

of the greater-inclusive offense in cause number F-0485746-K, violated the Fifth Amendment prohibition against being 'subject for the same offence to be twice put in jeopardy of life or limb[.]' We agree." (At 884) "[I]t is obvious that every element of the aggravated assault allegation in cause number F-0401705-RE is subsumed by the allegation of aggravated assault while a member of a criminal street gang in cause number F-0485746-K[.]" (At 886) "To the extent that Section 71.03(3) purports to authorize successive *prosecutions* for engaging in organized criminal activity and for the commission of one of the lesser-included predicate offenses listed in 71.02(a), we hold that it does indeed operate unconstitutionally." (Footnotes omitted).

York v. State, 342 S.W.3d 528, 551 (Tex. Crim. App. 2011), *cert. denied*, 565 U.S. 1156 (2012). "For jeopardy to attach to an issue in the *first* prosecution, the issue must be 'ultimate' rather than merely evidentiary. If jeopardy does not attach to a particular issue in the first prosecution, then that issue cannot become the basis for collateral estoppel in a subsequent prosecution." (At 552) "In light of our discussion, we reaffirm the bottom-line result in *Murphy* [*Murphy v. State*, 239 S.W.3d 791 (Tex. Crim. App. 2007)] as controlling where a defendant seeks to bar the relitigation of suppression issues on the basis of double jeopardy. That is, the State is not barred by the Double Jeopardy Clause from relitigating a suppression issue that was not an ultimate fact in the first prosecution and was not an ultimate fact in the second prosecution."

Saenz v. State, 166 S.W.3d 270, 271 (Tex. Crim. App. 2005). "Appellant was charged with capital murder in a three count indictment. Each count alleged the murder of a different victim, and each count alleged the murder of the two other victims as aggravating circumstances. The jury convicted appellant of three counts of capital murder." (At 274) "The most reasonable interpretation of the statute and its legislative intent is that, under the circumstances presented here, the statute allows only a single capital murder conviction. Accordingly, we hold that the Double Jeopardy Clause of the Fifth Amendment was violated when the State charged appellant with three separate counts of capital murder under Section 19.03(a)(7)(A) because the charges rely on the same three murders for each charge."

Hampton v. State, 165 S.W.3d 691, 692 (Tex. Crim. App. 2005). "The appellant was charged with aggravated sexual assault. At the end of the guilt phase of the trial, the trial court submitted within the jury charge a lesser-included offense instruction for sexual assault. The jury acquitted the appellant of aggravated sexual assault, but found him guilty of sexual assault. On prior review, we held that the submission of the lesser-included offense of sexual assault was improper because it was not supported by the evidence. On remand, the Court of Appeals held that the remedy for this error is a retrial for the lesser offense. We granted review. We conclude that the Court of Appeals was correct in remanding the case because re-litigating sexual assault is not jeopardy barred in this case."

Ex parte Goodman, 152 S.W.3d 67, 71 (Tex. Crim. App. 2004), *cert. denied*, 545 U.S. 1128 (2005). "Because the trial court granted the State's motion to dismiss the first indictment [after jeopardy attached], the Double Jeopardy Clause prohibits the State from reprosecuting appellant for the one theft alleged in the first indictment . . . . The State, in its current prosecution of appellant for aggregated theft, may attempt to prove any number of the aggregated theft's constituent thefts. However, consistent with the Double Jeopardy Clause, the State may not attempt to relitigate the facts underlying the theft alleged in the first indictment in an effort to prove that that offense or any of its lesser included offenses is one of the aggregated theft's constituent thefts. In other words, the State, in proving aggregated theft, may not rely upon proof of the theft alleged in the first indictment or any of its lesser included offenses."

Lopez v. State, 108 S.W.3d 293, 299 (Tex. Crim. App. 2003). "Section 481.112 provides several different means for committing the offense of delivery of a single quantity of drugs . . . The statute, however, cannot be turned on its head to allow several 'delivery' convictions where there is only one single sale of one drug. Therefore, we hold that the offer to sell and the possession of drugs to complete that specific sale is one single offense. Although the State may charge the offense as being committed in either of these modes, it cannot obtain two convictions for the same sale under Section 481.112(a). The entry of two convictions in this case violates double jeopardy under the *Blockburger* [*Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)] test because the steps in this single drug transaction were all 'the result of the original impulse,' and therefore each step was not a 'new bargain.'" (Citations omitted).

Ex parte Taylor, 101 S.W.3d 434, 442 (Tex. Crim. App. 2002). "In each case, the entire record—including the evidence, pleadings, charge, jury arguments, and any other pertinent material—must be examined to determine precisely the scope of the jury's factual findings. In one case, for example, a jury's acquittal might rest upon the proposition that the defendant was 'not intoxicated,' while in another, that same verdict might rest upon the narrower proposition that the defendant was 'not intoxicated' by a particular substance, but he might well have been intoxicated by a different substance. Generally, then, the scope of the facts that were actually litigated determines the scope of the factual finding covered by collateral estoppel." (At 445) "[A]pplication of collateral estoppel depends not merely upon the pleadings, but also upon the evidence, charge, jury argument, and any other relevant material." (Citations omitted).

Art. 1.11. Acquittal a Bar.

An acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been; but if the defendant shall have been acquitted upon trial in a court having no jurisdiction of the offense, he may be prosecuted again in a court having jurisdiction.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

State v. Herrera, 754 S.W.2d 795, 796-97 (Tex. App.—El Paso 1988, no pet.). "[T]he present matter is governed by the principal that conviction of the lesser offense operates as an acquittal of the greater . . . . An acquittal of the lesser must serve as a bar to the retrial of either. *See* [TEX. CODE CRIM. PROC.] arts. 1.11 and 37.14[.]"

Art. 1.12. Right to Jury.

The right of trial by jury shall remain inviolate.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Bearden v. State, 648 S.W.2d 688, 693 (Tex. Crim. App. 1983). "The right to trial by jury is no less protected because the trial is for a misdemeanor. *See* [TEX. CODE CRIM. PROC.] Article 1.12[.]"

