THE RECORDER
THE JOURNAL OF TEXAS MUNICIPAL COURTS
December 2019

CASE LAW AND ATTORNEY GENERAL OPINION UPDATE

TMCEC Academic Year 2020

Ned Minevitz
Program Attorney and
TxDOT Grant Administrator, TMCEC

Elizabeth Rozacky
Program Attorney, TMCEC

Ryan Kellus Turner
Executive Director, TMCEC

Except where noted, the following decisions and opinions were issued between the dates of October 1, 2018 and September 30, 2019.

Acknowledgments: Thanks to Judge Michael Keasler, Judge David Newell, Megan Reed, and Patty Thamez, for their contributions to this update.

I. Constitutional Issues

A. 1st Amendment

An overtly cross-shaped public monument did not violate the establishment clause of the 1st Amendment due to its historical value as a war memorial that has stood for nearly 100 years.

Am. Legion v. Am. Humanist Ass'n, 139 S. Ct. 2067 (2019)

The Bladensburg World War I Memorial was constructed in Bladensburg, Maryland by the American Legion in 1925. The 32-foot tall Latin cross displays the American Legion's emblem at its center and sits on a large pedestal bearing a bronze plaque that lists the names of the 49 county soldiers who had fallen in the war. The monument sits on public land. Additionally, the Maryland-National Capital Park and Planning Commission

Case Law Update *continued on pg. 11*

Inside This Issue

Texas Municipal Courts Education Center

2210 Hancock Drive
Austin, Texas 78756
512.320.8274 or 800.252.3718
Fax: 512.435.6118
www.tmcec.com

December Managing Editor: Elizabeth Rozacky

Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. An annual subscription is available for $35.

From the Center

With the changing of the seasons, there have also been a number of memorable changes at TMCEC.

- After 28 years of distinguished service to TMCEC, Hope Lochridge retired from the executive director position August 31 (see, page 3).
- On September 19, the TMCEC Board of Directors by a unanimous vote hired Ryan Kellus Turner to be Executive Director. Ryan has worked at TMCEC since 1999. Since 2004, he has served as General Counsel and Director of Education. This past summer he also served as interim Deputy Director.
- On October 10, the new executive director announced new job titles for two TMCEC attorneys. Mark Goodner is now General Counsel & Director of Education and Robby Chapman is now Deputy Counsel & Program Attorney. In an announcement sent to courts throughout the state, Turner stated, "With these job titles, their job responsibilities will be evolving. However, not all of them will be changing immediately as we are in the middle of staging the launch of the regional judges and clerks programs. Accordingly, Mr. Goodner will continue to oversee the judges program and Mr. Chapman is overseeing the clerk and court administrators programs for AY20."
- In AY 20, TMCEC is actively promoting online registration (see, page 43).
- This issue also contains an important reminder about policy changes effecting course materials at the 16-Hour Regional Judges Conferences (see, page 7). Under the new policy, which went into effect on September 1, judges will no longer receive paper course materials simply by registering. In order to receive paper course materials, judges must: (1) register on time, and (2) affirmatively request paper course materials upon registration. Please help us make sure that all judges are aware of the new policy adopted by the TMCEC Board of Directors.

With these announced changes, some things stay the same.

- To kick off a new academic year, this issue of *The Recorder* features TMCEC's annual Case Law and Attorney General Opinion Update.
- In years ending in 0 and 5, municipal judges are required to receive 2 hours of training related to understanding the relevant issues of child welfare and the Individual Disability Education Action Act (IDEA). Now is the time for all municipal judges to figure out how they will meet this training requirement (see, page 9).

Lastly, an important announcement! After a ten-year hiatus, TMCEC is excited to announce the return of one of our most popular seminar formats: the Low-Volume Court Seminar. Space is limited so register now. Priority is given to non-attorney judges and clerks who attend together (see, page 10). Come see the Marfa lights with TMCEC!

FROM THE EXECUTIVE DIRECTOR

Ryan Kellus Turner

When I first met Hope Lochridge during a job interview in 1999 there was no way of knowing how long we would work together or the influence she would have on me. Like so many other people who have worked at TMCEC during her tenure, I am grateful to have had the opportunity to work under her supervision and to have learned from her.

If you were unaware that Hope was retiring from TMCEC, effective August 30, 2019, count yourself in good company. She made it clear to her co-workers and our board of directors that she wanted to depart with no fanfare.Throughout the summer, I promised Hope that I would do my part to honor this wish but only until August 30. And that date has now passed.

Many of you who have gotten to know Hope during the 28 years that she served as Executive Director have expressed your gratitude and appreciation for her service to TMCEC and municipal courts throughout Texas. Such gratitude and appreciation is well deserved. Hope's accomplishments and contribution to courts across the state are important and worthy of recognition. As a judicial educator, she set the standard, not just for municipal court education but for judicial education throughout Texas. Because of her commitment and vision, the work of TMCEC is recognized, not just in Texas, but nationally.

Hope was committed to excellence and the belief that we can do better. With your support, working together, we will.

Around the State:

On October 1, Judge Kathleen Person, City of Temple, was appointed to the Texas Judicial Council. The Council, which is the policy-making body for the state judiciary, examines the work of courts and submits recommendations for improvement of the court system to the Legislature, the Governor, and the Supreme Court. The Council receives and considers input from judges, public officials, members of the bar, and citizens. Judge Person is one of two municipal court representatives on the Council. The other representative is Judge Ed Spillane, City of College Station.

November 4-8 was Municipal Courts Week. TMCEC, in collaboration with stakeholders across the state, prepared model resolutions which allowed city councils to publicly demonstrate their recognition of the importance of municipal courts, the rule of law, and the fair and impartial administration of justice. Next year's Municipal Courts Week will be November 2-6, 2020.

On November 5, Texans voted on Texas Proposition 1, a legislatively referred constitutional amendment which could have authorized elected municipal judges to serve multiple cities. A "yes" vote supported the amendment to allow persons to hold more than one office as an elected or appointed municipal judge in more than one municipality at the same time. A "no" vote opposed the amendment, allowing a person to hold office as an appointed (but not an elected) municipal judge in more than one municipality at the same time. Nearly 65 percent of voters voted "no." The ballot measure was defeated meaning that *elected* municipal judges cannot serve in more than one city. However, *appointed* judges may continue to serve multiple cities.

Municipal judges and court personnel attended the second Judicial Summit on Mental Health in San Marcos on November 18-19. More than 500 people attended the event sponsored by the Judicial Commission on Mental Health. The Summit drew attendees from all across the state including state agency staff, policymakers, and advocacy groups.

Table of Contents: Case Law & Attorney General Opinion Update

IMPORTANT REMINDER

NEW POLICY REGARDING COURSE MATERIALS AT TMCEC REGIONAL JUDGES SEMINAR

TIMELY REGISTER AND "CHECK THE BOX" OR "CLICK THE LINK" IF YOU WANT PAPER MATERIALS

Please read the following important reminder carefully. Help TMCEC make sure that you and everyone in your court understands the implications of a new TMCEC policy that applies to all 16-Hour Regional Judges Seminars during Academic Year 2020 (September 1, 2019 – August 31, 2020).

Earlier this year, the TMCEC Board of Directors took a major step toward phasing out paper course materials at TMCEC Regional Judges Seminars. Under the new policy, effective September 1, 2019, a judge shall not receive paper course materials unless:

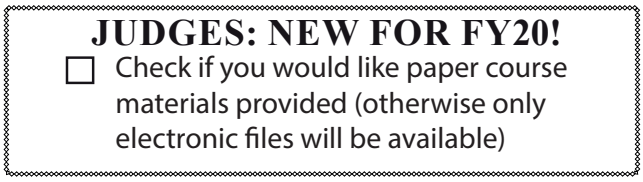
(1) registration is completed prior to the registration deadline (see page 5 of the TMCEC Academic Schedule 2019-2020) and

(2) the checkbox on the registration form is checked (for online registration, the "add" link to the right of the "BINDER – Select for Paper Copy of Materials" must be selected). (See, illustrations below.)

If you are a judge who depends on someone else to register you to attend a Regional Judges Seminar, it is your responsibility to make sure that the person registering you knows your preference with regard to course materials. Similarly, if you are not a judge but as part of your job, you register a judge to attend a regional judge conference, it is important that you ask the judge their preference. Failure to make the appropriate selection shall result in the judge not receiving paper course materials.

HOW TO REQUEST PAPER COURSE MATERIALS AT REGISTRATION

REGIONAL JUDGES REGISTRATION FORM



On paper registration form, check box

ONLINE REGISTRATION

For online registration, add the binder

DIGITAL COURSE MATERIALS

Whether you forgot to "check the box" or are among the many judges who have told TMCEC that you are ready to "ditch the binder," make sure to bring your freshly charged tablet or laptop computer to the seminar. There are three ways to digitally access conference materials:

THE TMCEC APP: All materials are available on the TMCEC app. Just search for TMCEC in your app store (Android and iPhone are both supported—for both phone and tablet).

THE TMCEC WEBSITE: All materials are available on the Course Materials page on our website: http://www.tmcec.com/course-m/judges/fy20-course-materials/. The classes are listed separately, but it is also possible to download (and print if you'd like) the entire course material binder using the link on the course material page as shown in the image here.

USB DRIVE: All materials are available on the USB drive that is handed out at all Regional Judge Seminars.

REGIONAL ROUNDTABLES

The Regional Roundtables will be held in the cities listed below

Tyler Midland Temple Luling
Conroe Baytown McAllen

EDUCATIONAL CREDIT

TMCEC is excited to introduce the Regional Roundtables as a new way for judges to earn flex-time and for clerks to earn clerk certification credit. (Total credits 2.5 hours; judicial education, clerk certification, and CLE)

SPACE IS LIMITED.

REGISTER NOW!

January 17, 2020 • 11:00 am to 2:00 pm
Holiday Inn South Broadway
5701 S. Broadway Ave
Tyler, TX

February 7, 2020 • 11:00 am to 2:00 pm
Midland Municipal Court, Community Courtroom
201 E Texas Ave,
Midland, TX 79701

March 27, 2020 • 11:00 am to 2:00 pm
Temple Sammons Senior
Center Lakeview Room
Sammons Community Center
2220 W Ave D,
Temple, TX 76501

April 17 2020 • 11:00 am to 2:00 pm
Zedler Mill
1107 S. Laurel Ave.,
Luling,TX 78648

A TMCEC board member and staff attorney will travel to each of the ten regions in the state to facilitate a small group discussion. The discussion topics will relate to fines, fees, costs, alternate sentencing and jail commitments.

Regional Roundtable participants will have the opportunity to discuss challenges, share solutions, and learn from others' experiences. Throughout the year, TMCEC will compile feedback from each Regional Roundtable. At the end of the academic year, TMCEC will share the results with participants from all ten regions.

There is no registration fee to attend. Registration is limited to 30 participants.
You may register online, by, mail or by fax. Fax: 512.435.6118

Website: www.tmcec.com/programs/clinics/

Municipal Judges Required to Complete Child Welfare and IDEA Training in 2019-2020 Academic Year

In the 81st Regular Legislative Session (way back in 2009), a new requirement was placed upon municipal judges to complete minimum education related to child welfare and the Individuals with Disabilities Education Act (IDEA).

What is the IDEA?

IDEA is the federal law enacted with the goal of providing full educational opportunities to all students with disabilities in the United States. Those full educational opportunities are provided in public schools through special education programs. Therefore, IDEA serves as the basis for all special education programs in every public school in Texas. More specific to courts, the IDEA helps ensure certain rights to children in special education programs who may be adversely affected by disciplinary proceedings in the juvenile justice system.

What is the requirement for education related to the IDEA?

House Bill 1793 added Section 22.1105 to the Government Code, which established additional education requirements for every judge who handles juveniles charged with fine-only offenses. Under Sec. 22.1105, judges must complete a two-hour course of instruction related to understanding the relevant issues of child welfare and the IDEA in every judicial academic year ending in 0 or 5.

Can I meet this requirement through my TMCEC judicial education this year?

Yes, TMCEC offers you multiple options for satisfying this requirement. Here are your options:

1. **In-Person Training at Regional Seminar –** Several classes are approved for IDEA/Child Welfare credit at the regional seminars. Judges can complete the two-hour requirement in full, or partially while at the seminar.

2. **Webinars –** Webinars will cover child welfare and the IDEA topics. If judges cannot watch these webinars live, they will be available on demand the day after the in-person webinar. Judges who watch webinars can fulfill the two-hour requirement.

3. **Video and Webinars on the Online Learning Center –** A child welfare and IDEA page is available this academic year with access to the videos dealing with child welfare and the IDEA. Judges who watch this fulfill the requirement.

How do I report this requirement?

Judges who fulfilled the requirement at an in-person Regional Seminar, were able to indicate they have met the requirement on the Record of Attendance. Judges who watch the webinar and complete an evaluation will receive a certificate that was used to report the completion of the training. Judges who attended the clinic signed in and this was used to indicate that participants will meet the requirement. Judges who watched the video on the online learning center may submit an affirmation of completion or a certificate available on the IDEA and child welfare page.

LOW-VOLUME COURT SEMINAR

FOR JUDGES AND CLERKS IS BACK!

After a 10 year hiatus, TMCEC is excited to announce the return of one of our most popular seminar formats: the Low Volume Court Seminar!

In 1999, TMCEC began offering a series of continuing judicial education programs for non-attorney judges and their clerks. The Low-Volume Court Seminar series offers opportunities for judges and clerks to collectively examine issues and problems commonly experienced in smaller courts that adjudicate fewer cases (i.e., low-volume courts).

Constitutional law permeates almost every aspect of life both inside and outside the courtroom. In AY 2020, these seminars will revisit the application of state and federal constitutional law to procedures in municipal courts. Part retrospective, part examination of all that has changed in the last decade, the seminar will include instruction on magistration, juvenile law, traffic safety issues, and a brief legislative update.

NO SECOND SEMINAR FEES

Feb 19-20, 2019

HOTEL SAINT GEORGE

105 Highland Ave, Marfa, TX 79843

This seminar is for non-attorney judges and clerks who have previously completed two years of training. Priority registration is given to judges and clerks from the same court who attend together.

This seminar is ideal for judges and clerks who are interested in gaining a better understanding of how constitutional law informs procedure and administration.

On-site registration will be open from 7:00 - 8:00 a.m. on February 19th ONLY.

Credit Hours

This seminar provides 12 hours of credit for Clerk Certification and 12 hours of judicial education credit for municipal judges. However, all judges must complete 16 hours each year. A Low-Volume Seminar can be used in place of a regional program for a judge's education hours or in addition to regional program as flex-time credit.

Register Now at www.tmcec.com

SPACE IS LIMITED

Case Law Update continued from pg. 1

uses public funds to maintain it.

In 2014, the American Humanist Association and others filed suit in District Court, alleging that the monument's presence on public land and the Commission's maintenance of the memorial violate the 1st Amendment's Establishment Clause. The District Court concluded that the Cross satisfied both the test established in *Lemon v. Kurtzman*, 403 U. S. 602 (1971) and the analysis applied by Justice Breyer in upholding a Ten Commandments monument in *Van Orden* v. *Perry*, 545 U. S. 677 (2005). The Fourth Circuit reversed.

