

# Case Law and Attorney General Opinion Update AY 2009

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Ryan Kellus Turner  
General Counsel & Director of Education  
Texas Municipal Courts Education Center

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Part I.

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*Constitutionality*

# The 6<sup>th</sup> Amendment

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*Rothgery v. Gillespie County*, No. 07-440 (6/23/08)

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Page 1:

**What marks the initiation of adversarial judicial proceedings that trigger 6th Amendment protections?**

# The 5<sup>th</sup> Amendment

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*In re H.V.*, 252 S.W.3d 319 (Tex. 2008)

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Page 5:

**Did the court of appeals err in deeming inadmissible statement of juvenile given to municipal judge acting as magistrate? Was the murder weapon that was discovered pursuant to the giving of the juvenile's statement "fruit of the poisonous tree?"**

# The 4<sup>th</sup> Amendment

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*St. George v. State*, 237 S.W.3d  
720 (Tex. Crim. App. 2007)

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Pages 6-7:

**Did the court of appeals err in holding that St. George, a passenger in an automobile, was illegally detained when he was questioned by the deputies once the initial reason for the traffic stop had ended?**

Remember *Brendlin v. California* from last year?

*Curtis v. State*, 238 S.W.3d 376 (Tex. Crim. App. 2007)

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**Page 7:**

**Did the court of appeals apply the appropriate standard of review in assessing reasonable suspicion?**

*Franks v. State*, 241 S.W.3d 135 (Tex. App. Austin 2007)

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**Pages 8-9:**

**Was the officer's detention at a rest stop justified by the community caretaking standard?**

*State v. Griffey*, 241 S.W.3d 700 (Tex. App. Austin 2007)

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**Page 9:**

**Did the uncorroborated tip from a restaurant manager give rise to reasonable suspicion to detain?**

*State v. Guzman*, 240 S.W.3d 362 (Tex. App. Austin 2007)

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Page 11:

**Does the “spinning of tires” give rise to reasonable suspicion?**

*Virginia v. Moore, No. 06–1082  
(4/23/08):*

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**Page 12:**

***Did the police violate the Fourth Amendment when they made an arrest that was based on probable cause but prohibited by state law, or when they performed a search incident to the arrest?***

*Miles v. State, 241 S.W.3d 28 (Tex. Crim. App. 2007)*

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Pages 12-13:

*Did multiple violations of Texas traffic laws while executing a citizen's arrest trigger the exclusionary rule?*

# Handcuffing

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Pages 12-14:

**Was a defendant subject to an arrest for Fourth Amendment purposes when he was handcuffed for transport to the police station?** *Turner v. State*, 252 S.W.3d 571 (Tex.App.—Houston [14th Dist] 2008)

**Was the defendant, a suspect in an assault, subject to an arrest for Fourth Amendment purposes when he was handcuffed and transported from a biker rally concert?** *Bartlett v. State*, 249 S.W.3d 658 (Tex.App.—Austin 2008)

# Blood Draws

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Page 16:

**Did the district court err in reversing the administrative decision to suspend a driver's license suspension because blood was drawn by an unauthorized person?** *Tex. Dep't of Pub. Safety v. Hutcheson*, 235 S.W.3d 312 (Tex. App. Corpus Christi 2007)

**Was the justice of the peace authorized to issue a blood draw warrant?** *Muniz v. State*, No. 01-07-00129-CR (Tex.App. [Houston 14th Dist.] 7/31/08)

Part II.

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*Substantive Law Issues*

*Stautzenberger v. State*, 232 S.W.3d 323  
(Tex.App.—Houston [14th Dist] 2007)

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**Page 20:**

**Was the evidence presented  
sufficient to support a conviction  
for driving while license invalid  
(DWLI)?**

# *Azeez v. State*, 248 S.W.3d 182 (Tex.Crim.App. 2008)

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Page 20:

Are the Penal Code offense of  
Failure to Appear and the  
Transportation Code offense of  
Violate Promise to Appear to be  
read in *pari materia*?