Art. 1.13. Waiver of Trial by Jury.

(a) The defendant in a criminal prosecution for any offense other than a capital felony case in which the state notifies the court and the defendant that it will seek the death penalty shall have the right, upon entering a plea, to waive the right of trial by jury, conditioned, however, that, except as provided by Article 27.19, the waiver must be made in person by the defendant in writing in open court with the consent and approval of the court, and the attorney representing the state. The consent and approval by the court shall be entered of record on the minutes of the court, and the consent and approval of the attorney representing the state shall be in writing, signed by that attorney, and filed in the papers of the cause before the defendant enters the defendant's plea.

(b) In a capital felony case in which the attorney representing the State notifies the court and the defendant that it will not seek the death penalty, the defendant may waive the right to trial by jury but only if the attorney representing the State, in writing and in open court, consents to the waiver.

(c) A defendant may agree to waive a jury trial regardless of whether the defendant is represented by an attorney at the time of making the waiver, but before a defendant charged with a felony who has no attorney can agree to waive the jury, the court must appoint an attorney to represent him.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1991, 72nd Leg., ch. 652, Sec. 1, eff. Sept. 1, 1991; Subsec. (c) amended by Acts 1997, 75th Leg., ch. 285, Sec. 1, eff. Sept. 1, 1997. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 1031, Sec. 1, eff. Sept. 1, 2011.

Ex parte Harris, __ S.W.3d __, 2024 Tex. Crim. App. Lexis 110, at *1 (Tex. Crim. App. Feb. 14, 2024). "Applicant's trial attorney told him that a jury could impose probation in a murder case. That was incorrect. But to show prejudice, Applicant needs to demonstrate that, if he had understood correctly who could assess probation, he would have in fact pled guilty or nolo contendere to the trial court and that the State would have consented to a jury waiver." (At *3) "We would remand this application to the trial court. We order the trial court to make findings on whether Applicant would have pled guilty or nolo contendere to the judge in order to seek deferred adjudication if he had known that a jury could not impose probation for murder. These findings should include determinations on the credibility of any sworn statements from Applicant and his attorney, or any testimony from either of them if a live hearing is deemed necessary. We also order the trial court to obtain evidence from the State on whether the State would have agreed to a jury waiver, and we order the trial court to make a finding on that issue. The trial court may gather other evidence or make other findings it deems necessary."

Lira v. State, 666 S.W.3d 498, 502-03 (Tex. Crim. App. 2023). **"**Does the Texas Supreme Court's 'Seventeenth Emergency Order Regarding the COVID-19 State of Disaster' authorize a trial court to conduct a plea proceeding via videoconference despite the lack of a defendant's written consent? No. We have previously held in *In re Ogg* [*In re State ex. Rel. Ogg*, 618 S.W.3d 361 (Tex. Crim. App. 2021) (orig. proceeding)] that the Supreme Court's emergency orders modifying deadlines and procedures could not be used to suspend a party's substantive rights or a procedure that involves a trial court's authority. The statutory requirement that a defendant consent in writing to a plea proceeding by videoconference is both a substantive statutory right and procedure necessary for the trial court to have the authority to proceed." (At 503) "Both Appellants reached plea agreements with the State and their cases were set for back-to-back pleas via a 'zoom/video-conference plea docket.' Prior to the hearing, counsel for Appellants filed identical motions objecting to the trial court's setting the cases for plea hearings via a Zoom videoconference." (At 510) "[W]e consider the question of whether modification of procedures surrounding a plea bargain abrogated the substantive rights of the Appellants or granted the trial court authority where none existed. We conclude that it did both." (At 511) "[A] defendant necessarily has a right to be present at the plea hearing as part of his right to confront his accusers and his due process right to be present at any stage of the criminal proceeding." (At 518) "Here, the governing statute [TEX. CODE CRIM. PROC. art. 1.13] similarly requires a defendant's presence (either in person or through Article 27.19) as a condition to the proper waiver his right to trial by jury. Without fulfillment of that condition, the waiver was not proper and the trial court had no authority to preside over anything but a trial by jury."

Rios v. State, 665 S.W.3d 467, 469 (Tex. Crim. App. 2022). "Appellant, . . . was convicted of continuous sexual abuse of a child. He appealed, arguing that he did not waive his federal constitutional right to a jury trial and that the state statutory procedures for waiving a jury were not followed. TEX. CODE CRIM. PROC. art. 1.13(a)." (At 485) "Application of the presumption of regularity to a constitutional no-waiver claim (unlike an Article 1.13(a) claim), seems inappropriate given that it does not inform the knowing and intelligent inquiry and because the burden is on the State on direct appeal to develop a record showing an express,

knowing, and intelligent waiver of a defendant's right to a jury. Given that the burden of proof is on the State and the sparse record in this case, we are forced to conclude that the evidence is insufficient to show that Appellant expressly, knowingly, and intelligently waived his right to a trial by jury." (At 485-86) "The parties and majority agree that a violation of a defendant's right to a jury trial is structural error defying a harm analysis because the error affected the framework of the trial. So do a number of other courts. This is a question that neither this Court nor the United States Supreme Court has resolved. This Court does not usually recognize structural errors until the United States Supreme Court identifies them, but we believe resolution of this issue is sufficiently clear that we will deviate from our usual practice and hold that a violation of the federal constitutional right to a jury trial is structural error."

Sanchez v. State, 630 S.W.3d 88, 90 (Tex. Crim. App. 2021). "The issue in this case is whether the trial court should have permitted Appellant to withdraw his waiver of a jury trial that was executed in anticipation of a negotiated plea that was never consummated. After overruling several requests by Appellant to withdraw his jury waiver, the trial court afforded him a bench trial. We conclude that the trial court abused its discretion by failing to permit the withdrawal of appellant's jury-trial waiver, and we therefore reverse." (At 97) "[A] defendant who executes a jury waiver in anticipation of a negotiated guilty plea, and then balks at executing the plea and immediately seeks the reinstatement of his right to a jury trial, should be no less entitled to have his wish respected than the defendant who goes through with the guilty plea and only later seeks to withdraw from both the plea itself and the attendant jury-trial waiver. He should be no more bound by his earlier jury-trial waiver than the defendant who accepts but then reneges upon a bargained-for guilty plea, at least not when he immediately makes it clear that he no longer wishes to be bound by the jury-waiver."