The United States Supreme Court granted certiorari and ruled 7-2 to reverse and remand the Fourth Circuit's decision. The Court's holding was narrowly tailored to the specific facts of the case. First, it discussed how retaining established, religiously-expressive monuments, symbols, and practices was quite different from erecting or adopting new ones. Second, it identified the cross as a symbol closely linked to World War I and noted that the monument acted as a memorial for the 49 area soldiers who fell in the war. Third, it noted that the monument had acquired historical importance with the passage of time, as it has stood for almost 100 years.

Justice Alito, writing for the plurality decision, stated that, "The cross is undoubtedly a Christian symbol, but that fact should not blind us to everything else that the Bladensburg Cross has come to represent," and that "destroying or defacing the Cross that has stood undisturbed for nearly a century would not be neutral and would not further the ideals of respect and tolerance embodied in the First Amendment." Justice Alito was joined in part by Chief Justice Roberts and Justices Breyer, Kagan, and Kavanaugh. Justices Thomas and Gorsuch wrote separate opinions that joined the plurality.

Commentary: The plurality opinion appears narrowly tailored to the facts of the case as the Court's main considerations appear to focus on the war memorial aspects of the monument and its long history in the community. This hyper-specificity may keep the holding from being widely applicable. While the Court concedes that the cross is an entrenched symbol of Christianity, it held that the cross on public land does not violate the establishment clause of the 1st Amendment due to its historical value as a war memorial that has stood for nearly 100 years. Justice Ginsburg, joined by Justice Sotamayor, found the plurality's secular interpretation of the monument unconvincing. Ginsburg argued that "the Latin cross is the foremost symbol of the Christian faith" that represents the Christian faith to the exclusion of others. She also noted the monument's placement on public land and its maintenance by a state entity.

The Court also argued over the relevance of the *Lemon* test. Justice Alito joined by Chief Justice Roberts, Justice Breyer, and Justice Kavanaugh, argued that the court could expressly decline to apply the test (or simply ignore it) because it lacked relevance in claims involving religiously expressive monuments, symbols, displays, and similar practices. Justice Thomas's dissent went even further, advocating that the *Lemon* test be overruled in all contexts. Justice Kagan's concurrence articulated continued support for the test, since its "focus on purposes and effects is crucial in evaluating government action" in Establishment Clause cases.

B. 4th Amendment

1. Probable Cause

When false portions of a search warrant affidavit are excised, the remaining portions of the affidavit are not subject to a heightened standard of review for the purposes of determining probable cause.

Hyland v. State, 574 S.W.3d 904 (Tex. Crim. App. 2019)

Hyland was operating a motorcycle with his wife as a passenger when he was involved in a crash. His wife was killed while Hyland sustained serious injuries and was unconscious. An investigating officer suspected intoxication and sought to obtain a sample of Hyland's blood. The officer filled out a pre-printed probable cause affidavit. The pre-printed form

contained introductory and concluding statements and nine numbered paragraphs. Each numbered paragraph contained brief statements, and some included blank lines for the affiant officer to use to conform the affidavit to the specific facts of a given case. Paragraph 7 stated that the officer performed a field sobriety test. Paragraph 9 stated that the officer "requested a sample of the suspect's breath and/or blood, which the suspect refused to provide."

At trial, Hyland argued that Paragraphs 7 and 9 could not possibly be true because he had been unconscious and thus he could not have performed field sobriety tests or withheld consent to a blood draw. Before allowing the blood sample to be entered into evidence, the trial court conducted a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) to address Hyland's contention that the search warrant was issued on the basis of falsified statements in the officer's affidavit. Following the *Franks* hearing, the trial court excised Paragraph 7 in its entirety, excised the last sentence of Paragraph 9, determined that the remaining facts in the affidavit were sufficient to support a finding of probable cause, and permitted the blood evidence to be submitted to the jury. Hyland was convicted of intoxication manslaughter.

Hyland appealed, asking the court of appeals to look to its holding in *McClintock v. State*, 444 S.W.3d 15 (Tex. Crim. App. 2014), which discussed whether probable cause was "clearly established" in a reformed affidavit. The court of appeals determined that the excised affidavit at issue here did not "clearly" establish probable case.

On discretionary review, the Court of Criminal Appeals found that the court of appeals erroneously treated the word "clearly" in *McClintock* as a heightened probable cause standard. The Court concluded that excising an officer's false statements from a search warrant affidavit after a *Franks* hearing does not require a heightened standard of review for probable cause.

In a concurring opinion, Judge Hervey explained that, while pre-printed boilerplate search warrant affidavits may be helpful for common crimes, this case illustrates what can happen when someone does not strike out inapplicable paragraphs. What was intended to be a time saving measure had an opposite result. The pre-printed form did not make the process easier. It resulted in drawn-out litigation.

Commentary: It deserves emphasis that affiants are swearing to all statements contained within an affidavit. This extends to peace officers filling out probable cause affidavits. Courts may find that extraneous or inapplicable language amounts to a false statement. Setting the *Franks* issues aside, this case indirectly underscores the potentially problematic issues associated with pre-printed language in search warrant affidavits. It is interesting, however, that other than in Judge Hervey's concurring opinion and one footnote (footnote 6), the Court does not focus on the merits of using pre-printed boilerplate search warrant affidavits. The Court's focus is clearly on *McClintock* (pun intended).

Under the collective knowledge doctrine, the sum of information known by all the responding officers in a public intoxication case can be imputed to the individual officer making a warrantless arrest when determining whether there is probable cause.

State v. Martinez, 569 S.W.3d 621 (Tex. Crim. App. 2019)

Roger Martinez was arrested for public intoxication by Officer Quinn without an arrest warrant. Martinez challenged this arrest as lacking probable cause because Officer Quinn himself did not personally observe Martinez's behavior that led to the arrest. Only two other officers, Guerrero and Ramirez, had personally observed Martinez. The fact that Quinn did not observe the behavior leading to the arrest was not disputed. Both the trial court and the court of appeals agreed with Martinez and invalidated the arrest. Noting that probable cause can be shown by both direct and circumstantial evidence, the Court of Criminal Appeals sent the case back to the trial court in 2016. In 2017, the lower courts again decided that there was no probable cause. The Court of Criminal Appeals again agreed to hear the case.

In the Court's second review of *Martinez*, it found

probable cause to arrest the defendant under the "collective knowledge" doctrine. Under the collective knowledge doctrine, when there is cooperation between law enforcement officers or agencies, the sum of information from *all* the cooperating officers can be used to determine whether there is probable cause to make an arrest or conduct a search. Martinez argued that there was no evidence that Guerrero and Ramirez communicated their knowledge to Quinn. The Court rejected this argument because communication is not a requirement—it is enough that the officers were all part of the same department responding to the same call. The Court went on to state that, even if the other officers did not direct Quinn to arrest Martinez, the collective knowledge of the officers would still be enough for probable cause.

Commentary: While the Court takes care to limit this ruling to the facts of this case, *Martinez* superficially appears to be a win for law enforcement agencies' ability to make arrests under Article 14.01(b) of the Code of Criminal Procedure (offenses committed within the view of an officer). Critics of this opinion are likely to claim that the Court is "moving the goal post" when it comes to the collective knowledge doctrine. Supporters are likely to assert that the case further fleshes out the collective knowledge doctrine by making a meaningful delineation between "communication" and "cooperation" between peace officers. Evidence of communication is not always necessary, particularly when there is evidence of cooperation.

2. Suspicious Places

A motion to suppress is properly granted when the State fails to establish "exigent circumstances" when arguing that a warrantless arrest was justified because the defendant was found in a suspicious place.

State v. McGuire, No. 01-18-00146-CR, 2019 LEXIS 7955 (Tex. App.—Houston [1st Dist.] Aug. 29, 2019)

3. Blood Warrants

Exigent circumstances supporting a warrantless blood draw existed where the defendant was unconscious because the circumstances present a "medical emergency."

Mitchell v. Wisconsin, 139 S. Ct. 2525 (2019)

After a roadside breath test showed that Gerald Mitchell's blood alcohol concentration (BAC) was three times Wisconsin's legal limit, law enforcement drove Mitchell to the police station for further testing. Upon arrival, Mitchell was unconscious and thus could not give breath, so the officer took him to a nearby hospital to conduct a blood test. Mitchell subsequently challenged this blood draw as violating his 4th Amendment right against unreasonable searches because it was performed without a search warrant. The State responded arguing that Wisconsin's "implied consent" law supported the warrantless blood draw. Generally, implied consent laws provide that drivers impliedly consent to give their breath and/or blood in return for their ability to travel on public roadways—a doctrine that challenges the necessity of blood warrants in impaired driving cases.

In a plurality opinion by Justice Alito joined by Chief Justice Roberts, Justice Breyer and Justice Kavanaugh, the U.S. Supreme Court deemed this warrantless blood draw constitutional. The plurality opinion cited *Schmerber v. California*, 384 U.S. 757 (1966) as the chief rule to be applied in assessing warrantless blood draws. Specifically, *Schmerber* requires (1) the dissipation of BAC evidence and (2) some other factor that creates pressing health, safety, or law enforcement needs that must take priority over going through the process of seeking a warrant. The Court then distinguished the holding in *Schmerber* from *Missouri v. McNeely*, 569 U.S. 141 (2013), where the Court held that the natural dissipation of alcohol in the blood *alone* was not deemed an exigent circumstance. The Court noted that the dissipation prong in *Schmerber* is satisfied in virtually any DWI (alcohol) investigation. The Court determined that Mitchell's unconsciousness satisfied the second requirement of *Schmerber* because it was a "medical emergency." Because both *Schmerber* prongs were satisfied, the Court upheld the warrantless blood draw. In reaching its determination, the Court rejected Mitchell's argument that in the current rapid

age of communication, warrants can be obtained quickly. The Court cited time-consuming formalities and unpredictable magistrate availability in this rejection.

Justice Sotomayor dissented joined by Justices Ginsburg and Kagan. The dissent opined that *Schmerber* and *McNeely* stand for the notion that "[u]nless there is too little time to do so, police officers must get a warrant before ordering a blood draw." The dissenters reject the notion that there was no time to obtain a warrant under the *Mitchell* facts: a warrant could have been obtained while at the same time providing Mitchell medical attention for his unconsciousness. Furthermore, the dissent criticizes the majority for tackling the exigent circumstances inquiry as it was not raised by the State—the State's argument rested on implied consent.

Commentary: *Mitchell* represents a potential shift in the way the U.S. Supreme Court views blood draw cases. It also seems to mark a broadening of what qualifies as an exigent circumstance. Since *McNeely*, the vitality of implied consent laws, which all 50 states and the District of Columbia still espouse in some way, have generally been considered to be on life support. Indirectly, *Mitchell* may have helped "stabilize the patient."

There was no implied consent under Texas law to draw blood on an unconscious DWI suspect without a warrant.

State v. Ruiz, 581 S.W.3d 782 (Tex. Crim. App. 2019)

In 2015, Ruiz fled the scene of a crash in Gonzales, Texas. Law enforcement later found him unconscious next to a nearby carwash and detected the strong odor of alcohol. Emergency medical personnel attempted to revive Ruiz but were unsuccessful. He was transported to a hospital where he remained unconscious. Authorities ordered his blood drawn for alcohol testing without a warrant.

The Court of Criminal Appeals granted review to decide whether there was implied consent to give blood under Section 724.014(a) of the Transportation Code. The Court found, despite the language of the statute, that there was no consent, implied or otherwise. The Court rejected the State's argument that because the State did not cause the unconsciousness, it should not be held against the prosecution in assessing the voluntariness of Ruiz's consent. The Court stated that Ruiz had no capacity to make a choice, and thus taking his blood without a warrant was a violation of his 4th Amendment rights.

The Court of Criminal Appeals remanded the case back to the court of appeals to determine whether, in light of *Mitchell v. Wisconsin*, 139 S. Ct. 2525 (2019), the warrantless blood draw in *Ruiz* could be justified under the exigent circumstances exception to the 4th Amendment warrant requirement.

Commentary: *Ruiz* has been bouncing around Texas courts since 2015 and has been covered in previous TMCEC case law updates. Even if *Mitchell* marks a revival for implied consent laws nationally, the Court of Criminal Appeals made it clear in *Ruiz* that implied consent under Section 724.014(a) of the Transportation Code will generally not justify warrantless blood draws in impaired driving cases.

There was no exigent circumstance justifying a warrantless blood draw where officers claimed concern that intravenous therapy would dilute a blood sample but were actually aware that all medical treatment had stopped.

State v. Garcia, 569 S.W.3d 142 (Tex. Crim. App. 2018)

Joel Garcia was involved in a fatal car crash and taken to a hospital, accompanied by the peace officers who arrested him. The officers suspected that Garcia was intoxicated. As they observed his treatment, they expressed concern that he might receive an IV (i.e., intravenous therapy) and that the IV would dilute potential blood-alcohol evidence. Officers took a sample of his blood without a warrant. Garcia moved to suppress the evidence gathered from the officers' warrantless blood draw. The State argued that the officers acted in the face of exigent circumstances.

The trial court's findings at the suppression hearing emphasized that, at the time the officers ordered the

phlebotomist to take a sample of Garcia's blood, all medical treatment of had stopped. The court also found that the officers were aware of this historical fact at the time they initiated the search. Together, these facts showed that, at the time of the blood draw, the officers knew there was no impending IV. Consequently, there was no risk that blood evidence would be destroyed and, therefore, no exigency. Accordingly, the trial court suppressed the blood evidence.

The El Paso Court of Appeals reversed and remanded. The Court of Criminal Appeals granted Garcia's petition for discretionary review. The Court determined that, because the trial court judge's findings of historical fact were entitled to deference if supported by the record, the trial judge acted within his discretion. Here the record showed that, at the time of the search, the officers 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." In reaching this holding, the Court explicitly rejected a per se rule that any time a person suspected of committing a serious drunk-driving offense is taken to a hospital for medical treatment, exigent circumstances will justify a warrantless search.

Commentary: The U.S. Supreme Court addressed the exigent circumstances requirement with regard to warrantless blood draws in *Missouri v. McNeely*, 569 U.S. 141 (2013). Just as the Court of Criminal Appeals rejected the premise that taking someone to a hospital constitutes exigent circumstances, in *McNeely*, the Supreme Court expressly rejected the argument that drunk-driving cases present a per se exigency. Rather, exigency in the context of alcohol-related blood draw cases should be informed by the totality circumstances and analyzed under an objective standard of reasonableness.

Law enforcement needed a search warrant to test blood that was previously drawn by a hospital for medical purposes.

State v. Martinez, 570 S.W.3d 278 (Tex. Crim. App. 2019)

Juan Martinez was involved in a traffic crash in Beeville, Texas and was taken to a hospital where trauma procedures were performed, including taking his blood. During treatment, Martinez told a nurse that he could not afford treatment and subsequently left the hospital. Peace officers arrived at the hospital after Martinez left and thus had no opportunity to question him about the crash. After learning that the hospital had drawn Martinez's blood, the officers secured a grand jury subpoena from the district attorney to gain possession of the blood, which was sent for lab testing. Both the trial court and court of appeals determined that while the *seizure* of the blood was valid, the testing of the blood required a warrant, and thus the test results were inadmissible.