*Anthony v. State*, 209 S.W.3d 296  
(Tex.App. Texarkana 2006)

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**Page 22:**

**Did the city's unofficial policy allowing police officers to ban people from city parks violate the Due Process Clause of the United States Constitution and render evidence of criminal trespass legally insufficient?**

# Part III. Procedural Law Issues

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# Procedural Law Pertaining to Dangerous Dog Cases

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Page 25:

Did the county court err in concluding that it did not have jurisdiction of a municipal court's dangerous dog determination? *In re Loban*, 243 S.W.3d 827 (Tex. App. Fort Worth 2008)

May a non-record municipal court hear appeals stemming from compliance applications disputes and dangerous-dog determinations? *Op. Tex. Atty. Gen. No. GA 0660 (9/2/08)*

*Ex Parte Thompson*, No. AP-75720  
(Tex. Crim. App. 3/5/08)

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Page 28:

Could a witness who indicated a refusal to answer any questions be found guilty of one count of contempt for each time he subsequently refused to answer each individual question asked by the prosecutor?

*Abdygapparova v. State*, 243 S.W.3d 191  
(Tex.App.—San Antonio 2007)

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Page 28:

Did the trial court's ex parte communication with the State during voir dire preclude the defendant from receiving a fair trial?

*Kassem v. State*, No. 01-07-00463-CR  
(Tex. App. Houston 1st Dist. 5/8/08)

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Page 29:

**Did the defendant make a prima facie showing of racial discrimination under *Batson*?**

# Interpreters

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Pages 29-30:

Did the trial court err by failing to appoint a licensed interpreter for a witness who did not understand English? *Ridge v. State*, 205 S.W.3d 591 (Tex. App.—Waco 2006)

Should the court have provided a deaf-relay interpreter to a defendant who was pre-lingual deaf? *Linton v. State*, 246 S.W.3d 698 (Tex. App.—Corpus Christi 2007)

# *Dashboard Cameras*

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Pages 30-31:

Did the recording of the peace officer's observations by his patrol car dashboard camera qualify as a present sense impression? *Fischer v. State*, 252 S.W.3d 375 (Tex. Crim. App. 2008)

Should the video footage of defendant requesting counsel at traffic stop have been suppressed as unfairly prejudicial? *Lajoie v. State*, 237 S.W.3d 345 (Tex. App. Fort Worth 2007)

# *Closing Arguments and Jury Instructions*

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Page 31:

Was the prosecutor's argument that the jury had "heard from the State's witnesses, and State's witnesses only" an improper comment on the defendant's failure to testify? *Crocker v. State*, 248 S.W.3d 299 (Tex.App.—Houston [1st Dist] 2007)

Was it harmless error for the court to speculate during pretrial jury instructions that one reason a defendant may choose not to testify is because he is guilty? *Duffey v. State*, 249 S.W.3d 507 (Tex. App.—Waco 2007)

# Judgments

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Pages 32-33:

Does the “concurrent sentence” provision of Section 3.03(a) of the Penal Code apply to the entire sentence, including fines? *State v. Crook*, 248 S.W.3d 172 (Tex. Crim. App. 2008)

Must restitution be included in the oral pronouncement of the sentence in order to be included in the judgment? *Weir v. State*, 252 S.W.3d 85 (Tex. App.—Austin 2008)

# Part IV. Ordinances

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*State v. Chacon*, No. 04-07-0069-  
CR (Tex.App. San Antonio 9/17/08)

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**Page 35:**

**Was the municipal court correct when it determined that it did not have jurisdiction over violations of a fine-only offense related to sexually oriented businesses?**

# Part V. Judicial Conduct

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*Op. Tex. Atty. Gen. No. GA-0651  
(7/29/08)*

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Page 36

**May a justice of the peace who also an attorney be appointed to represent criminal defendants in appellate proceedings?**

OK, wake your neighbor. It's time to eat!

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