In re State ex rel. Ogg, 618 S.W.3d 361, 362 (Tex. Crim. App. 2021). "The defendant sought to waive his right to a jury trial and have a bench trial. By statute, the State has the authority to refuse to consent to such a waiver, and the State refused to consent in the defendant's case. But the trial court concluded that it had the power, under the Texas Supreme Court's Emergency Order in response to COVID-19, to suspend that statutory provision and conduct a bench trial despite the State's refusal to consent. The State then sought a writ of mandamus or a writ of prohibition from the court of appeals, but that court declined to grant relief. The State now seeks mandamus relief against the court of appeals. We conditionally grant mandamus relief." (At 363-64) "We have issued mandamus relief in the past when a trial court has indicated that it intends to conduct a bench trial despite the State's lack of consent to a defendant's waiver of a jury. (¶) The question we confront is whether the Emergency Order changes that it intends to conduct a bench trial despite the State's lack of consent to a defendant's waiver of a jury." (At 365) "Turning to the present case, we conclude that the consent requirement is not merely procedural, but implicates the trial court's authority to preside over a particular type of proceeding. We have indicated that a judgment obtained from a bench trial conducted without the State's consent in violation of 1.13 is a nullity for double-jeopardy purposes. The judge simply does not have the authority to conduct a bench trial when the State has not consented. He cannot use the Emergency Order's authorization to modify or suspend procedures to confer that authority upon himself."

Miller v. State, 548 S.W.3d 497, 498 (Tex. Crim. App. 2018). We "hold that a defendant meets the prejudice prong of his ineffective assistance of counsel claim by demonstrating that he would have opted for a jury if his attorney had correctly advised him that he was ineligible for probation from the trial court. He does not have to show that the likely outcome of the jury trial he waived would have been more favorable than the court trial he had . . . . We disavow our contrary holding in *Riley v. State*, 378 S.W.3d 453, 458 (Tex. Crim. App. 2012), to the extent that it conflicts with this opinion. We express no opinion about whether Appellant has demonstrated a reasonable probability that he would have opted for a jury if his attorney had correctly advised him about his probation eligibility but remand to the court of appeals to address that issue." (At 501) "But regardless of its unworkability and its failure to adhere to precedent, we cannot follow *Riley* because we are bound by the rulings of the United States Supreme Court on this topic." (At 502) "In the context of this case, Appellant would have to demonstrate a reasonable likelihood that he would have opted for a jury if his attorney had correctly advised him about his probation eligibility from the trial court. He would not have to demonstrate a reasonable likelihood that the jury trial he waived would have yielded a more favorable result than the court trial he had."

Metts v. State, 510 S.W.3d 1, 2 (Tex. Crim. App. 2016). "In 2004, Appellant pled guilty to two charges of sexual assault of a child and was placed on deferred adjudication community supervision for each offense. Before Appellant entered his plea, he and a prosecutor representing the State appeared at a status hearing to waive Appellant's right to a jury trial. The prosecutor later became a district court judge and, nine years later, she adjudicated Appellant guilty and sentenced him to ten years of confinement for each offense . . . We granted Appellant's petition for discretionary review to consider his contention that the court of appeals erred by holding that the trial judge's prior involvement in the cases as a prosecutor did not render her constitutionally and statutorily disqualified from adjudicating Appellant's guilt." (At 5-6) "In our view, Judge Darr acted as counsel for the State in Appellant's case, however briefly. Under Article 1.13 of the Texas Code of Criminal Procedure, it is necessary for 'the attorney representing the State' to sign a written consent to Appellant's waiver of a jury trial. Tex. Code Crim. Proc. art. 1.13(a) (providing that a defendant may waive a jury trial only with the consent, 'in writing, signed by' 'the attorney representing the state'). If Judge Darr had not been acting as counsel in the case, her signature would presumably have never appeared on the jury waiver form." (At 8) "The court of appeals held that because Judge Darr had not investigated, advised, or participated in the case in any way, she was not disqualified. While the record does not suggest to what degree Judge Darr investigated Appellant or advised the State, the record does provide

an affirmative showing that she actively participated in the case by executing the State's written consent and approval to Appellant's waiver of a jury trial, which allowed Appellant to receive deferred adjudication. Accordingly, the court of appeals was mistaken to conclude that Judge Darr was not disqualified from later presiding over Appellant's adjudication hearing."

Ex parte Garza, 337 S.W.3d 903, 905 (Tex. Crim. App. 2011). "After the jury was empaneled and sworn in this misdemeanor prosecution for driving while intoxicated, but before trial commenced, one of the jurors became at least temporarily indisposed for health reasons and the trial was continued for a few days. Ultimately, the trial court declared a mistrial over the appellant's objection. When the case was reset for trial, the appellant filed a pre-trial application for writ of habeas corpus arguing that, because a manifest necessity for the mistrial was lacking, his re-prosecution violated double jeopardy." (At 913) "The general provision in the Code of Criminal Procedure that permits a criminal defendant to waive 'any rights secured him by law,' we have assumed, includes his right knowingly to forego a jury comprised of the full constitutional complement. That Section 62.301 of the Government Code does not specifically authorize the parties in County Court to consent to go to trial with fewer than six members does not mean that such an alternative is forbidden. We effectively harmonize Section 62.301 with Articles 1.14 and 1.15, by holding that, while none of these statutes explicitly prohibits an accused in County Court from waiving a trial by fewer than six jurors, and the first does not expressly permit it, the latter two at least implicitly permit it." (At 915) "There is no statutory provision comparable to [Tex. Code Crim. Proc.] Article 36.29(a) that requires a County Court to continue with a trial once one of the original six jurors becomes disabled. But there is no constitutional or statutory impediment to its doing so either, so long as the defendant waives his right to trial by a complete jury under Article 1.14, and the State and the trial court are willing to consent to do so under Article 1.13(a). The trial court should have explored that option before *sua sponte* declaring a mistrial."