On the State's petition for discretionary review, the Court of Criminal Appeals examined three of its prior opinions: (1) *State v. Comeaux*, 818 S.W.2d 46 (Tex. Crim. App. 1991), holding that a defendant's 4th Amendment expectation of privacy was violated when the State tested blood taken by the hospital for medical purposes following a crash; (2) *State v. Hardy*, 963 S.W.2d 516 (Tex. Crim. App. 1997), holding that a defendant's 4th Amendment rights were not violated when the State did not obtain a warrant to seize a defendant's blood test *results* taken by a hospital following a crash; and (3) *State v. Huse*, 491 S.W.3d 833 (Tex. Crim. App. 2016), which reaffirmed *Hardy* after the enactment of the Health Insurance Portability and Accountability Act (HIPAA).

The Court observed that the facts in *Martinez* facts are virtually identical to those in *Comeaux* (a plurality opinion). It also reiterated that when a defendant voluntarily abandons property, the person can no longer reasonably expect to have a privacy interest in the property. The Court, however, agreed with the lower courts that Martinez did not voluntarily abandon his property (i.e., his blood). To reach this conclusion, it drew a distinction between having blood drawn at a hospital, where there is an expectation that it will not be freely distributed, versus leaving vials of blood in public accessible to anybody.

The State argued for the application of the third-party doctrine, which states that a person has no

expectation of privacy when they turn property/information over to a third party. The Court rejected this argument, explaining that Martinez did not go to the hospital on his own volition—he was transferred there following a crash. Finally, the Court cited a litany of blood draw cases (most notably *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016)) that emphasize the strong expectation of privacy in one's blood and any information contained therein. Ultimately, the Court determined that, when the hospital took blood for medical purposes, Martinez still had an expectation of privacy in it and any test results from it. Thus, his 4th Amendment protections continued to exist.

The Court clarified that the expectation of privacy to draw blood in the first place is stronger than the expectation of privacy for blood that has already been drawn. It distinguished the *Martinez* facts from *Hardy* and *Huse* where the hospital had already tested the blood and the State sought those test results. The Court determined that the *testing* itself constituted a 4th Amendment search, and thus a warrant was required to perform such a test. Finding no exigent circumstances, the Court found the blood test evidence in *Martinez* to be inadmissible.

Commentary: The Court may have agreed to review *Martinez* because *Comeaux* is a plurality opinion. Since *Martinez*, there has been some speculation as to whether law enforcement needs separate warrants to seize *and* test blood in impairment cases. Generally, such search warrants only command the seizure (and not the testing) of blood. It will be interesting to see how *Martinez* affects argumentation and appellate decisions going forward.

4. Cell Phones

There was no legitimate expectation of privacy in less than three hours of real-time cell-site location information records accessed by police less than five times.

Sims v. State, 569 S.W.3d 634 (Tex. Crim. App. 2019)

In 2014, Annie Sims was found dead on her front porch. Annie's car, purse, and two guns were missing from her home. Annie's husband called to cancel her credit cards, and the credit card company told him that the cards had been used three times, including once at a Wal-Mart in McAlester, Oklahoma. Security footage from the Wal-Mart showed Christian Vernon Sims (Annie's grandson).

From this information, police suspected Sims of murder, burglary of a habitation, unauthorized use of a motor vehicle, and credit card abuse. They also believed that Sims posed a danger to the public because he was likely armed. Accordingly, law enforcement sought to "ping" Sims's phone to determine his real-time location. Rather than obtaining a search warrant, officers used an "emergency situation disclosure" form, which allowed Sims's service provider, Verizon, to "divulge records or other information to governmental entities in certain emergencies, pursuant to 18 U.S.C. § 2702(b)(8) or § 2702(c)(4) or an equivalent state law."

At trial, Sims filed a motion to suppress arguing that the police violated the 4th Amendment when they searched his phone for real-time location information without a warrant supported by probable cause.

On appeal, the Court of Criminal Appeals applied the U.S. Supreme Court's recent decision in *Carpenter v. United States*, 138 S. Ct. 2206 (2018), which analyzed the privacy interests in cell-site location information (CSLI) as it relates to both the third party doctrine and physical movements and location jurisprudence. The *Carpenter* court held that there is a legitimate expectation of privacy in at least seven days of historical CSLI and that the government violates the 4th Amendment when it searches this information without a warrant supported by probable cause. Applying *Carpenter*, the *Sims* court determined that "[w]hether a particular government action constitutes a 'search' or 'seizure' does not turn on the content of the CSLI records; it turns on whether the government searched or seized '*enough*' information that it violated a legitimate expectation of privacy" (emphasis added). *Carpenter* identified a privacy interest in at least seven days of historical CSLI. Less than three hours of real-time CSLI were at issue here.

Ultimately, the Court held that Sims did not have a legitimate expectation of privacy in his physical movements or his location as reflected in the less than three hours of real-time CSLI records accessed by police by pinging his phone less than five times.

Commentary: Like the holding in *Carpenter*, the opinion here is narrowly tailored to the facts of the case. Whether a person has a recognized expectation of privacy is decided on a case-by-case basis. There is no bright-line rule for determining how long law enforcement can track a person's cell phone in real time before it violates an expectation of privacy. At the same time, in cases like *Sims*, appellate courts seem to be drawing incremental boundaries when applying established law regarding the legitimate expectations of privacy in new technologies and cell phone data. *Carpenter* set an initial upward limit, finding an expectation of privacy in at least seven days of historical CSLI. Now *Sims* sets a preliminary floor, finding that there is not an expectation of privacy in less than three hours of real-time CSLI where a defendant's phone is "pinged" less than five times. The *Sims* court saw no reason to distinguish historical location from real time location information. Because the U.S. Supreme Court refused to hear Sims's case on June 24, 2019, it is possible the Supreme Court also sees no distinction.

The 4th Amendment is a restraint on government and does not apply to private individuals who are acting in a private capacity. The Texas Exclusionary Rule does not extend the 4th Amendment to private citizens acting in a private capacity.

Ruiz v. State, 577 S.W.3d 543 (Tex. Crim. App. 2019)

Lauro Eduardo Ruiz was a substitute teacher at a private high school. Students complained that Ruiz was using his cell phone to take pictures up female students' skirts. The dean, principal, and vice principal questioned Ruiz about the allegations. Principal Gilbert Saenz scrolled through the photos on Ruiz's phone and saw images of the legs of girls who were dressed in the school uniform. Saenz turned the phone over to law enforcement. Officers then obtained a warrant to search the contents of the phone.

At trial, Ruiz moved to suppress the evidence from his phone because Principal Saenz did not have either his consent or a warrant to search the phone. He argued that Saenz's warrantless search of the phone violated the 4th Amendment and that the evidence should be suppressed under Article 38.23 of the Code of Criminal Procedure (the Texas Exclusionary Rule).

On appeal, the Texas Court of Criminal Appeals first determined that, "the Fourth Amendment is a restraint on government and that it does not apply to private individuals who are acting [in a private capacity]." As such, Saenz's search of Ruiz's phone was not a violation of the 4th Amendment because the principal was acting as a private individual when he looked at the pictures.

Next the Court turned to Article 38.23. It reads in pertinent part, "[n]o evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case." The Court held that Saenz may be an "other person" under the statute, but that Ruiz did not meet his burden to show that Saenz obtained evidence in violation of law.

Commentary: The Court took the opportunity to tease out its holding in *Miles v. State*, 241 S.W.3d 28 (Tex. Crim. App. 2007). In *Miles* the Court asserted that, "if the police cannot search or seize, then neither can the private citizen." Here, the Court conceded that this "could be read to imply that a private person can violate the constitution." The Court construed this problematic passage as dicta.

The exigent circumstances exception justified the warrantless seizure of the defendant's cell phone when both probable cause and exigency existed. A child victim of sexual assault saying that the phone contained photos taken by the defendant of her sexual organs established probable cause and an officer's reasonable fear that the defendant would destroy the photos or phone established exigent circumstances.

Gutierrez v. State, No. 14-18-00201-CR, 2019 Tex. App. LEXIS 7316 (Tex. App.—Houston [14th Dist.] Aug. 20, 2019)

There is a reasonable expectation of privacy in 206 days of cell site location information.

Hankston v. State, 582 S.W.3d 278 (Tex. Crim. App. 2019)

Gareic Jerard Hankston, was charged with murder in May 2011. He filed a pretrial motion to suppress, arguing (among other things) that the State violated the 4th Amendment when it unreasonably searched his cell-phone call logs and historical cell site location information (CSLI) records. The trial court denied his motion. At trial, the State used CSLI to establish that, Hankston was near the complainant's home at the time of the murder and that immediately after the murder his phone usage was more than any other comparable time frame in the preceding 206 days. On direct appeal, the court of appeals affirmed the ruling of the trial court. The case went to the Court of Criminal Appeals on a petition for discretionary review.

Initially, the Court of Criminal Appeals held that Hankston had no expectation of privacy in his third-party call logs or CSLI records. He filed a petition for writ of certiorari in the United States Supreme Court. While that petition was pending, the Supreme Court handed down *Carpenter v. U.S.,* 138 S. Ct. 2206 (2018), which held that there *is* a 4th Amendment expectation of privacy in at least seven days of historical CSLI records despite the fact that they are third-party business records. *Hankston* was remanded to the Court of Criminal Appeals. On remand, the Court vacated the court of appeals opinion and remanded it for reconsideration in light of *Carpenter*.

Commentary: *Hankston* represents another step in the reimagining of the 4th Amendment implications of cell-phone data (particularly CSLI) following *Carpenter*.

C. 5th Amendment

Jeopardy does not attach, double jeopardy protections are not applicable, and collateral estoppel is not implicated when an offense is alleged in a revocation hearing as a violation of the terms of community supervision because there is no possibility of a new conviction or punishment.

State v. Waters, 560 S.W.3d 651 (Tex. Crim. App. 2018)

D. 6th Amendment — Ineffective Assistance of Counsel

When it comes to ineffective assistance of counsel, the presumption of prejudice applies regardless of whether the defendant signed an appeal waiver. Prejudice can be presumed when a defendant requests an appeal but counsel fails to file.

Garza v. Idaho, 139 S. Ct. 738 (2019)

Trial counsel was not ineffective for failing to challenge the shackling of a defendant when the State's justification for shackling (i.e. the defendant's previous escape attempt) was not shown to be deficient and a barrier was put up to prevent the jurors from seeing the shackles.

Ex parte Chavez, 560 S.W.3d 191 (Tex. Crim. App. 2018)

E. 8th Amendment – Excessive Fines Clause

The Excessive Fines Clause of the 8th Amendment is an incorporated protection applicable to the states pursuant to the Due Process Clause of the 14th Amendment.

Timbs v. Indiana, 139 S. Ct. 682 (2019)

Timbs pled guilty to dealing controlled substances and conspiracy to commit theft. When he was arrested, law enforcement seized his Land Rover. Timbs had purchased the SUV for $42,000 with money he received from an insurance policy after his father died. The State of Indiana (via a private law firm) sought civil *in rem* forfeiture of the SUV because Timbs used the vehicle to transport heroin.

After he pled guilty in the criminal case, the trial court held a hearing on the forfeiture demand. The trial court denied the state's request for forfeiture because Timbs purchased the car for more than four times the maximum $10,000 fine assessable for the drug conviction. The trial court held that forfeiture would be grossly disproportionate to the gravity of Timbs's offense. The Court of Appeals of Indiana affirmed that determination of the trial court. The Indiana Supreme Court reversed, holding the Excessive Fines Clause only limits federal action and is inapplicable to states. The Indiana Supreme Court did not decide whether the forfeiture was excessive.

Justice Ginsburg, joined by eight other justices, delivered the opinion of the Court. Ginsburg detailed that, like the 8th Amendment's prohibition of cruel and unusual punishment and excessive bail, the prohibition against excessive fines protects the public from governmental abuse and punitive law-enforcement authority. The Court found that the historical and logical case for concluding that the 14th Amendment's Due Process Clause incorporates the Excessive Fines Clause was overwhelming. It is a safeguard that is fundamental to liberty and deeply rooted in the United States' history and tradition.

Justice Gorsuch filed a concurring opinion stating that the appropriate vehicle for incorporation may well be the 14th Amendment's Privileges or Immunities Clause, rather than the Due Process Clause. Regardless, the 14th Amendment requires States to respect the freedom from excessive fines enshrined in the 8th Amendment.

Justice Thomas filed an opinion concurring in the judgment. He identified that, because the Due Process Clause speaks only to "process," the Court has struggled to define what substantive rights it protects. Thomas argued that rather than continuing to marginalize the rights of United States citizens under the Privileges and Immunities Clause, the Court should recognize these rights in this and other cases. Because the "oxymoronic 'substantive due process' doctrine has no basis in the Constitution," the Court has no guiding principles which allow meaningful discernment between fundamental rights that warrant protection and non-fundamental rights that do not. Thomas concludes that the present case illustrates the incongruity of the Court's due process approach to incorporating fundamental rights against states.

Commentary: Since being handed down in February 2019, commentary regarding *Timbs* has mostly been superficial and fanciful. In fairness, even those who are well versed in the law governing the imposition of fines have long pondered the meaning of "excessive fines." However, people whose understanding of "excessive fines" comes solely from the internet may be reading too much into the *Timbs* decision. According to Wikipedia, there is "speculation by supporters of criminal justice reform that the decision may affect the use of confiscation of driver's licenses to compel payment of fines and fees, as well as imprisoning those unable to pay bail or fines for otherwise minor crimes." Here is the rub: *Timbs* does not address any of those issues. Heck, it did not even decide whether Timbs got to keep his Land Rover.

Setting speculation aside, the significance of *Timbs* is simple and singular: The 8th Amendment's Excessive Fines Clause is an incorporated protection applicable to the states. The U.S. Supreme Court previously declined to decide this proposition in *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257 (1989). Prior to *Timbs*, however, the U.S. Supreme Court had already explained in *U.S. v. Bajakajian*, 524 U.S. 321, 334-336 (1998) that a fine is constitutionally excessive when it is grossly disproportionate to the defendant's offense (not a defendant's ability to pay) and that judgments about the appropriate punishment for an offense belong in the first instance to the legislature (not the judiciary). Accordingly, we already knew that a fine is not excessive as long as it does not exceed the limits prescribed by the statute authorizing it. This is an important point notably absent in criticism of criminal courts imposing fines.

While there is no separating the criminal-law function of government from the 8th Amendment, it is important to emphasize that "excessive fines" encompass more than the fines assessed by judges in criminal cases. The U.S. Supreme Court case law governing "excessive fines," stems from civil *in rem* asset forfeitures, not the imposition of criminal fines

that are most common and familiar to the public. This asset forfeiture dimension makes "excessive fines" jurisprudence inherently counterintuitive. Not surprisingly, *Timbs* has generated questions and confusion about its holding.

In March 2019, in light of *Timbs,* State Representative James White requested an attorney general opinion (*RQ-0277-KP*). "The question still remains what amounts to an excessive fine?" (Would it not also include in-kind fine assessments such as community service?) "[H]ow is a court likely to rule when faced with fines, and associated fees and surcharges, that are disproportionate to the offense, target political opposition, raise revenue, or exact hostility on minority groups? How would a court likely identify such fines, fees, surcharges? Is there a legal metric that courts use to derive at such findings? … How would a court recognize a disproportionate fine?"

