

Burns v. State

Burns is a bond forfeiture case. John Burns was a surety for Pedro Alvarez who was indicted for the felony offense of delivery of a controlled substance. Burns executed an appearance bond for \$100,000 on behalf of Alvarez. Alvarez failed to appear, and the court ordered his bond forfeited. The State filed for summary judgment on the bond forfeiture, and the trial court granted the State's motion, entering a final judgment for the State.

Burns argued that summary judgment was improper because a fact issue existed concerning whether the principal's name was called at the courthouse door as required by Article 22.02 of the Code of Criminal Procedure. Burns pointed to deposition testimony of the bailiff showing that Alvarez's name was not called outside the courthouse door, but in the hallway outside the courtroom on the sixth floor of the courthouse. The Court held that the bailiff's actions of calling the name in the hallway were in substantial compliance with Article 22.02. Proof that Alvarez's name was not called at the courthouse door does not defeat the State's showing of substantial compliance. The court reasoned that to hold otherwise would render the term "substantial compliance" meaningless.

While this case was later reversed on other grounds, the issue of calling the defendant at the courthouse door was not addressed. The case has subsequently been cited regarding the courthouse door issue, and it still holds that calling for the defendant outside of the courtroom (even on the sixth floor) is in substantial compliance with Article 22.02 of the Code of Criminal Procedure.