Hobbs v. State, 298 S.W.3d 193, 197-98 (Tex. Crim. App. 2009). "A defendant has an absolute right to a jury trial. As a matter of federal constitutional law, the State must establish, on the record, a defendant's express, knowing, and intelligent waiver of jury trial. Article 1.13 of the Code of Criminal Procedure sets out the required formalities of a jury-trial waiver in Texas. But once the defendant validly waives his right to a jury trial, he does not have an unfettered right to reassert that right. Should the defendant who wants to withdraw his prior written waiver—and is seeking to change the status quo—have the burden to show an 'absence of adverse consequences' from granting the withdrawal? Yes. He must establish, on the record, that his request to withdraw his jury waiver has been made sufficiently in advance of trial such that granting his request will not: (1) interfere with the orderly administration of the business of the court, (2) result in unnecessary delay or inconvenience to witnesses, or (3) prejudice the State. A request to withdraw a jury waiver is addressed to the discretion of the trial court. If the defendant's claims are rebutted by the State, the trial court, or the record itself, the trial judge does not abuse his discretion in refusing to allow the withdrawal of the waiver." (At 198) "As noted by the court of appeals, this record shows potential adverse consequences if the trial judge permitted appellant to withdraw his jury waiver and continued the case to allow for a jury trial. As the State argues, 'The complaining witness was available to testify that day, but in light of petitioner's threats there is no guarantee that the complainant would have returned on another day to testify.' Appellant failed to present either evidence or argument to assuage this legitimate concern. Under these circumstances, the court of appeals correctly found that appellant failed to carry his evidentiary burden; thus, the trial court did not abuse its discretion in denying appellant's request to withdraw his waiver." (Footnotes omitted).

Ex parte Douthit, 232 S.W.3d 69, 74 (Tex. Crim. App. 2007), *cert. denied*, 552 U.S. 956 (2007). "Similar to *Ex parte Sadberry* [*Ex parte Sadberry*, 864 S.W.2d 541 (Tex. Crim. App. 1993)], we will not set aside a conviction for a violation of pre-September 1, 1991, Article 1.13 and Article 1.14's prohibition on jury waiver in capital cases if the applicant fails to claim that 'he desired and was deprived of his constitutional right to a trial by jury, that he did not intend to waive a jury trial or was otherwise harmed, and the record reflects that the applicant agreed to the waiver[.]' Consistent with our more soundly reasoned decisions in *Ex parte McCain* [*Ex parte McCain*, 67 S.W.3d 204 (Tex. Crim. App. 2002)] and *Ex parte Sadberry* we hold that we will not grant habeas relief where there is no federal constitutional right and the defendant waived a right in a manner inconsistent with the procedures outlined only by statute, but the record reflects that the defendant did so knowingly and voluntarily." (Footnotes omitted).

Ex parte McCain, 67 S.W.3d 204, 206 (Tex. Crim. App. 2002). "[T]he violation of a procedural statute, even a 'mandatory' statute, is not cognizable on a writ of habeas corpus. Although [Tex. Code Crim. Proc.] Article 1.13(c) states that the trial court 'must' appoint an attorney to represent a felony defendant before he may waive a jury trial, this statutory provision does not embody a constitutional or fundamental right. Because habeas relief under [Tex. Code Crim. Proc.] Article 11.07 is available only for jurisdictional defects and violations of certain fundamental or constitutional rights, appellant's claim is not cognizable on a writ of habeas corpus."

Johnson v. State, 72 S.W.3d 346, 349 (Tex. Crim. App. 2002). "The judgment states that Johnson waived a jury trial, and that statement indicates that Johnson knew about his right to a jury trial. We must presume that statement correct in the absence of direct proof of its falsity, and there is no such proof in the record. So although [Tex. Code Crim. Proc.] Art. 1.13 was violated, Johnson was not harmed by the violation because the record reflects that he was aware of his right to a jury trial and opted for a bench trial."

Marquez v. State, 921 S.W.2d 217, 223 (Tex. Crim. App. 1996). "We hold that a defendant should be permitted to withdraw his previously executed jury waiver if he establishes on the record that his request to do so is made sufficiently in advance

of trial such that granting his request will not: (1) interfere with the orderly administration of the business of the court, (2) result in unnecessary delay or inconvenience to witnesses, or (3) prejudice the State."

Huynh v. State, 901 S.W.2d 480, 482-83 (Tex. Crim. App. 1995). "Given [TEX. CODE CRIM. PROC.] Chapter 45's comprehensive and specific applicability to the unique municipal court context, we hold that article 45.24 which specifically addresses jury waiver in the municipal court context is controlling, to the preclusion of article 1.13."

Ex parte Sadberry, 864 S.W.2d 541, 543 (Tex. Crim. App. 1993). "[W]e hold that where the applicant does not claim he desired and was deprived of his constitutional right to a trial by jury, that he did not intend to waive a jury trial or that he was otherwise harmed and the record reflects that the applicant agreed to the waiver, we will not set aside a conviction by habeas corpus or collateral attack due to the applicant's failure to sign a written jury form pursuant to [TEX. CODE CRIM. PROC.] article 1.13." [The court also overruled *Ex parte Felton*, 590 S.W.2d 471 (Tex. Crim. App. 1979) to the extent that it conflicts.]

State ex rel. Curry v. Carr, 847 S.W.2d 561, 562 (Tex. Crim. App. 1992). "We hold [the trial judge] does not have the discretion to serve as a factfinder in the trial of a misdemeanor case absent the consent and approval of the State as prescribed by [TEX. CODE CRIM. PROC.] Art. 1.13(a) . . . to the accused's waiver of jury trial."

Shaffer v. State, 769 S.W.2d 943, 944-45 (Tex. Crim. App. 1989). TEX. CODE CRIM. PROC. art. 1.13 "requires the State to give written consent to a defendant's jury waiver. Such a requisite is meant to protect the State's right to insist on a jury trial even where a defendant wishes to waive a jury . . . . We now hold the State's failure to give written consent to a defendant's jury waiver, in violation of Art. 1.13, does not constitute error as to a defendant or from which a defendant can complain."