In September 2019, the Attorney General responded, "While the U.S. Supreme Court in *Timbs* held that the 14th Amendment incorporates the 8th Amendment protection against fines, it did not determine whether the specific fine in question was excessive. . . . Given the lack of guidance from the U.S. Supreme Court on a test to determine excessive fine questions and the pending litigation surrounding the application of *Timbs* to specific excessiveness determinations, we are unable to answer your final questions." Tex. Atty. Gen. *KP-0267 (9/11/19)* at 3.

For a deeper dive into excessive fines and proportionality, see Chapter 5 (Judgments, Indigence, and Enforcement); Ryan Kellus Turner and Clay Abbott, *The Municipal Judges Book* 7th ed. (TMCEC) 2017.

F. 14th Amendment — *Batson* Challenges

Striking 41 of 42 black prospective jurors across six trials violated *Batson v. Kentucky*.

Flowers v. Mississippi, 139 S. Ct. 2228 (2019)

Curtis Flowers was tried six separate times for the murder of four employees of a Mississippi furniture store. Flowers is black; three of the four victims were white. At the first two trials, the State used its peremptory strikes on all of the qualified black prospective jurors. In each case, the jury convicted Flowers and sentenced him to death. The convictions were later reversed by the Mississippi Supreme Court based on prosecutorial misconduct. At the third trial, the State used all 15 of its peremptory strikes against black prospective jurors. The jury convicted Flowers and sentenced him to death but the Mississippi Supreme Court reversed again, this time concluding that the State exercised its peremptory strikes on the basis of race in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). Flowers's fourth and fifth trials ended in mistrials. At the fourth, the State exercised 11 peremptory strikes—all against black prospective jurors (racial information on the prospective jurors for the fifth trial is unavailable). At the sixth trial, the State exercised six peremptory strikes—five against black prospective jurors, allowing one black juror to be seated. Flowers again raised a *Batson* claim, but the trial court concluded that the State had offered race-neutral reasons for each of the five peremptory strikes. The jury convicted Flowers and sentenced him to death. The Mississippi Supreme Court affirmed.

On appeal, the U.S. Supreme Court considered four facts critical. First, in the six trials combined, the State employed its peremptory challenges to strike 41 of the 42 black prospective jurors. Second, in the most recent (sixth) trial, the State exercised peremptory strikes against five of the six black prospective jurors. Third, at the sixth trial the State engaged in dramatically disparate questioning of black and white prospective jurors. This disparate questioning was probative of discriminatory intent, showing that the State sought a pretextual reason to strike black prospective jurors. Fourth, the State then struck at least one black prospective juror who was similarly situated to white prospective jurors who were not struck by the State. Taken together, these circumstances established that the trial court committed clear error in dismissing Flowers's *Batson* challenge.

Justice Alito's short concurrence notes the complicated nature of the case. Viewed in isolation,

the sixth trial's preemptory strikes might seem standard. However, the historical pattern of strikes against black prospective jurors in the previous five trials could not be ignored.

Justice Thomas, dissenting, argued that the Court should never have agreed to review Flowers's case in the first place. He also seemed to suggest that the justices might have taken up the case due in part to the media attention it had generated. Thomas also posited that the State's prosecutors had reasonable, race-neutral reasons for striking the five black jurors at Flowers's final trial. Thomas also took exception to the majority's examination of the prosecution's conduct at Flowers's earlier trials. He seemed to be of the opinion that the sixth trial should be viewed in isolation and that Flowers's earlier trials had no bearing on the record at hand.

Commentary: This case is extremely fact-specific and, as Justice Alito notes, it is likely one of a kind. Additionally, the majority notes that the case breaks no new legal ground. Nevertheless, it reinforces the constitutional rights of Equal Protection espoused in *Batson*.

II. Substantive Law

A. Penal Code

To establish the offense of Tampering with a Governmental Record (Sections 37.10(a)(4) and (5), Penal Code), the State must make a showing that the document(s) presented are "government records."

Alfaro-Jimenez v. State, 577 S.W.3d 240 (Tex. Crim. App. 2019)

When asked to present some identification, Pablo Alfaro-Jimenez produced a social security card bearing an alternate name and a social security number matching a person from Vietnam. He was charged with tampering with a governmental record under Sections 37.10(a)(4) and (5) of the Penal Code. The indictment contained alternative paragraphs. The first paragraph alleged that Alfaro-Jimenez had presented a social security card "with knowledge of its falsity" and the second paragraph alleged that he had possessed the social security card "with the intent that it be used unlawfully." Both paragraphs alleged that the record at issue was "a governmental record."

At trial, Alfaro-Jimenez admitted that the card was a fake. He contended that this meant the card was not a "government document" at all. The trial court found this persuasive but the court of appeals reversed and the case came before the Court of Criminal Appeals.

On appeal, Alfaro-Jimenez argued that both of the subsections listed in the indictment require proof that the document the defendant possessed or presented was actually a "governmental record." Because the State never proved that the fake social security card was a governmental record, it could not prove that he had tampered with a government record. The Court of Criminal Appeals determined that, while the State proved that *a* social security card is a government record, it did not present any evidence that *the* social security card at issue here was a governmental record. Because the State failed to meet its burden, the Court reversed the judgment of the court of appeals and rendered an acquittal.

Commentary: The Court of Criminal Appeals' analysis boils down to one essential point: the State proceeded under the incorrect statute. By indicting the defendant for tampering with a governmental record, the State was required to prove that the social security card at issue was an actual governmental record, not merely that the defendant intended the card be taken as a genuine governmental record.

Even if a court is not required to keep a document, it is a still a "governmental record" for the offense of Tampering with a Government Record (Section 37.10, Penal Code).

Chambers v. State, 580 S.W.3d 149 (Tex. Crim. App. 2019)

This case addresses the issue of whether an individual commits a crime if he falsifies a governmental record that the government was not required to keep. The Court found that he can, but this summary is limited to the Court's interpretation of what constitutes

a "governmental record." Specifically, the Court states that even if the government is not required to keep some document or record, it can still be a governmental record for the purposes of law. The Court's reasoning is that Section 37.01(2)(A) of the Penal Code defines "governmental record" as "anything belonging to, received by, or kept by government for information, including a court record…" There are other descriptions of government records listed in Section 37.01(2), such as 37.01(2)(B): "anything required by law to be kept by others for information of government." But because of the "or" language in the statute, not *all* examples of governmental records must be required to be kept by law.

Commentary: This case serves as a reminder that generally all documents kept by a court—whether required to be kept or not—are "governmental records" for the purposes of records requests, tampering, and other areas of law.

In a theft case, an employee may still "appropriate" funds when he accepts payment for services he does not intend to perform and the company owner endorses and deposits the payment.

Johnson v. State, 560 S.W.3d 224 (Tex. Crim. App. 2018)

Dondre Johnson ran the Johnson Family Mortuary (JFM) which was owned by his wife. Johnson accepted payments for numerous services and his wife deposited the checks to JFM's bank account. On July 15, 2014, JFM's landlord found multiple decomposing bodies on the JFM property. It was then discovered that Johnson had accepted payments for cremations that were never performed. Johnson was charged with two counts of theft. He was convicted at trial but the court of appeals reversed on insufficient evidence grounds. On appeal, the Court of Criminal Appeals held that a rational jury could find there was sufficient evidence to support both counts of theft.

Count One involved the theft of money from Margaret Francois. She entered into an agreement on July 1 for the cremation of Patricia Baptiste. Francois paid for the cremation on July 7 with a $1,500 cashier's check made out to JFM. Johnson's wife endorsed the check and deposited it into JFM's account the following day. Baptiste's decomposing body was among those found on July 15. Under Section 31.03 of the Penal Code, theft is the "unlawful appropriation of property without the effective consent of the owner with the intent to deprive the owner of property." The court paid particular attention to the "intent to deprive" and "appropriation" elements. In a theft case arising from a contract, the State must prove that the accused intended to deprive the owner of the property when it was taken. *Taylor v. State*, 450 S.W.3d 528, 536 (Tex. Crim. App. 2014). The Court determined that here, Johnson knew it was impossible to carry out cremations at the time he took payment for those services. Specifically, at the time he took the money, he knew that JFM was operating without a funeral director in charge (FDIC). He also knew that a funeral home cannot secure death certificates without an FDIC and that, without a death certificate, a provider cannot perform a cremation.

Next, the Court identified that one definition of "appropriate" is to acquire or exercise control over property. It disagreed with the court of appeals' reasoning that Johnson could not have appropriated the money for the incomplete services because he did not control the money. And that Johnson had merely held the checks while his wife deposited them to JFM's bank account for the company's benefit while Johnson was merely its employee. Instead, the Court noted that the law of parties in Section 7.02(a)(2) of the Penal Code does not require evidence of the other person's intent. The Court also noted that Johnson's intent and efforts to assist in the commission of the crime, plus Johnson's wife's appropriation of the check, equal theft regardless of his employee status.

Count Two alleged an aggregate theft of $20,000. Multiple people had paid Johnson for various cremations and memorial services. Although Johnson performed the memorial services, he did not cremate the deceased individuals. The Court noted that circumstantial evidence of deception, combined with Johnson's lies, suggested that he was engaged in a kind of Ponzi scheme in which he delivered earlier

ashes for later bodies.

Commentary: While this case deals with felony theft, the Court's analysis of the elements of theft may be instructive in any level of theft.

Organized Retail Theft (Section 31.16(b), Penal Code) cannot be committed by an ordinary shoplifter acting alone.

Lang v. State, 561 S.W.3d 174 (Tex. Crim. App. 2018)

Terri Regina Lang entered a grocery store, placed multiple items in her cart, and left without paying for some of them. She was charged and convicted for organized retail theft. A person commits the offense if they intentionally conduct, promote, or facilitate an activity in which the person receives, possesses, conceals, stores, barters, sells, or disposes of (among other things) stolen retail merchandise. Lang appealed, arguing that her conduct amounted to mere shoplifting. She claimed that, because she acted alone and without the cooperation of others, her conduct could not properly give rise to an organized-retail-theft conviction as a matter of law.

The Court of Criminal Appeals began its analysis by interpreting the organized retail theft statute to determine whether it properly reaches the type of conduct at issue. Finding the statute ambiguous, the Court looked to extra-textual factors and determined that the statute was not intended to criminalize every act of ordinary shoplifting. Rather, the statute was intended to target professional crime rings involved in the large-scale theft and reselling of stolen retail merchandise. The Court remanded the case to the court of appeals to consider reforming the judgment to a lesser-included offense before rendering a judgment of acquittal.

Commentary: The Court abstained from drawing clear lines between organized retail theft and ordinary shoplifting. While it remains unclear what additional evidence must be shown to elevate the offense, the implication is that there must be some showing of "large scale" theft. For example, a more organized retail theft ring might qualify.

For purposes of Assault (Section 22.01(b)(1), Penal Code), a peace officer working as a private security guard is "discharging an official duty" when enforcing provisions of the Alcoholic Beverage Code.

Cuevas v. State, 576 S.W.3d 398 (Tex. Crim. App. 2019)

A Bee County constable was moonlighting in his constable uniform as a security guard for a wedding reception at The Grand, which was a licensed liquor establishment. As part of the terms of the license, the establishment was required to prohibit customers from taking alcohol outside the premises under Section 28.10(b) of the Alcoholic Beverage Code. One of the wedding guests, Jeremy Cuevas, attempted to take alcohol off The Grand's premises. When Cuevas attempted to re-enter the reception, the off-duty constable asked him to leave (ostensibly enforcing Section 28.10(b)). Cuevas attempted to push past the constable, jumping on top of him and knocking him down. Cuevas was charged with assault of a public servant under Section 22.01 of the Penal Code.

Under Section 22.01(b)(1), a person commits an offense if they intentionally or knowingly cause injury to "a person the actor knows is a public servant *while the public servant is lawfully discharging an official duty*," (emphasis added). At trial, Cuevas moved to dismiss the charges arguing that the evidence was insufficient to show that the constable was "discharging an official duty" when he was assaulted. The trial court overruled the motion and convicted Cuevas for assault on a peace officer. The court of appeals reversed.

On appeal, the Court of Criminal Appeals noted that Section 101.07 of the Alcoholic Beverage Code requires peace officers to enforce the provisions of the Code. One of those provisions, Section 28.10(b), prohibits mixed beverage permit holders from allowing customers to take drinks off premises. The Court determined that, by enforcing Section 28.10(b) as required by Section 101.07, the off-duty constable was discharging an official duty.

Commentary: This holding potentially expands the understanding of what "discharging an official duty" may entail. This reasoning, for example, could apply to other codes or other fact patterns involving moonlighting officers. The opinion does not contain explicit language limiting this holding exclusively to the enforcement of the Alcoholic Beverage Code.

The statute governing the Reckless Discharge of a Firearm (Section 42.12, Penal Code) is not *in pari materia* with a similar municipal ordinance.

State v. Musa-Valle, No. PD-1047-18, 2019 LEXIS 345, at *1 (Tex. Crim. App. June 19, 2019) (per curiam) (not designated for publication)

José Musa-Valle was charged under Texas Penal Code Section 42.12, which provides that, "A person commits an offense if the person recklessly discharges a firearm inside the corporate limits of a municipality having a population of 100,000 or more." The alleged conduct occurred in the City of San Antonio. The city has its own reckless discharge ordinance which reads, "It shall be unlawful for any person to discharge a firearm within the city limits of the City of San Antonio." San Antonio, Tex., Code of Ordinances ch. 21, art. VI, § 21-152(a) (2018).

Musa-Valle filed a motion to set aside the information. He argued that his conduct should be punishable as a Class C misdemeanor under San Antonio Municipal Ordinance § 21-152, not as a Class A misdemeanor under section 42.12 of the Texas Penal Code. Additionally, he asserted that the ordinance and statute were *in pari materia* and contained an irreconcilable conflict because of the differences in punishment. As such, he had a due process right to be prosecuted under the ordinance. The trial court granted Musa-Valle's motion and the State appealed.

The San Antonio Court of Appeals found that, although the ordinance and the statute deal with the same subject matter and the same conduct may sometimes violate both, they were not *in pari materia*. Crucially, they were enacted by two separate legislative bodies, had different elements of proof with regard to the culpable mental state, different penalties, and were designed to serve different purposes or objectives. Therefore the State "properly exercised its option" to prosecute Musa-Valle under the statute.

The Court of Criminal Appeals took the case on discretionary review but later concluded that the decision to grant review was improvident.

Commentary: By declaring an improvident grant, the Court of Criminal Appeals allowed the intermediate court's opinion to stand. The court of appeals was able to decide this case based on clear differences in the elements of proof. But what happens if the elements are not so different? This decision—and the attention it garnered—has larger implications for the interplay between local ordinances and state statues.

B. Transportation Code

When a highway lane branches to form an optional exit ramp, shifting to the exit ramp constitutes a change of lane requiring the driver to signal (Section 545.104(a), Transportation Code).