Story v. State, 614 S.W.2d 162, 163 (Tex. Crim. App. 1981, panel op.). "The [TEX. CODE CRIM. PROC. art. 1.13] requirement that consent and approval be filed before the entry of the plea applies to the consent and approval by the prosecutor, not to the consent and approval by the trial court."

Art. 1.14. Waiver of Rights.

(a) The defendant in a criminal prosecution for any offense may waive any rights secured him by law except that a defendant in a capital felony case may waive the right of trial by jury only in the manner permitted by Article 1.13(b) of this code.

(b) If the defendant does not object to a defect, error, or irregularity of form or substance in an indictment or information before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other postconviction proceeding. Nothing in this article prohibits a trial court from requiring that an objection to an indictment or information be made at an earlier time in compliance with Article 28.01 of this code.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1733, ch. 659, Sec. 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, Sec. 5, eff. June 14, 1973. Amended by Acts 1985, 69th Leg., ch. 577, Sec. 1, eff. Dec. 1, 1985; Acts 1991, 72nd Leg., ch. 652, Sec. 2, eff. Sept. 1, 1991.

Simpson v. State, 591 S.W.3d 571, 572 (Tex. Crim. App. 2020). "While on probation, Robvia Simpson struck her roommate with an ashtray. She maintains that she did so in self-defense. But at the hearing to determine whether her probation would be revoked, Simpson did not claim self-defense. Instead, she simply pleaded 'true' to the allegation that she assaulted her roommate. Did Simpson's plea of 'true' preclude her from claiming self-defense in a subsequent criminal trial? We conclude that it did not." (At 575) "[N]either a probationer's plea of 'true' nor a revoking judge's finding of 'true' should give rise to an offensive claim of collateral estoppel in a subsequent criminal trial." (At 576) "Perhaps the argument could be made that, by pleading 'true' at the revocation hearing, Simpson waived her right to have a jury pass on her claim of self-defense. We do not agree. Our law provides that the defendant's right to a jury trial must be expressly waived. When Simpson pleaded 'true' at the revocation hearing, she expressly waived a number of rights, many of which are peculiar to revocation proceedings. She expressly waived her right to a jury trial on the child endangerment offense. She did not expressly waive her right to have a jury determine the merits of the assault charges, including her claims of self-defense."

Jenkins v. State, 592 S.W.3d 894, 896 (Tex. Crim. App. 2018). "Appellant argued to the trial court that, since the indictment filed by the State and read to the jury at the beginning of his trial did not name him personally, it did not charge 'a person,' and thus it was fatally defective under article V, section 12(b) of the Texas Constitution." (At 902) "As in *Teal* [*Teal v. State*, 230 S.W.3d 172 (Tex. Crim. App. 2007)], the face of the charging instrument put Appellant on notice that he was the defendant referred to in the indictment. We conclude, therefore, that, although defective under [TEX. CODE CRIM. PROC.] article 21.02, the indictment nevertheless (1) charges a person (2) with committing an offense, and thus vested the trial court with both personal and subject-matter jurisdiction. (¶) If a defendant does not object to a defect, error, or irregularity of form or substance in an indictment before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other post-conviction proceeding. As we observed in *Teal*, 'Texas law now requires the defendant to object to any error in the indictment before the day of trial and certainly before the jury is empaneled.' (¶) In this case, Appellant did not raise an objection to the indictment, nor claim that it was defective, until the second day of the trial . . . because Appellant failed to make a timely objection before the date of trial, he 'forfeited any right to object' to the indictment defect."

Carson v. State, 559 S.W.3d 489, 490 (Tex. Crim. App. 2018). "Appellant, Gary Carson, was charged with three counts of assault on a public servant and three counts of bail jumping. After Appellant agreed to waive his right to appeal, the State agreed to waive its right to a jury trial and the case proceeded before the trial court. Appellant pleaded guilty to all six charges. The trial court accepted Appellant's pleas, found him guilty, and sentenced him. Appellant appealed his conviction. Having found that Appellant's waiver of his right to appeal was invalid, the court of appeals affirmed Appellant's convictions, but reversed the assessment of punishment. Because we find that Appellant's waiver of his right to appeal was valid, we will reverse. We remand this case to the court of appeals to address whether an exception to the waiver rules nevertheless applies in this case in which the trial judge admitted that he considered facts not introduced into evidence when assessing Appellant's sentence." (At 496) "Appellant negotiated with the State and promised to waive his right to appeal in exchange for the State's promise to waive a jury. Given the circumstances in this case, we hold that the State's waiver of its right to a jury was sufficient consideration to render Appellant's waiver of his right to appeal knowing and intelligent."

Washington v. State, 363 S.W.3d 589, 589-90 (Tex. Crim. App. 2012). "Billie Dean Washington pleaded guilty to sexual assault of a child. Pursuant to a plea bargain, he was placed on deferred adjudication for ten years. The State moved to adjudicate guilt, and Washington pleaded true to the allegations. Without an agreed recommendation for punishment and before sentencing, Washington waived his right to appeal in a written stipulation of evidence. The trial judge found Washington guilty and sentenced him to twenty years' confinement and a fine of $10,000. (¶) The First Court of Appeals dismissed Washington's *pro se* appeal for want of jurisdiction, noting that Washington's waiver supported the trial judge's certification that Washington waived his right to appeal. But when a defendant waives his right to appeal before sentencing and without an agreement on punishment, the waiver is not valid. And contrary to the State's assertion, the record does not confirm that the State gave any consideration for Washington's waiver. So, on this record, Washington's waiver was not valid." (Footnotes omitted).

Ex parte Garza, 337 S.W.3d 903, 905 (Tex. Crim. App. 2011). "After the jury was empaneled and sworn in this misdemeanor prosecution for driving while intoxicated, but before trial commenced, one of the jurors became at least temporarily indisposed for health reasons and the trial was continued for a few days. Ultimately, the trial court declared a mistrial over the appellant's objection. When the case was reset for trial, the appellant filed a pre-trial application for writ of habeas corpus arguing that, because a manifest necessity for the mistrial was lacking, his re-prosecution violated double jeopardy." (At 913) "The general provision in the Code of Criminal Procedure that permits a criminal defendant to waive 'any rights secured him by law,' we have assumed, includes his right knowingly to forego a jury comprised of the full constitutional complement. That Section 62.301 of the Government Code does not specifically authorize the parties in County Court to consent to go to trial with fewer than six members does not mean that such an alternative is forbidden. We effectively harmonize Section 62.301 with Articles 1.14 and 1.15, by holding that, while none of these statutes explicitly prohibits an accused in County Court from waiving a trial by fewer than six jurors, and the first does not expressly permit it, the latter two at least implicitly permit it." (At 915) "There is no statutory provision comparable to [Tex. Code Crim. Proc.] Article 36.29(a) that requires a County Court to continue with a trial once one of the original six jurors becomes disabled. But there is no constitutional or statutory impediment to its doing so either, so long as the defendant waives his right to trial by a complete jury under Article 1.14, and the State and the trial court are willing to consent to do so under Article 1.13(a). The trial court should have explored that option before *sua sponte* declaring a mistrial."

Ex parte Broadway, 301 S.W.3d 694, 696 (Tex. Crim. App. 2009). "We filed and set this case for submission to determine whether a defendant can voluntarily waive his entire appeal as a part of a plea, even when sentencing is not agreed upon, where consideration is given by the State for that waiver." (At 697-98) "[T]here was a bargain in Applicant's case because the State gave consideration for Applicant's waiver of appeal. It was not a plea bargain; Applicant rejected the plea bargain offered by the State and chose to enter an open plea. But a bargain of a different sort originated from Applicant's decision to waive his right to a jury in order to ensure that the judge would be able to consider deferred-adjudication community supervision with drug treatment." (At 698-99) "In this case, Applicant chose to enter an open plea. The fundamental nature of an open plea is uncertainty. If Applicant had agreed to a plea bargain, he would have obtained the benefits provided by [Tex. Code Crim. Proc.] Article 26.13, namely an announcement from the judge before any finding on the plea as to whether the court would follow or reject the agreement and the opportunity to withdraw the plea if the court rejected the agreement. (¶) In conclusion, we agree with the trial court that Applicant voluntarily, knowingly, and intelligently waived his right to appeal. We deny Applicant relief and hold that a defendant may knowingly and intelligently waive his entire appeal as a part of a plea, even when sentencing is not agreed upon, where consideration is given by the State for that waiver." (Footnotes omitted).

Ex parte Reedy, 282 S.W.3d 492, 500 (Tex. Crim. App. 2009). Considering an express waiver of the right to post-conviction habeas corpus relief, "[w]e think that ineffective assistance of counsel of such a magnitude as to render a guilty plea involuntary also has the effect of vitiating any waiver of habeas corpus relief with respect to that claim. After all, there is at least a reasonable likelihood that an accused who would have rejected a plea offer and pled not guilty but for the patent incompetence of his lawyers would have declined to waive habeas corpus relief as well. This means, of course, that before a habeas court can ascertain whether the applicant's waiver of habeas relief was truly voluntary, it must evaluate the underlying ineffective assistance of counsel claim. Because the habeas court must reach the merits of the underlying ineffective assistance of counsel claim in any

event, we simplify the process by holding that a waiver of post-conviction habeas corpus relief will not be enforceable to prohibit an applicant from claiming that his guilty plea was the product of constitutionally ineffective assistance of counsel, i.e., that but for the incompetence of his counsel, he would not have pled guilty but would have elected to proceed to trial." (Footnote omitted).

Kirkpatrick v. State, 279 S.W.3d 324, 326 (Tex. Crim. App. 2009). "The parties agree that the faces of the indictments at issue here allege misdemeanor tampering with a governmental record; 'the indictment[s] failed to contain language that would charge a felony offense—i.e., that Appellant intended to defraud or harm another or that the governmental record was of the type to make the offense a third-degree felony.' . . . Predictably, they disagree as to whether appellant's failure to object, before trial, to being tried on misdemeanor allegations in a district court prevented the court of appeals from granting relief on her appellate complaints about subject-matter jurisdiction." (At 329) "Here, although the indictment properly charged a misdemeanor and lacked an element necessary to charge a felony, the felony offense exists, and the indictment's return in a felony court put appellant on notice that the charging of the felony offense was intended. Further, the face of each indictment contains a heading: 'Indictment—Tampering with a Governmental Record 3rd Degree Felony,—TPC § 37.10(a)-Code 73990275.' The Penal Code section was easily ascertainable, and the notation that the offense was a third-degree felony clearly indicated that the state intended to charge a felony offense and that the district court had subject-matter jurisdiction. Appellant had adequate notice that she was charged with a felony. If she had confusion about whether the State did, or intended to, charge her with a felony, she could have, and should have, objected to the defective indictment before the date of trial. (¶) The court of appeals erred when it concluded that these indictments fail to satisfy the constitutional requirement of subject-matter jurisdiction and did not vest the district court with jurisdiction." (Footnote omitted).