Speck v. State, 564 S.W.3d 497 (Tex. App.—Houston [14th Dist.] 2018)

Christopher Speck was driving on a highway that had two lanes of traffic. The outermost lane branched to form both a continuing lane and an optional exit ramp. Speck was driving in the outermost lane of the highway until he exited without signaling. An officer initiated a traffic stop because appellant exited the highway without signaling. During the course of the traffic stop, the officer determined that Speck was inebriated and placed him under arrest. Speck was then charged with driving while intoxicated.

At trial, Speck sought to suppress evidence stemming from the traffic stop. He argued that the officer lacked reasonable suspicion to initiate the traffic stop because a signal was not required. The trial court denied the motion to suppress.

On appeal, the Houston Court of Appeals [14th Dist.] examined the signaling statute under Section

545.104(a) of the Transportation Code, which requires a driver to use a signal "to indicate an intention to turn, change lanes, or start from a parked position." As a preliminary matter, the court identified that the statute does not define the phrase "change lanes." It defined the term to mean, "to make a shift from one strip of roadway to another." The court then concluded that, because the outermost lane did not require an exit and Speck could have continued driving on the direct course of the highway, his choice to shift to the exit ramp (a separate strip of roadway) constituted a lane change. Signaling was therefore required and Speck's failure to signal was sufficient to create a reasonable suspicion that a traffic violation has occurred and so justified the stop.

Commentary: If nothing else, this opinion comes with an excellent diagram depicting the necessary signaling conditions.

A local law enforcement officer must be certified by the Department of Transportation to enforce weight restrictions and weight regulations on county roads.

Tex. Atty. Gen. Op. KP-0245 (03/11/19)

Following analogous judicial and attorney general opinions, a court would likely conclude that one statewide weight enforcement framework exists under Chapters 621 and 251 of the Transportation Code. Thus, the authority granted to a constable or deputy constable under Transportation Code section 251.153 is identical to the authority described by Section 621.402 of the Transportation Code.

Construing Section 621.402(e)(1) of the Transportation Code and the Department of Transportation's rule implementing it as a qualification to Subsection 251.153(b) of the Transportation Code, a court would likely conclude that a local law enforcement officer such as a constable or deputy constable must be certified by the Department to enforce weight restrictions, even if he or she enforces those restrictions only on county roads.

Similarly, construing Subsection 621.402(e)(2)(B) of the Transportation Code as a qualification to Subsection 25 l.153(b), a court would likely conclude that the Department may revoke a constable's authorization to weigh vehicles granted by a county commissioners court.

III. Procedural Law

A. Charging Instruments

An indictment that does not state the name of the accused in the body is not void on its face.

Jenkins v. State, No. PD-0086-18, 2018 LEXIS 1162 (Tex. Crim. App. December 5, 2018)

Jenkins was charged with the continuous trafficking of persons. At trial, he moved to dismiss his case arguing that the indictment was defective under Article V, Section 12(b) of the Texas Constitution. Section 12(b) reads, "An indictment is a written instrument presented to a court by a grand jury charging a person with the commission of an offense . . . The practice and procedures relating to the use of indictments and informations, including their contents, amendment, sufficiency, and requisites, are as provided by law. The presentment of an indictment or information to a court invests the court with jurisdiction of the cause." Jenkins argued that because the indictment, which only contained his name in the indictment's caption, did not name him personally, it did not charge "a person," and thus it was fatally defective. The trial court denied his motion to dismiss but the court of appeals reversed.

On petition for discretionary review, the Court of Criminal Appeals determined that—while the indictment did not identify Jenkins by name—the face of the charging instrument contained a caption with enough information (including Jenkins's full name) to determine: (1) that he was "the defendant" referred to in the indictment, and (2) that it charged *him* with the felony offense of continuous trafficking of persons. Therefore, the defective indictment was still an indictment that met the jurisdictional requirements under Article V, Section 12(b) of the Texas Constitution.

Commentary: The opinion articulates a rule regarding the sufficiency of indictments, which are not used by municipal and justice courts. In *Huynh v. State*, 901 S.W.2d 480 (Tex. Crim. App. 1995) the Court of Criminal Appeals held that, when the law articulates a rule for "charging instruments," without specifying the type of instrument, it may relate to indictments, informations, and complaints. However, when a law deals expressly and exclusively with "indictments and informations" and does not mention "complaints," the authority to enforce the rule cannot be extended to complaints. Here, Article V, Section 12(b) of the Texas Constitution deals expressly and exclusively with indictments and informations and does not mention complaints. Under *Huynh*, at first blush, *Jenkins* does not look relevant to municipal and justice courts.

However, even in courts where complaints are used, *Jenkins* is worthy of a closer look. Article 21.02 of the Code of the Criminal Procedure sets out what is required to make an indictment sufficient. Article 21.02(4) states that an indictment "must contain the name of the accused or state that his name is unknown and give a reasonably accurate description of him." Similar to Article 21.02(4), Article 45.019(a)(3) states that "it must state the name of the accused if known, or if unknown, must include a reasonably definite description of the accused."

In *Jenkins* the Court agreed with the court of appeals that failure to comply with Article 21.02(4) made the indictment defective. However, the Court rejected the court of appeals conclusion that it also rendered the indictment *void*. While *Jenkins* does not set precedent in courts that utilize complaints, the similarity between the language in Article 45.019(a)(3) and Article 21.02(4)— combined with the fact that Article 45.019(a) states that "a complaint is sufficient, *without regard to its form*, *if it substantially satisfies*" the requisites of Article 45.019—make a compelling argument that the rationale in *Jenkins* is also applicable to complaints.

An information tracking the language of the Disorderly Conduct statue for "display of a firearm" (Section 42.01(8), Penal Code) provides sufficient notice to a defendant.

State v. Ross, 573 S.W.3d 817 (Tex. Crim. App. 2019)

Ross was accused of committing disorderly conduct for "intentionally or knowingly . . . display[ing] a firearm . . . in a public place in a manner calculated to alarm." The information charging him with the offense largely tracked the relevant penal statute. In a pretrial motion, Ross moved to quash the information, claiming that it did not give him enough notice to prepare a defense. Specifically, Ross argued that, because the phrase "calculated to alarm" as it appears in Section 42.01(a)(8) of the Penal Code was unconstitutionally vague, any indictment containing that term, without further elaboration, necessarily provided inadequate notice of the prohibited conduct in an open-carry state like Texas.

Both the trial court and the San Antonio Court of Appeals held that the information did not provide Ross with sufficient notice. The Court of Criminal Appeals took the State's pre-trial appeal on discretionary review. In analyzing Ross's sufficiency and vagueness claims, the Court construed the plain meaning of the terms, resolved ambiguities in favor of their readily susceptible definitions, and determined the reach of the given culpable mental state. It concluded that, to be guilty of disorderly conduct under Section 42.01(a)(8), a person must intentionally and knowingly display a firearm in a public place in a manner that the person knows is likely, under an objective standard of reasonableness, to frighten the average, ordinary person. Construing the statute in this manner, the Court concluded that it was not unconstitutionally vague. Therefore, a charging instrument that tracked that statute provided sufficient notice as required by law.

The Court also reconciled the statute with the State's open-carry laws, finding that the proffered reading of Section 42.01(a)(8) did not create any tension with the right of law-abiding Texans to openly carry their firearms. The Court determined that display in a "manner calculated to alarm" must necessarily mean something other than the lawful display envisioned by open-carry.

Judge Yeary joined the majority on all sections except Part III-B. He did not think the Court needed to

give a full interpretation of the statute. Additionally, he disagreed with the majority's construction of "display" and offered his own analysis of the term, paying particular attention to the term's interplay with open-carry concepts.

Judge Newell, Judge Walker, and Judge Slaughter filed dissenting opinions. All three dissents asserted that the majority should not have engaged in an in-depth statutory analysis when the limited question before the Court was whether the trial judge erred by granting the motion to quash, due to lack of adequate notice. Judge Newell agreed with the majority's analysis but argued that the question of statutory interpretation was not properly before the court. Judge Walker opined that engaging in statutory interpretation was improper for two reasons: (1) it imposed a retroactive punishment on Ross, and (2) it was unfair to the lower courts, who could not have guessed how the Court would interpret the statute. Judge Slaughter disagreed with the majority's construction of terms and its resolution of the open-carry issue.

Commentary: The Penal Code contains eleven ways a person can commit disorderly conduct. Nine of the offenses contained in Section 42.01 are Class C misdemeanors. Two of the offenses, including, the one at issue in *Ross*, are Class B misdemeanors. The Court concluded in this case that a charging instrument tracking the challenged statute would be sufficiently clear to give notice to the defendant. Would the same rationale hold true for other offenses under Section 42.01? Particularly in light of changing social norms, other variants of disorderly conduct seem primed for similar constitutional challenges.

B. Pleas

Subsequent changes to the law do not invalidate pleas that were previously made, even if the changes may have changed the plea.

Briggs v. State, 560 S.W.3d 176 (Tex. Crim. App. 2018)

In 2012, Sandra Briggs pled no contest to intoxication manslaughter of a peace officer. She later claimed that case law decided after her plea (*Missouri v. McNeely*, 133 S. Ct. 1552 (2013)) would have changed her plea and she would have instead requested a jury trial. The intermediate court of appeals granted Briggs's motion, stating "having the benefit of *McNeely* and its progeny, [Briggs's attorney] misrepresented the law to Briggs [in 2012] as it relates to the admissibility of her blood-draw evidence."

The Court of Criminal Appeals found that the intermediate court of appeals erred: pleas are made under the law existing at the time of the plea. Furthermore, the fact that Briggs's attorney could not foresee or predict potential changes in the law does not affect the reliability and truthfulness of Briggs's plea. The Court declined to analyze whether or not *McNeely* would have actually helped her case as such an analysis was deemed irrelevant to the validity of her plea. The Court cited the seminal U.S. Supreme Court case *Brady v. U.S.*, 90 S. Ct. 1463 (1970) to support its ruling. *Brady* contained a similar argument to the one Briggs raised: that death penalty case law had effectively changed the law following his plea, rendering it invalid. Just as the Supreme Court rejected Brady's argument, the Court of Criminal Appeals rejected Briggs's argument. The Court acknowledged, however, that if Briggs had received *erroneous* information from her attorney before her plea, it may have been deemed involuntary. But her attorney's information was not erroneous *at the time it was given*. The fact that the law changed later cannot retroactively render the advice erroneous.

C. Trial

A denial of the ability to cross-examine a witness is proper if the testimony would not have been likely to affect the case's outcome.

Jones v. State, 571 S.W.3d 764 (Tex. Crim. App. 2019)

A defendant was charged with causing bodily injury to his girlfriend. The girlfriend's mother was an eyewitness to the altercation. Defense counsel sought to question the girlfriend's mother about an

ongoing Child Protective Services (CPS) proceeding to determine the parental rights of the defendant and his girlfriend—specifically whether she had a preference whether either parent's parental rights were terminated. The trial court ruled that this inquiry was irrelevant. The court of appeals disagreed, ruling that it was a violation of the 6th Amendment Confrontation Clause to disallow the defendant from exposing a potential bias on the part of a witness.

The Court of Criminal Appeals first assessed whether this line of questioning was proper on its face. Rule 613(b) of the Texas Rules of Evidence grants litigants relatively broad latitude to question witnesses about biases they may have. The Court reiterated that it is for the trier of fact to determine how much any bias would affect the witness's reliability. In the present case, the Court determined that it was proper to explore whether the mother's testimony was colored by the fact that a conviction for the defendant could improve her daughter's chances in the CPS proceeding.

The Court next analyzed whether the defendant was harmed beyond a reasonable doubt when this line of questioning was denied by the trial court. The defendant himself admitted at trial to striking his girlfriend, but he claimed self-defense. The jury was instructed that in order to accept the claim of self-defense, they must find that the defendant had a reasonable expectation or fear of bodily injury. The Court determined that it was unlikely the jury's finding vis-à-vis self-defense would turn on "subtle differences" between the mother's and the defendant's account of the altercation. An example of a difference was the girlfriend's initial attack: one described it as a "blow with her own hand" while the other described it as a "karate kick." Furthermore, the Court determined that allowing this cross-examination would only marginally increase the damage already done to the witness's credibility that the jury had already heard. For example, her testimony that the defendant ransacked the house was plainly contradicted by a peace officer's testimony. Finally, the simple fact that the witness was the alleged victim's mother and the child's grandmother would surely have been perceived by the jury as an inherent bias. In the end, the Court was confident that the jury would still have rejected the self-defense claim even with questioning related to the CPS proceeding. The trial court's judgment was affirmed.

A trial court may not dismiss a jury and impose deferred adjudication after a defendant pleads guilty to the jury mid-trial and the jury returns a guilty verdict.

In re State ex rel. Mau v. Third Court of Appeals, 560 S.W.3d 640 (Tex. Crim. App. 2018)

In a misdemeanor family violence trial in a county court, the defendant, Rivera, pled not guilty and requested a jury trial. During the trial, defendant changed his plea to guilty. The trial court instructed the jury to return a guilty verdict, which they did. Rather than permit the jury to assess punishment, the trial court dismissed the jury and placed the defendant on deferred adjudication community supervision.

The State sought mandamus, arguing that the trial court had no authority to defer the adjudication of guilt and also lacked the authority to sentence the defendant because the defendant's change of plea converted the trial into a unitary proceeding in which the jury should assess punishment. The Austin Court of Appeals denied the mandamus petition. The State then asked the Court of Criminal Appeals to compel the trial court to withdraw the deferred adjudication and empanel a new jury to determine the defendant's punishment.

In delivering the opinion of the Court, Judge Yeary explained that when a defendant pleads guilty to a jury, absent consent by the State per Article 1.13(a) of the Code of Criminal Procedure, the trial court lacks the authority to dismiss the jury and impose deferred adjudication.

Judge Alcala, joined by Judge Hervey and Judge Newell, filed a concurring opinion. Judge Alcala explained that she could not join the majority opinion's analysis pertaining to the trial courts authority to assess punishment because it was unnecessary to the resolution of the case and

an inappropriate advisory ruling. She explained that the Court should limit its written opinions to grants of mandamus relief that do not create new legal standards and the rationale underlying those decisions.

Judge Newell, joined by Judge Hervey and Judge Alcala, also filed a concurring opinion. Judge Newell echoed Judge Alcala's concurring opinion that mandamus is not to be used to make new law but rather to preserve existing law. He emphasized that the Court's analysis makes clear that there is no such thing as a "State's right to a jury trial." Rather, Article 1.13(a) provides a limitation on a trial court's authority, rather than a grant of power to the State. Though the State has a legitimate interest in the method of trial, Article 1.13 can also be read as ensuring greater protections for a defendant's right to a jury by limiting how and when the defendant can waive that right. Admittedly, it seems odd that a defendant who wants to waive a jury could be forced to endure one. But the statute says what it says, and mandamus is not the appropriate vehicle to second-guess the Legislature.

Commentary: For the past 17 years one of authors of this article has regularly reminded readers that deferred disposition is not deferred adjudication. *See*, Ryan Kellus Turner, *Deferred Disposition is not Deferred Adjudication, The Recorder* (August 2002) at 13. "Alas, despite their similarities they are distinct. Granted, out of sheer necessity municipal courts may at times have to look to case law to interpret deferred adjudication in construing deferred disposition. Nevertheless, be careful to not go too far in making comparisons. The laws are simply different." *Id.* at 15. Time will likely tell whether appellate courts are willing to extrapolate the holding in *Mau* regarding deferred adjudication to deferred disposition. Philosophically, it is easy to make the argument. But, because of specific language in Chapter 45 of the Code of Criminal Procedure, the statutory argument is not as easy. For starters, unlike in district and county courts (which are governed by Article 1.13 of the Code of Criminal Procedure), in justice and municipal courts, the State does not have to consent to a defendant's waiver of their right to a jury trial. Article 45.025, Code of Criminal Procedure.