Teal v. State, 230 S.W.3d 172, 181-82 (Tex. Crim. App. 2007). "Thus, the complete test for the constitutional sufficiency of a particular charging instrument goes slightly further than that expressly set out in *Studer* [*Studer v. State*, 799 S.W.2d 263 (Tex. Crim. App. 1990)] and *Cook* [*Cook v. State*, 902 S.W.2d 471 (Tex. Crim. App. 1995)]: Can the district court and the defendant determine, from the face of the indictment, that the indictment intends to charge a felony or other offense for which a district court has jurisdiction? Suppose, for example, that a named person is indicted for the offense of speeding. The constitutional requirements of an indictment are met—a named person and an offense—but district courts do not have subject-matter jurisdiction over speeding offenses, regardless of how 'perfect' the wording of the charging instrument might be. Thus, the indictment, despite whatever substantive defects it contains, must be capable of being construed as intending to charge a felony (or a misdemeanor for which the district court has jurisdiction). (¶) The element that was missing in this indictment was whether appellant knew that Brown was a felony fugitive. This is one of the two *mens rea* requirements for Hindering Apprehension. We have previously upheld the validity of the indictment in several cases, including *Studer* itself, in which the *mens rea* allegation was missing or defective. In this case, the indictment, as a whole, was sufficient to vest the district court with subject-matter jurisdiction and give the defendant notice that the State intended to prosecute him for a felony offense. It alleged whom appellant was hiding (Brown); it stated the offense Brown was hiding from (a felony); it alleged that appellant told police that Brown was not present. Because Brown was alleged to be a fugitive 'for the offense of Failure to Comply with Registration as a Sex Offender' which is a felony, the district court could conclude, from the face of the charging instrument, that the State intended to charge a felony hindering apprehension offense. It certainly was a defective indictment because it omitted one of the two elements that raise hindering apprehension from a misdemeanor to a felony, but it was nonetheless sufficient to vest jurisdiction—it charged 'an offense' and one could fairly conclude from the face of the charging instrument that the State intended to charge a felony offense. If appellant was confused about whether the State did or intended to charge him with a felony, he could have and should have objected to the defective indictment before the date of trial." (Footnotes omitted).

Ex parte Insall, 224 S.W.3d 213, 215 (Tex. Crim. App. 2007). "Under the reasoning of *Delaney* [*Ex parte Delaney*, 207 S.W.3d 794 (Tex. Crim. App. 2006)], applicant's waiver of his right to seek habeas relief was involuntary or not 'knowingly and intelligently made' because the plea agreement contained only the range of punishment and not a certain punishment to be imposed if guilt was adjudicated. We nevertheless agree with the State that, under the facts of this case, the record also supports the convicting court's conclusion that applicant 'was aware that he could be sentenced to life in prison if his deferred adjudication was revoked and he was adjudicated guilty.' We, therefore, reject applicant's claim that his plea was involuntary on its merits." (Footnote omitted).

Ex parte Delaney, 207 S.W.3d 794, 799-800 (Tex. Crim. App. 2006). "To remove the confusion that has arisen related to pretrial waivers of appeal, we hold that, in order for a pretrial or presentencing waiver of the right to appeal to be binding at the punishment phase of trial, the waiver must be voluntary, knowing, and intelligent. One way to indicate that the waiver was knowing and intelligent is for the actual punishment or maximum punishment to have been determined by a plea agreement when the waiver was made. However, simply knowing the range of punishment for the offense is not enough to make the consequences of a waiver known with certainty, because it still does not allay the concern that unanticipated errors may occur at the punishment phase of trial. (¶) Because his waiver was not knowing and intelligent concerning the punishment phase of trial, Applicant's pretrial waiver of appeal does not prevent appeals from his sentence. When Applicant waived his right of appeal at the time he agreed to deferred adjudication, he could not know what errors might occur at the sentencing phase of trial or what punishment would be assessed if guilt was adjudicated. Therefore, Applicant's waiver was not knowing and intelligent and does not bar him from appealing from the punishment phase of trial."

Griffith v. State, 166 S.W.3d 261, 262 (Tex. Crim. App. 2005). "We affirm the Court of Appeals because, based on the plain meaning of the language in Article 42.12, the appellant could waive his right to the PSI report during the initial plea proceedings and the waiver was effective for the sentencing proceedings."

Duron v. State, 956 S.W.2d 547 (Tex. Crim. App. 1997). "The reasoning behind [TEX. CRIM. CODE PROC.] Article 1.14(b) is that a defendant should have notice of the charge against him, but a conviction should not be reversed simply because the charging instrument may have a technical error that the defendant never raised to the trial court."

Huynh v. State, 901 S.W.2d 480, 481 (Tex. Crim. App. 1995). "Were [TEX. CODE CRIM. PROC.] article 1.14 to refer to 'charging instruments' in place of 'indictments and informations,' we would be compelled to agree with the Court of Appeals that as a charging instrument in the municipal court context, a complaint would be covered thereunder. However, we are without authority to project such an intention in the face of the statute's specific and plain language."

Studer v. State, 799 S.W.2d 263, 273 (Tex. Crim. App. 1990). Where the State filed a substantively defective information, "it was incumbent upon [the defendant] under [TEX. CRIM. CODE PROC.] Art. 1.14(b) to lodge an objection to this substantive defect. Since [the defendant] failed to make any pre-trial objection to the substance error in the information, it is waived."

Art. 1.141. Waiver of Indictment for Noncapital Felony.

A person represented by legal counsel may in open court or by written instrument voluntarily waive the right to be accused by indictment of any offense other than a capital felony. On waiver as provided in this article, the accused shall be charged by information.

Added by Acts 1971, 62nd Leg., p. 1148, ch. 260, Sec. 1, eff. May 19, 1971.

Murray v. State, 302 S.W.3d 874, 877 (Tex. Crim. App. 2009). "District courts have jurisdiction over felonies, misdemeanors involving official misconduct, and misdemeanor cases transferred to the district court pursuant to [TEX. CODE CRIM. PROC.] article 4.17 . . . . A district court in a felony case also has jurisdiction over a misdemeanor that is 'included in the indictment': 'Upon trial of a felony case, the court shall hear and determine the case as to any grade of offense included in the indictment, whether the proof shows a felony or a misdemeanor.'" (At Note 11) "In a felony case, a defendant who is represented by counsel may waive indictment in open court or by written instrument and consent to be charged by information. Presumably, a defendant who waives indictment stands in the shoes of an indicted individual for all other purposes, and the district court would have jurisdiction over a misdemeanor included in the resulting information." (Citations, footnotes omitted).

Art. 1.15. Jury in Felony.