On a macro level, *Mau* is about the tension and interplay between the defendant's rights, the State's prerogative, and the statutory limits of judicial decision-making during trial. Such tension can also exist in municipal court trials. In the last year, there have been similar questions regarding the proper use of mandamus arising from municipal court proceedings. As Judge Newell explained "[m] unicipal courts are some of the hardest working courts in Texas. Yet, for these daunting caseloads, the code of criminal procedure has one chapter (out of 64) devoted to these courts. Rules of criminal procedure to supplement these statutes could fill in obvious gaps left by the relevant statutes without abridging, enlarging, or modifying the substantive rights of the litigants. Without such rules, appellate courts could be forced to rely increasingly upon mandamus proceeding to settle disputes. . . This, in turn, could result in a watering down of standards for mandamus review for criminal cases across the board." *In re Yeager*, 562 S.W.3d 449, 449-50 (Tex. Crim. App. 2018).

D. Expert Witness Testimony

Expert witnesses generally must satisfy the *Nenno* test, which is less stringent than the *Kelly* test, if their testimony does not involve "hard sciences" or mathematical calculations.

Rhomer v. State 569 S.W.3d 664 (Tex. Crim. App. 2019)

A collision between a motorcycle and a car resulted in the death of the motorcyclist. Detective John Doyle was assigned to investigate the crash. While he had extensive training in crashes involving multiple cars, he had no training specifically related to motorcycle crashes. He acknowledged that there are "different physics, different science, [and] different mathematical principles" that apply when analyzing car crashes versus motorcycle crashes. Doyle provided expert testimony at trial. The Court addressed two questions: (1) whether the decision to admit Doyle as an expert was a violation of Texas Rule of Evidence 702; and (2) whether the court of

appeals was correct in applying the *Nenno* standard (instead of *Kelly*) in determining the reliability of Doyle's testimony.

Texas Rule of Evidence 702 requires that an expert has specialized knowledge that can assist the trier of fact in better understanding the evidence. There is no requirement that the best possible expert be put on the stand in any given case. In assessing this, appellate courts may consider the complexity of the field, the conclusiveness of the testimony, and the centrality of the testimony to the outcome of the case (*Rodgers v. State*, 205 S.W.3d 525 (Tex. Crim. App. 2006)). Applying this to the present case, the Court determined that Doyle's opinion was not complex. It was mainly limited to where and how the collision happened. Further, the Court observed, his background in car crashes certainly held some parallels to motorcycle crashes. The Court ruled that Texas Rule of Evidence 702 was not violated by admitting Doyle's testimony.

When expert testimony is based on hard science involving "precise calculations and the scientific method," the expert must satisfy the test laid out in *Kelly v. State*, 824 S.W.2d 568 (Tex. Crim. App. 1992). The *Kelly* test requires a valid scientific theory, a valid technique for applying the theory, and the proper application of the technique. Experts testifying outside hard sciences must only satisfy the less-stringent test established in *Nenno v. State*, 970 S.W.2d 549 (Tex. Crim. App. 1998). The *Nenno* test requires a legitimate field of expertise, testimony within the scope of that field, and testimony that properly relies upon and/or utilizes the principles of the field. In this case, the Court found that the *Nenno* test was applicable because Doyle's testimony relied on his opinions, which "were based on his training and experience in evaluating physical evidence at crash scenes more than on a hard scientific inquiry such as calculating a vehicle's pre-impact speed." The Court went on rule that the *Nenno* factors were all satisfied. The Court noted that an expert's qualifications do not decide whether to apply the *Kelly* or *Nenno* test. Rather, the question turns on the manner in which the expert conducted their investigation and the content of their testimony. Thus, even though Doyle did not possess knowledge or skills directly related to motorcycle crashes, he did not utilize hard science in his investigation or testimony.

Commentary: *Rhomer* presents a tidy overview of the two tests available for courts to assess the reliability of expert witness testimony. Based on this case, it seems that if no complex mathematical calculations are made in a crash analysis, the *Nenno* test applies. Once more complex ideas arise (such as estimating pre-impact speeds), the more rigorous *Kelly* test applies.

E. Jury Instruction

Instructing the jury on voluntary intoxication during the punishment phase regarding extraneous conduct must be limited to that extraneous offense or else it can be a comment on the weight of the evidence

Smith v. State, 577 S.W.3d 548 (Tex. Crim. App. 2019)

In the punishment phase of his aggravated-robbery trial, Joseph Smith presented evidence that he suffers from a severe drug addiction. The State sought an instruction that voluntary intoxication would not constitute a defense to the commission of a crime. The trial court granted the instruction and Smith was ultimately found guilty. On appeal, Smith argued that the instruction acted as a comment on the weight of the evidence under Article 36.14 of the Code of Criminal Procedure.

The Court of Criminal Appeals determined that a trial court can give such a voluntary-intoxication instruction when (1) the facts support the instruction, and (2) it is appropriately limited to the extraneous-conduct evidence introduced at punishment.

The Court held that, here, the facts supported the instruction because there was evidence that could have lead the jury to conclude that Smith's intoxication somehow turned his otherwise-unlawful bad acts into lawful ones (i.e. the evidence had mitigating value). Next, the Court looked at whether the instruction was appropriately limited. Judge

Keasler, writing for the Court, cautioned that a trial judge must expressly limit any punishment-phase instruction under Section 8.04(a) of the Penal Code to only apply to the jury's consideration of extraneous-conduct evidence. Without this limitation, the instruction could only be understood to say that evidence of intoxication carries "no mitigating value." Such an instruction "could only function as a comment upon the weight of the punishment-phase evidence." The Court found that the instruction given in this case was *not* limited to extraneous conduct and thus acted as a comment on the weight of the evidence. The Court remanded the case for a harm analysis.

Commentary: It is possible to craft a voluntary-intoxication instruction that does not improperly comment on the weight of the evidence. However, the limiting language is likely to be confusing for juries and judges alike. Given this risk of confusion, the Court of Criminal Appeals cautioned that in most cases the wiser course would be for the trial judge to avoid this kind of instruction altogether.

Habeas relief is denied when a testifying officer makes false statements about his qualifications if they were immaterial and unlikely to have changed the outcome of a trial.

Ex parte Lalonde, 570 S.W.3d 716 (Tex. Crim. App. 2019)

In a possession of a controlled substance trial resulting in conviction, a peace officer testifying as a State's witness gave indisputably false testimony that he had served as an instructor for various organizations. After testifying, the same officer was indicted for aggravated perjury in other criminal cases. Although he avoided prosecution through pretrial diversion, the prosecution indicated that it would no longer use him as a witness in the instant case due to these allegations. The defendant in the controlled substance case (1) sought to have his conviction set aside in light of the officer's alleged perjury in other cases and have any evidence presented by the officer suppressed and (2) claimed that the State violated *Brady* regarding the officer's perjury.

The well-known rule outlined in *Brady v. Maryland*, 373 U.S. 83 (1963)) states that the prosecution must not suppress evidence favorable to the defense if that evidence is material to either guilt or punishment. The defense, however, bears the burden of showing that it is reasonably probable that the outcome of the trial would have been different if the prosecution had disclosed the evidence. First, the State must know about *Brady* information, in order to suppress it. Here, the State intoned that it did not become aware of the perjury until after the trial. However, the Court concluded that the officer was obviously aware of it when he testified at trial and at the suppression hearing and that, therefore, the State was aware of the information and suppressed it.

However, the Court found the evidence to be immaterial. While the office's false testimony about his credentials may have made him seem more worthy of belief by the court, any contribution this may have had to the guilty verdict was *de minimis* given that there was ample other unchallenged evidence from other officers on which to convict the defendant. Accordingly, the Court did not set aside the conviction. The Court further noted that if the defense had the perjury evidence as a bargaining chip for a plea agreement, it was unlikely to have any material difference in plea negotiations.

In conclusion, the Court denied both the defendant's claims for relief.

F. Closing Argument

Showing a video of a lion attempting to eat a child is not a proper demonstrative aid in the closing argument for a non-violent robbery case.

Milton v. State, 572 S.W.3d 234 (Tex. Crim. App. 2019)

Milton was on trial for a non-violent robbery offense where he demanded that a pharmacy cashier give him money or else he would kill her. Even though Milton claimed he had a weapon, he never displayed one. In closing arguments of the punishment phase, the State showed a 35-second video of a lion attempting to eat a human baby through protective glass. The

video was used to compare the defendant to the lion and the jury to the glass as a mechanism to stop the defendant from fulfilling his "innate" tendencies. Both the trial court and court of appeals allowed the video primarily because the defendant had a lengthy criminal history and it was not a stretch to convey that he had criminal tendencies.

However, the Court of Criminal Appeals ruled that this video was improper. The Court began by stating that the purpose of a closing argument is to facilitate the jury in properly analyzing the evidence presented and not to arouse "passion or prejudice." The Court acknowledged that the rules surrounding closing arguments generally serve to bar the introduction of evidence not offered earlier at trial. The use of demonstrative aids to help clarify evidence is permissible, however, demonstrative aids should not have any independent probative value. The Court determined that the video bore no actual relation to any evidence presented at trial. It did not convey any information about the defendant's actual criminal history. As such, it was likely that the jury was unfairly prejudiced by its introduction in that it invited them to believe that the defendant's actions were more brutal than they were. Finally, the Court acknowledged that "colorful" *language* is often permissible in closing arguments. For example, had the State *verbally* compared Milton to a lion behind protective glass, it may have been proper.

Commentary: In reaching this decision, the Court had to contend with a dearth of case law regarding demonstrative aids in closing arguments. This forced the Court to draw analogies to more-developed standards. Namely, the Court draws on the standards for proper closing argument. Proper jury argument generally falls within one of four areas: (1) summation of the evidence, (2) reasonable deduction from the evidence, (3) answer to an argument of opposing counsel, and (4) plea for law enforcement.

G. Mistrial

In the double-jeopardy context, there is no implied consent to mistrial when a judge declares a mistrial on his own motion and the defendant does not object.

Ex parte Garrels, 559 S.W.3d 517 (Tex. Crim. App. 2018)

Elizabeth Ann Garrels was charged by information with the misdemeanor offense of driving while intoxicated. The case went to trial. The jury was duly selected and sworn, thereby placing Garrels in "jeopardy" for double-jeopardy purposes.

Garrels objected to the State's first witness, citing a discovery violation and seeking to have the testimony struck. Evidently conceding a violation of the discovery statute, the State countered that the "appropriate remedy would be a continuance of the trial and not the exclusion of testimony." Although the trial judge was not inclined to grant Garrels's request to "strike" the officer's testimony, he was also averse to the State's request for a two-week continuance so that the terms of the discovery statute might be satisfied. Faced with two unappealing options, the judge declared a mistrial *sua sponte*. The State expressly objected to this approach arguing that, "without a finding of manifest necessity" on the record, the State "would be jeopardy barred" from re-trying Garrels in any future proceeding. Nevertheless, the trial judge declared a mistrial. Garrels did not object.

Several months later, the State sought to re-try Garrels for the same offense. Garrels filed a pre-trial application for a writ of habeas corpus, claiming that Double Jeopardy barred the State from re-prosecuting the case. The 5th Amendment to the United States Constitution prohibits a State from putting a defendant in jeopardy twice for the same offense. So, "as a general rule," if the defendant is placed in jeopardy and "the jury is discharged without reaching a verdict, double jeopardy will bar retrial." There are exceptions to this general rule. Namely, if the mistrial was done with the defendant's consent, re-trial is not jeopardy barred. The State argued that, by not objecting to the mistrial, Garrels gave her implied consent to the order terminating her first trial.

The Court of Criminal Appeals ultimately decided that the State did not meet its burden to prove that appellant consented to the order terminating her first trial. The Court noted that the record was largely

silent as to the facts and circumstances surrounding the mistrial declaration. Because implied consent is determined from "totality of circumstances," facts supporting a finding of implied consent must be in the record. They cannot be presumed by a silent record.

Commentary: The Court's holding reinforces the idea that it is the State's burden to "introduce such evidence" into the record if consent is to be relied upon as a reason to allow re-prosecution. It is not the defendant's burden to show that, although she did not request the mistrial, neither did she consent to it.

However, the opinion takes time to lay out how the State and the Courts may preserve facts supporting a finding of implied consent. It states that there is "no impediment to the trial court, either *sua sponte* or at the State's insistence, simply asking the defendant whether she would consent to the mistrial before it is declared." Doing so would capture the defendant's choice in the matter.

Additionally, the opinion notes that it may be necessary to capture facts not traditionally shown in the record. For example, it would be prudent to capture that, upon the trial court's declaration of a mistrial, Garrels and her lawyer performed some overtly celebratory act that is not ordinarily captured in the record—hand-shaking, "high-fiving," or joyously embracing one another. The Court makes a point to say that, "[t]he trial court would have acted well within its discretion to construe each of these circumstances as an indication that the defendant impliedly consented to the mistrial; and a reviewing court would be required to view this evidence 'in the light most favorable to the trial court's ruling.'"

H. Recusal

It is an abuse of discretion for a judge to prohibit the State from presenting evidence at a recusal hearing and to allow the judge-at-issue to make an oral or written response to the motion.

In re State ex rel. Durden, 2019 LEXIS 6797 (Tex. App.—San Antonio August 7, 2019)

Judge Shahan refused to voluntarily recuse himself after the State alleged the judge had instituted a "pay-to-plea" policy for his court. (See, below, *In re State ex rel. Durden*, 2019 Tex. App. LEXIS 6279). Kinney County Attorney, Todd A. Durden, subsequently filed a motion to disqualify and recuse Judge Shahan. The matter was assigned to Judge Spencer W. Brown.

At a hearing on the recusal motion—before Durden had the opportunity to put on his case—Judge Shahan asked to "address the Court on some pretrial motions." He took the opportunity to orally argue against his own recusal and moved to dismiss the matter. When Durden asked to present his counterargument, Judge Brown refused and granted Judge Shahan's motion to dismiss. Afterward, Durden sought mandamus in the San Antonio Court of Appeals.

The court of appeals examined the case in light of Rules 18a and 18b of the Texas Rules of Civil Procedure, which provide the procedures for the recusal or disqualification of a judge in civil and criminal matters (*but not in municipal courts*). Under Rule 18a, the motion to recuse or disqualify "must be heard as soon as practicable" and "[t]he judge whose recusal or disqualification is sought should not file a response to the motion." The Court determined that, by not allowing Durden to put on evidence, Judge Brown deprived Durden of his mandatory right to "be heard" on the matter. Additionally, Judge Shahan's oral argument constituted a "response to the motion." These two failures demonstrated an abuse of discretion on the part of Judge Brown and his order denying recusal/dismissal was vacated.