No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless the defendant, upon entering a plea, has in open court in person waived his right of trial by jury in writing in accordance with Articles 1.13 and 1.14; provided, however, that it shall be necessary for the state to introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgment and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same. The evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents either to an oral stipulation of the evidence and testimony or to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment of the court. Such waiver and consent must be approved by the court in writing, and be filed in the file of the papers of the cause.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1733, ch. 659, Sec. 2, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 3028, ch. 996, Sec. 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, Sec. 5, eff. June 14, 1973. Amended by Acts 1991, 72nd Leg., ch. 652, Sec. 3, eff. Sept. 1, 1991.

Menefee v. State, 287 S.W.3d 9, 13 (Tex. Crim. App. 2009). "No trial court is authorized to render a conviction in a felony case, consistent with Article 1.15, based upon a plea of guilty 'without sufficient evidence to support the same.'" (At 14) "A deficiency of one form of proof—say, a defective written stipulation of evidence (as we have in this case) or written judicial confession—may be compensated for by other competent evidence in the record. In the instant case, the court of appeals held that the defective written stipulation was saved by the sworn colloquy between the trial court and the appellant in which the appellant acknowledged that he was pleading guilty to the offense as alleged in the indictment, including the element of possession that was missing from the stipulation. The question presented in this case is whether a sworn acknowledgment that one is opting to plead 'guilty' to the charged offense (without expressly admitting that the charges are 'true and correct') is tantamount to a judicial confession, sufficient to satisfy [TEX. CODE CRIM. PROC.] Article 1.15. We hold that it is not." (At 17-18) "[W]e hold that the appellant's sworn affirmation, in response to the trial court's questioning, that he was in fact pleading guilty to the charges in the indictment does not constitute a judicial confession and does not otherwise supply evidence, in whole or in part, sufficient to support the plea under Article 1.15. A guilty plea entered under oath is still just a guilty plea. It does not provide independent evidence to substantiate the defendant's guilt." (Footnotes omitted).

Stringer v. State, 241 S.W.3d 52, 58-59 (Tex. Crim. App. 2007). "According to its terms, Article 1.15 applies only where a felony-defendant waives the right to a trial by jury at

the guilt stage. [Tex. Code Crim. Proc.] Article 1.15 clearly speaks of the introduction of evidence showing the defendant's guilt and evidence sufficient to support a defendant's conviction where a defendant waived the right to a jury trial at the guilt stage. [Tex. Code Crim. Proc.] Article 1.15 contains no reference to punishment. Indeed, as former Presiding Judge Onion observed, Article 1.15 concerns the State's burden to produce sufficient evidence to support a guilty verdict when a defendant waives the right to a jury trial. And when a defendant waives a jury at the guilt stage, the requirement of a written waiver of the right to confrontation and cross-examination is applicable only when a defendant consents to stipulate to evidence for the trial judge's consideration in rendering a verdict on guilt." (At 59) "Because Article 1.15 applies only to the guilt stage, we hold that Stringer's written waiver of his right to confrontation and cross-examination applied only to the guilt stage. Therefore, contrary to the determination of the court of appeals, Stringer did not knowingly, voluntarily, and intelligently waive his right to confront and cross-examine witnesses at sentencing." (Footnotes omitted).

Aguirre-Mata v. State, 125 S.W.3d 473, 474 (Tex. Crim. App. 2003). "It is undisputed that the trial court erred in failing to show on the record that it admonished appellant on the range of punishment when appellant pled guilty to the charged offense . . . . Supreme Court case law seems primarily to be concerned with insuring that a guilty-pleading defendant understand the nature of the charges to which he is pleading and with insuring that a defendant not be coerced, forced or threatened into pleading guilty." (At 476) "We also cannot say that the Court of Appeals erroneously determined that the trial court's failure to admonish appellant on the range of punishment did not affect appellant's substantial rights under Rule 44.2(b). The record contains references to the correct punishment range and there is nothing in the record that shows appellant was unaware of the consequences of his plea or that he was misled or harmed."

Hatch v. State, 958 S.W.2d 813, 816 (Tex. Crim. App. 1997). "Since [Tex. Code Crim. Proc.] Article 1.15 has been amended to permit waiver of a jury in all non-capital felonies and capital felonies where the prosecution does not seek the death penalty, it is a logical extension of *Mackey* [*Mackey v. State*, 151 S.W. 802 (Tex. Crim. App. 1912)] to hold that Article 1.15 carries with it the further right to waive a jury composed of twelve persons in these felonies."

Stone v. State, 919 S.W.2d 424, 426 (Tex. Crim. App. 1996). "This Court has routinely found that a stipulation as to what witnesses would testify had they been present at trial is sufficient to support a conviction in the context of [Tex. Code Crim. Proc.] Art. 1.15."

Pitts v. State, 916 S.W.2d 507, 509 (Tex. Crim. App. 1996). "The broader issue before this Court is whether a judicial confession contained in the transcript, but not found in the statement of facts, may be considered as evidence to support a plea of guilty under [Tex. Code Crim. Proc.] Art. 1.15." (At 510) "In the instant case . . . State's Exhibit #1 was not merely treated as if admitted, but was in fact formally offered and admitted into evidence, although it does not appear in the statement of facts before us. Appellant did not take issue with the State's characterization of State's Exhibit #1 as 'the defendant's written judicial confession . . . contained in the court's file,' and he did not object to its admission into evidence . . . . Therefore, we accept as true that State's Exhibit #1 was Appellant's written judicial confession, and that it was the same one contained in the court's file."

Art. 1.16. Liberty of Speech and Press.

Every person shall be at liberty to speak, write or publish his opinion on any subject, being liable for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. In all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 1.17. Religious Belief.

No person shall be disqualified to give evidence in any court of this State on account of his religious opinions, or for the want of any religious belief; but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Craig v. State, 480 S.W.2d 680, 684 (Tex. Crim. App. 1972). Tex. Code Crim. Proc. art. 1.17 "'is to be construed similarly' to Tex. Const. art. I, § 5. In construing the constitutional article, 'this court has previously held that it is constitutionally permissible that jurors be allowed to affirm instead of being sworn.'"

Art. 1.18. Outlawry and Transportation.

No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 1.19. Corruption of Blood, etc.

No conviction shall work corruption of blood or forfeiture of estate.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.