Commentary: Recusal and disqualification have both constitutional and statutory roots. Parties are entitled to a neutral and detached judge. *See*, Chapter 4, *Municipal Judge's Book*, 7th Edition (2017). The Texas Rules of Civil Procedure governing recusal and disqualification are *inapplicable to municipal courts*, which is why in 2011 the Legislature amended Chapter 29 of the Government Code to include Subchapter A-1 "Recusal or Disqualifications of Municipal Judges." While Subchapter A-1 does not contain the exact language from Rules 18a and 18b which prohibits a judge from filing a response

faced with a recusal or disqualification motion, a judge's best move is to stay quiet. Section 29.054 of the Government Code only authorizes a "party" to file a motion opposing or concurring with a motion to recuse or disqualify. While a judge may feel like a party to the matter, legally, the judge is not a party (the judge is the judge). When a judge appears to act like a party, the judge is likely to be perceived as either neutral or detached. Such a judge is, however, more likely to be a party before the State Commission on Judicial Conduct. (Which is no party.)

IV. Court Administration & Costs

A writ of mandamus cannot be used to compel a judge to discontinue a moot issue concerning a "pay-to-plea" policy.

In re State ex rel. Durden, 2019 LEXIS 6279 (Tex. App.—San Antonio July 24, 2019)

Maria Villarreal Cervantez paid $397 in court costs and $500 towards a fine. When the charges against her were later dismissed, Ms. Cervantez's attorney filed a motion to withdraw the total amount of $897 on deposit in the court's registry. The judge released only $500 and refused to release the amount designated as court costs.

A writ of mandamus was filed to compel two actions. First, it asked the trial judge to refund the full amount. Second, the writ sought to compel the judge to develop new policies or local rules of administration addressing the district court's "Pay to Plea" policy, which permitted a criminal defendant to enter a plea and begin the terms of community supervision only after they had paid all fines and court costs.

After the writ was filed, the judge issued an order revoking the disputed policy. He conceded that it was "inappropriate under applicable law for the Clerk of this Court to receive, receipt or hold [fees, fines and costs], [and the trial court] is of the opinion that fees, fines and costs may only be collected after entry of a conviction of criminal charges asserted against an individual." He then ordered the court clerk and the county treasurer to take certain specific steps to return the deposited funds to affected defendants.

The court of appeals ordered the court to release the court costs but determined that the judge's interim order rendered mandamus on the "Pay to Plea" complaint moot and declined to compel the judge to develop new policies or local rules of administration.

Commentary: The San Antonio Court of Appeals declined to compel a judge to discontinue a "pay-to-plea" policy. However, the opinion included some pointed implicit reprimands indicating that such policies are frowned upon. Specifically, the court said, "we are confident Judge Shahan will take all necessary steps to identify any person who paid the fines and court costs in violation of applicable laws and return those funds . . . [w]e are confident that any policy requiring a defendant to fully pay any fines and courts costs before being allowed to enter a plea and begin community supervision is no longer in practice in Kinney County."

The Time Payment Fee is facially unconstitutional because it violates the Separation of Powers Clause.

Johnson v. State, 573 S.W.3d 328 (Tex. App.—Houston [14th Dist.] 2019)

Devlon Johnson questioned the constitutionality of several court costs assessed following his guilty plea to a charge of drug possession and resulting conviction and sentence. Johnson argued that a number of fees violated the Separation of Powers Clause of the Texas Constitution because they turned the courts of the judicial branch into tax collectors when the taxing power is properly attached to the executive branch.

In reaching its decision, the court of appeals relied heavily on *Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017), which opined that court costs assessed for legitimate criminal justice purposes do not violate the Separation of Powers provision. In *Salinas*, the Court of Criminal Appeals analyzed the constitutionality of two accounts within the former Consolidated Fee found in Section 133.103

of the Local Government Code: (1) an account for "comprehensive rehabilitation," and (2) an account for "abused children's counseling." The *Salinas* court identified that the monies collected by these two accounts flowed into a general revenue fund to be used for unspecified purposes. Therefore, they could not relate specifically to the criminal justice system, and were not for a "legitimate criminal justice purpose."

Of all the fees challenged by Johnson, the Court found only the Time Payment facially unconstitutional. Under Section 133.103, a person convicted of a felony or misdemeanor must pay (in addition to all other costs) a fee of $25 if the person pays "any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution. This amount is then allocated three ways: 50% to the comptroller, who shall then deposit the fees to the credit of the general revenue fund; 40% to the general revenue account of the county or municipality; and the remaining 10% to the general fund of the county or municipality "for the purpose of improving the efficiency of the administration of justice." The Court noted that 90% of the fee was deposited into general funds without limitation or restriction. Following *Salinas*, this indiscriminate allocation showed that the Time Payment Fee lacked a legitimate criminal justice purpose and therefore acted like an unconstitutional tax.

Commentary: Three other court of appeals cases have also analyzed the constitutionality of the Time Payment Fee: *King v. State*, No. 11-17-00179-CR, 2019 Tex. App. LEXIS 5902 (Tex. App.—Eastland July 11, 2019); *Kremplewski v. State*, No. 01-19-00033-CR, 2019 Tex. App. LEXIS 6919 (Tex. App.—Houston [1st Dist.] Aug. 8, 2019); and *Dulin v. State*, Nos. 03-18-00523-CR, 03-18-00524-CR, 2019 Tex. App. LEXIS 7084 (Tex. App.—Austin Aug. 14, 2019). Each case noted the 90% allocation to general funds and, following the reasoning espoused in *Salinas* and *Johnson,* found the fee facially unconstitutional.

Will any of these Time Payment Fee cases matter after January 1, 2020? During the 2019 Legislative Session, lawmakers responded to the line of cases challenging the constitutionality of various fees, including the Time Payment Fee, by passing S.B. 346, which reimagined the court cost structure. The bill alters the names, amounts, and allocations of numerous fines, fees, and costs in an attempt to head-off further constitutional challenges. The Time Payment Fee was renamed the Time Payment *Reimbursement* Fee, the amount was reduced from $25 to $15, and the 50% remittance to the State was removed. S.B. 346 also renamed the fees under article 102.011 of the Code of Criminal Procedure as a "reimbursement fees" but did not make any substantive changes. Once again, these changes go into effect January 1, 2020. Time will tell whether these amendments cure the constitutional defects identified by *Johnson*, *King*, *Kremplewski*, and *Dulin*.

A private attorney or collection agency that contracts with a county to collect delinquent amounts owed to county courts may charge defendants a fee for the use of credit cards.

Tex. Atty. Gen. Op. KP-0257 (06/14/19)

Section 604A.0021 of the Business and Commerce Code prohibits imposing a surcharge for the use of a credit card in certain instances. A recent judicial decision, *Rowell v. Paxton*, 336 F. Supp. 3d 724, 732 (W.D. Tex. 2018), held Section 604A.0021 unconstitutional as applied to specific facts. It remains enforceable in some contexts, but it does not apply to a local government (including a county) imposing a surcharge on a payee using a credit card for the payment of money owed to the county.

Section 103.0031 of the Code of Criminal Procedure authorizes a local government to contract with a private attorney or a public or private vendor for the provision of collection services for fees. If a local government is entitled to impose a surcharge fee for credit card use, a court would likely conclude that a private attorney or collections agency acting as agent for the county could collect that surcharge on behalf of the county when collecting other fees, taxes, or other charges.

V. Local Government

Section 551.143 of the Government Code, the former "walking quorum" provision of the Texas Open Meetings Act (TOMA), was unconstitutionally vague on its face.

State v. Doyal, No. PD-0254-18, 2019 Tex. Crim. App. LEXIS 161 (Tex. Crim. App. Feb. 27, 2019)

Prior to the 2019 Legislative Session, a provision of the Texas Open Meetings Act (TOMA) makes it a crime if a member or group of members of a governmental body "knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter." A majority of the Court of Criminal Appeals concluded that the provision was unconstitutionally vague on its face because the prohibited conduct was "hopelessly indeterminate by being too abstract." Namely, the statute contained little in the way of limiting language and lacked language to clarify its scope.

This vagueness stemmed in part from disagreements between the section's terms. The statute defines the term "deliberations" to mean a verbal or written exchange *between a quorum* of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body. However, Section 551.143 expressly refers to "meeting in numbers *less than a quorum* for the purpose of secret deliberations in violation of this chapter." This creates an internal self-contradiction. The Court also took exception to the term "circumvent." It held that the conduct of "circumventing" necessarily required something other than a literal violation of TOMA. Proscribing a non-literal violation of TOMA could not set forth a clear standard.

Finally, the Court countered the State's contention that the statutory language could only refer to the conduct of forming a "walking quorum." First, the Court found that the section could reasonably refer to conduct other than "walking quorums." Second, it determined that—even if the section did refer to "walking quorums"—there were a number of different ways to define the concept, and there remains disagreement on whether certain situations qualify as "walking quorum" conduct.

Judge Slaughter concurred but suggested that section 551.143 was unconstitutional, not because it is impermissibly vague, but because it violated the 1st Amendment by abridging freedom of speech. Slaughter contended that the section was a content-based restriction on speech. As such, strict scrutiny applied and the State was required to show both a compelling state interest and that the statute was narrowly tailored to achieve that interest. Slaughter asserted that the State did not meet this burden because it did not show that the statute is narrowly tailored to achieve the compelling interest of ensuring an open and transparent government.

Judge Yeary's dissent posited that the statute is not vague and does not violate the 1st Amendment.

Commentary: After *Doyal* was decided, the Attorney General drafted an opinion in response (*Tex. Atty. Gen. Op. KP-0254* (05/24/19)). It concluded that, if a quorum of a governmental body deliberates about public business within the jurisdiction of the body outside of a meeting authorized by the Texas Open Meetings Act, through multiple communications each involving fewer than a quorum, then the governmental body violates TOMA. Action taken by a governmental body in violation of TOMA is voidable. In addtion, any interested person may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the Act by members of a governmental body.

Following these opinions, the 86th State Legislature amended TOMA to address the Court's vagueness concerns by identifying walking-quorum-type behavior as the prohibited conduct and by clearly defining what that conduct entails. These changes closely tracked the language in the AG opinions.

Payment outside of a fee schedule's fixed rates pursuant to an "opt-out" provision violates the Code of Criminal Procedure.

In re State ex rel. Wice v. Fifth Judicial Dist. Court of Appeals, 581 S.W.3d 189 (Tex. Crim. App. 2018)

Three attorneys pro tem in Collin County who were appointed by the district court after the district attorney recused himself because of his friendship with Attorney General Ken Paxton and his family. The appointment came under fire after it was learned that the attorneys pro tem were each billing the county at the rate of $300 per hour. Collin County claimed that the rate was exorbitant and violated county rules about capping fees for court-appointed attorneys. This resulted in two appeals to the Court of Criminal Appeals. The Court sided with Collin County both times, striking down the attorneys pro tem rate and voiding their six-figure invoice. Specifically it held that, the opt-out provision in the Collin County fee schedule (Local Rule 4.01B) ran afoul of the plain language of Article 26.05 of the Code of Criminal Procedure, which limits a trial court's authority to order payment within a fixed fee schedule. Article 26.05 does not permit judges to expand that authority by individually setting a fee outside the range of what has been collectively agreed upon as reasonable.

Commentary: *Wice* ostensibly prompted the 2019 Texas Legislature to pass S.B. 341, The bill was aimed at limiting which attorneys can be appointed as an attorney pro tem in county and district courts. However, the bill also repeals the authority of a municipal judge to make an attorney pro tem appointment. The bill repealed Article 2.07(g) of the Code of Criminal Procedure, which stated, "An attorney appointed under Subsection (a) of this article to perform the duties of the office of an attorney for the state in a justice or municipal court may be paid a reasonable fee for performing those duties."

Likely, the Legislature was unaware that Article 2.07(g) was of import to municipal courts and equally unaware of Article 45.031 of the Code of Criminal Procedure, which states that a judge may "appoint an attorney pro tem as provide by this code to represent the state if the state is not represented by counsel." Article 45.201 of the Code of Criminal Procedure, which is unaffected by S.B. 341, provides that "[a]ll prosecutions in a municipal court shall be conducted by a city attorney or a deputy city attorney" and that these attorneys "also represent the state."

S.B. 341 begs a question with no singular or simple answer: what are municipal judges to do if a prosecutor in a municipal court is disqualified, absent, or otherwise unable to perform their duties? In a home rule municipality, some guidance may exist in the city charter. In general law cities, depending on a city's municipal government type, some guidance may be provided by the Local Government Code. While there may be some stopgap provisions in other laws, municipal courts are part of the state judicial system and criminal procedure is the bailiwick of state law. Ideally, the Legislature will resolve any problems inadvertently created by S.B. 341 next session.

A local law enforcement agency's "no-chase" policy limits a peace officer's duty to prevent and suppress crime and exposes the peace officer to civil liability for later harm caused by the offender the peace officer failed to chase.

Tex. Atty. Gen. Op. KP-0249 (05/22/19)

While Article 2.13 of the Code of Criminal Procedure imposes a duty on peace officers to prevent and suppress crime, policies that encourage officers to seek alternative methods of pursuit in an attempt to ensure the safety of the public and law enforcement officers generally do not conflict with this duty.

An officer observing a governmental employer's no-chase policy is unlikely to incur personal liability for harm caused by a fleeing offender. In instances when an officer exercises discretion under a no-chase policy, the officer will likely qualify for official immunity. In circumstances where official immunity does not apply, an officer will have other defenses, as courts have generally held that an officer has no legal duty to arrest a suspect to prevent third-party injury. Further, Subsection 101.106 of the Texas Tort Claims Act entitles a governmental employee to dismissal if a suit is based on conduct within the scope of their employment and could have been brought under the Act against the governmental unit.

A municipality does not have the authority to regulate firearms and ammunition sales through zoning and other regulations.

Tex. Atty. Gen. Op. KP-0252 (05/24/19)

Subsection 229.00I(a)(l) of the Local Government Code prohibits a municipality from regulating the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies. Subsection 229.001(b)(3) excepts from this prohibition a municipality's regulation on the use of property or businesses and the location of businesses as long as the regulation does not circumvent the intent of subsection (a)(l). A regulation that expressly prohibits gun stores from operating in a specific area relates to the transfer of firearms and is prohibited by subsection 229.00I(a)(l). Similarly, an ordinance singling out firearm and ammunition sales relates to the transfer of firearms and is therefore prohibited. A court would likely conclude Subsection 229.00I(a)(l)'s prohibition encompasses any one or more of the listed items. To the extent a municipality regulates firearm transfers but not also licensing, registration, or transportation of firearms, it acts contrary to Subsection 229.00l(a)(l).

The dismissal of a former prosecutor's action alleging that he was wrongfully terminated by the county because of refused his supervisor's order to withhold exculpatory evidence was proper because governmental immunity barred the suit.

Hillman v. Nueces Cty., 579 S.W.3d 354 (Tex. 2019)

Chapter 1704 of the Occupations Code does not prohibit a jail or detention facility from using a third-party contractor to provide persons in the custody of law enforcement with information on available bail bond services.

Tex. Atty. Gen. Op. KP-0272 (09/24/19)

Subsection 1704.304(c) of the Occupations Code prohibits a bail bond surety from soliciting business in a police station, jail, prison, detention facility, or other place of detainment for persons in the custody of law enforcement. Based on the description provided, a court would likely conclude that a signboard installed inside a jail facility by a third party providing information about available bail bond services does not amount to a solicitation and is therefore not prohibited under Subsection 1704.304(c). The 1st Amendment does not impose any duty on a public official with control over a detention facility to provide a public forum for third-party contractors to install and maintain an informational signboard in the facility.

Under the doctrine of incompatibility, a member of an independent school district board of trustees may not simultaneously serve as the county judge.

Tex. Atty. Gen. Op. KP-0228 (01/07/19)

A city attorney and city administrator are not local public officials subject to Chapter 171 of the Local Government Code.
Tex. Atty. Gen. Op. KP-0244 (03/07/19)

Section 171.004 of the Local Government Code prohibits a "local public official" from participating in a vote or decision involving property in which the official has a substantial interest when it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property. Because the city attorney and a city administrator at issue did not possess authority to vote or make decisions on a proposed agreement as described, they were not subject to the requirements of Section 171.004 of the Local Government Code with respect to that agreement.

VI. Juvenile Justice

A juvenile's statement is properly suppressed under Section 51.095 of the Family Code when a magistrate fails to maintain neutrality.

In re B.B., 567 S.W.3d 786 (Tex. App.—San Antonio 2018)

Juvenile Respondent, B.B. was brought before a magistrate in relation to theft charges. The detective who implicated B.B. gave the magistrate a list of questions to ask. The magistrate questioned the juvenile based on a detective's questions, instructed the juvenile to think about those questions prior to

writing his statement, shared the written statement with the detective, and asked additional questions suggested by the detective. B.B. moved to suppress the written statement, arguing that the magistrate's actions violated Section 51.095 of the Family Code, which sets forth the requirements for obtaining written statements from juveniles.

Under Section 51.095, before a juvenile's written statement is taken, the juvenile must have received express statutory warnings from a magistrate. This includes a warning that "if the [juvenile] is unable to employ an attorney, the [juvenile] has the right to have an attorney appointed to counsel with the [juvenile] before or during any interviews with peace officers or attorneys representing the state" and "has the right to terminate the interview at any time." (Section 51.095(a)(1)(A)(iii) and (iv), Family Code). In addition, "the statement must be signed in the presence of a magistrate by the [juvenile] with no law enforcement officer or prosecuting attorney present." (Section 51.095(a)(1)(B)(i), Family Code).

At the suppression hearing, the trial court made three findings, First, the magistrate's questioning of B.B. with the list of questions provided by the detective prior to respondent providing a written statement operated to remove the protection of taking a child before a magistrate, prior to giving a written statement. Second, the magistrate's actions in questioning B.B. about what should be included in his statement, placed the magistrate in the position of law enforcement, rather than a neutral and detached arbiter. And third, B.B.'s written statement obtained after his formal arrest does not comply with Section 51.095 of the Texas Family Code. Based on these findings, the trial court granted B.B.'s motion to suppress. The San Antonio Court of Appeals affirmed on the same grounds.

Commentary: This case reinforces the special considerations in dealing with juveniles. The Fourth Court of Appeals notes that *strict* compliance with Section 51.095 is necessary due to the pressing interest in protecting juveniles. Additionally, the case highlights the importance of maintaining the independence of the judiciary. Judges court disaster any time they appear to act as a mouthpiece or a rubber-stamp for law enforcement.

Bail & Bonds Exposition and Showcase (Part of the C3 Initiative)

The C3 Initiative (Councils, Courts, & Cities) is TMCEC's newest public information and education campaign. C3's purpose is to highlight issues and increase awareness and understanding of municipal courts in Texas for mayors, city council members, city attorneys, and other local officials. (Follow C3 on Twitter @C3forTexas. For more information visit www.tmcec.com/c3)

Building on the success of last year's Fines and Fees Exposition and Showcase, in 2020 TMCEC will take a similar deep dive into the subject of bail and bonds. The 8th Amendment prohibition against excessive bail is one the few rights of criminal defendants that has not been expressly incorporated into the 14th Amendment. In Texas, the right to bail is rooted in the state constitution, making Texas one of 41 "right-to-bail states." Subject to few limitations, Texas strongly favors the individual's right to bail.

Bail has attracted increasing scrutiny, particularly in the context of pre-trial bail. Criminal justice reform advocates claim that "money bail"–practices requiring defendants to pay money to procure release via either a bail bond (where money is paid to a surety) or cash bond (where money is deposited with the government)–disproportionately hurts many low-income defendants who, while still presumed innocent, cannot afford to pay to secure their release from jail. As a result, Texas jails are overcrowded and public officials are taking notice. Additionally, litigation throughout Texas has caused judges and local governments to reexamine local practices pertaining to bail in criminal cases.

Part retrospective, part preview, an examination of both big ideas and best practices, the TMCEC Bail & Bonds Exposition and Showcase will feature a unique blend of new presentations and topics with some of TMCEC's best presentations and presenters. Do not miss this one-time opportunity to bridge the information gap! Save the dates: June 1-3, 2020.

In Appreciation: TMCEC Faculty

TMCEC extends our sincere gratitude to the faculty members and course directors who participated in AY19 programs. Without the hard work and dedication of the following faculty members, TMCEC would not have been able to make the year's programs an overall success.

Clay Abbott, DWI Resource Prosecutor, Texas District & County Attorney Association
Courtney Acklin, Court Administrator, Palestine
Michael Acuna, Judge, Dallas
Rodney Adams, Presiding Judge, Irving
Laura Anderson, Judge, Irving
Don Ash, Senior Judge, Murfreesboro, TN
Robert Barfield, Judge, El Lago
Michael Barker, Instructor
Douglas Beach, Retired Circuit Judge
Cody Beauchamp, Presiding Judge, Corsicana
Bianca Bentzin, Chief Prosecutor, Austin
Janet Blacklock Matthews, Judge, Wilson
Kim Bower, Sergeant, San Antonio
Jennifer Bozorgnia, Court Services Coordinator, Irving
Jaime Brew, Court Administrator, Coppell
Carlin Caliman, Juvenile Case Coordinator, Arlington
Cass Callaway, Presiding Judge, Hutchins
Jim Camp, Dynamic Messages LLC
Natasha Castille, Juvenile Case Manager, Allen
Katherine Chancia, Associate Judge, Jersey Village
Robby Chapman, Presiding Judge, West Lake Hills
Crystal Collier, Murhy Peterson Behavioral Health Fellow, Hope and Healing Center and Institute
Terry Coonan, Executive Director/ Assoc. Professor, Florida State University College of Law
Jeremy Creech
Hilda Cuthbertson, Judge, Snook
Michael Davis, Presiding Judge, Conroe
Elizabeth De La Garza, TxDOT Grant Administrator, TMCEC
Peter DeLeef, Associate Judge, El Lago
Artin DerOhanian, Senior Associate Attorney, Law Office of Ryan Henry
Matt Dixon, Prosecutor, Arlington
Lauren Doan, Presiding Judge, Quitman
Angela Downes, Associate Judge, Glenn Heights
Aracely Ellis, Program Supervisor,
Gary Ellsworth, Presiding Judge, Spearman
Julie Escalante, Presiding Judge, Baytown
Theresa Ewing, Court Director, Fort Worth
Timm Fautsko, Consultant, National Center for State Courts
Andy Fazzio, Fazzio Consulting, Motivational Interviewing Network of Trainers Members
Ross Fischer, City Attorney, Brady
Bryan Flatt, Lead Instructor, TMPA
Matthew Freeman, Court Administrator, Frisco
Russ Frohardt, Associate Professor, Chair of Psychology, St. Edward's University
Esmeralda Garcia, Associate Presiding Judge, Houston
Frederick Garcia, Alternate Judge, Helotes
Susie Garcia, Court Administrator, San Marcos
Carol Gauntt, Judge, Willow Park
Allen Gilbert, Associate Judge, San Angelo
Tracie Glaeser, Retired Court Administrator
Hector Gomez, Court Security Director, Office of Court Administration
Chase Gomillion, Prosecutor, Austin
Mark Goodner, Judge, Leander
Bobby Gutierrez, Chief Deputy,
Jacqueline Habersham, Deputy Senior Counsel, Commission on Judicial Conduct
David Hamilton, Prosecutor, Reno in Lamar County
Jason Hassay, Senior Legislative Counsel
Tina Heine, Senior Deputy Clerk, Georgetown
Ryan Henry, Associate Judge, West Lake Hills
Norma Herrera, Juvenile Case Manager, New Braunfels
Erin Higginbotham, Prosecutor, West Lake Hills
Carrie Hoffman, Team Lead-Mental Health First Aid
Matthew Holderread, Criminal Justice Program Specialist
Brian Holman, Presiding Judge, Lewisville
Robert Hopkins, Bailiff/Warrant Officer, Pantego
Qiana Howard, Program Supervisor
Sally Howard, Senior JCM, Austin
Leah Huff, Assistant Director, Fort Worth
Victoria Jaramillo Medley, Court Administrator, Amarillo
Michael Jennings, DWI Coordinator, Austin Police Department
Jason Johnson, Constable, Kaufman
Kimberly Jozwiak, Court Administrator, Fate
Mahar Karam-Hage
Matthew King, Tarrant County Magistrate, Tarrant County
Timothy Kirwin, Alternate Judge, Hedwig Village
Phyllis Kotey, Senior Judge/Clinical Professor of Law, The National Judicial College
Debbie Landrum, Court Administrator, Fair Oaks Ranch
Becky Lange, City Prosecutor, Cottonwood Shores
Jim Lehman, CEO/Special Consultant, The Lehman Group
Cindy Leonard, MEd, Program Coordinator, Our Driving Concern and Impairment Training, Texas Employers (DITTE) Programs for the National Safety Council
Adam Lichtenberger, Prosecutor, Austin
Pamela Liston, Presiding Judge, Rowlett
Craig Lopez, CJIS Auditor
Sandra Mabbett, Judicial Information Analyst, Office of Court Administration
J. Elaine Marshall, Presiding Judge, Houston
Ashley McSwain, Prosecutor, Murphy
Regan Metteauer, Staff Attorney, Judicial Commission on Mental Health
Stewart Milner, Chief Judge, Arlington
Ned Minevitz, TxDOT Grant Administrator & Program Attorney, TMCEC

Laura Mueller, Associate Attorney, Bojorquez Law Firm
Michael Mullen, Teen Court Coordinator, College Station
Patrick Navarijo, Detective, San Antonio
David Newell, Judge, Texas Court of Criminal Appeals
Jared Olson, Traffic Safety Resoure Prosecutor, Idaho
Tara Osborne, Former Trial Judge, US Army
Melissa Pace, Client Liaison/Business Development, Perdue Brandon Fielder Collins and Mott, LLP
Lily Pebworth, Program Coordinator, TMCEC
Esmeralda Pena Garcia, Associate Judge, Houston
Kimberly Piechowiak, Domestic Violence Resource Attorney, Office of Court Administration
Timothy Preece, DRP Program Administator, Enforcement & Compliance Service - DLD Department of Public Safety
Andrew Quittner, City Attorney, Seguin
William Ragsdale, Presiding Judge, Ingram
Robin Ramsay, Judge, Lewisville
Eric Ransleben, Presiding Judge, Trophy Club
Geary Reamey, Professor of Law, St. Mary's University School of Law
Cathleen Riedel, Presiding Judge, Leander
Pat Riffel, Court Administrator, Friendswood
Sheila Roach, Deputy Clerk, Canyon
Lisa Robinson, Senior Grants Program Manager,
James Rodgers, Chief Judge, Fort Worth
Michael Roosevelt, Court Service Analyst, NCSC
Randy Sarosdy, General Counsel, Texas Justice Court Training Center
Daniel Sharp, Chief of Police of Oro Valley, AZ
Katie Sherman, Opioid Treatment Expert, Health and Human Services
Brian Sims, Senior Director of Medical and Behavioral Health,
Michael Smith, Managment Analyst
Edward Spillane, Presiding Judge, College Station
Rebecca Stark, Court Clerk, Woodcreek
Sherry Statman, Presiding Judge, Austin
Michael Strawn, Driver Education and Traffic Safety Compliance, Texas Department of Licensing and Regulation
Randall Stump, Presiding Judge, Georgetown
Angie Suarez, Assistant Manager, Texas Department of Public Safety
Jed Paul Tamayo, Court Administrator, Allen
George Thomas, Associate Judge, Austin
Zindia Thomas, Assistant General Counsel, Texas Municipal League
Eleanor Thompson, Planner/Juvenile, Travis County JP Court
Carlos Tirado, M.D., MPH, FABAM, President, Texas Society of Addiction Medicine,
Bonnie Townsend, Judge, Luling
Amber Trueblood, Assistant Research Scientist,
James Tucker, Intervention Specialist, Arlington Independent School District
Ryan Turner, Substitute Associate Judge, Austin
Chidinma Ume, Deputy Director of Policy,
Eric Vinson, Commission on Judicial Conduct
Sidarth Wakhlu, Professor of Psychiatry, UT Southwestern Medicial Center
Rebecca White, Five Simple Guidlines
Susan Wolf, Teen Court Coordinator, Fort Worth
Matthew Wright, Presiding Judge, Rosebud
Jessica Yeager, PRS/ICRC, PRC, PM, Houston Recovery Center
Rose Zamora, Presiding Judge, New Braunfels

2019-2020 TMCEC Academic Schedule
At-A-Glance

Seminar	Date(s)	City	Hotel Information
New Judges & Clerks Seminars	December 9-13, 2019	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
Regional Judges & Clerks Seminars	January 6-8, 2020	San Antonio	Omni at Colonnade 9821 Colonnade Blvd., San Antonio, TX 78230
Regional Clerks Seminar	January 12-14, 2020	Galveston	San Luis Resort 5222 Seawall Blvd. Galveston, TX 77551
Level III Assessment Clinic	January 21-24, 2020	Austin	Crowne Plaza 6121 N Interstate Hwy. 35, Austin, TX 78752
Regional Judges Seminar	February 2-4, 2020	Galveston	San Luis Resort 5222 Seawall Blvd. Galveston, TX 77551
Regional Judges & Clerks Seminars	February 10-12, 2020	Houston	Omni Westside 13210 Katy Freeway, Houston, TX 77079
Regional Clerks Seminar	March 2-4, 2020	Addison	Crowne Plaza 14315 Midway Road, Addison, TX 75001
Regional Judges Seminar	March 4-6, 2020	Addison	Crowne Plaza 14315 Midway Road, Addison, TX 75001
Prosecutors Conference	March 23- 25, 2020	Houston	Omni Westside 13210 Katy Freeway, Houston, TX 77079
Regional Judges & Clerks Seminars	March 30- April 1, 2020	Lubbock	Overton Hotel 2322 Mac Davis Ln., Lubbock, TX 79401
Traffic Safety Conference	April 6-8, 2020	Austin	Omni Southpark 4140 Governor's Row, Austin, TX 78744
Teen Court Conference	April 20-21, 2020	Georgetown	Sheraton Georgetown Hotel 1101 Woodlawn Ave., Georgetown, TX 78628
Regional Clerks Seminar	April 27-29, 2020	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., S. Padre Island, TX 78597
Regional Attorney Judges Seminar	May 3-5, 2020	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., S. Padre Island, TX 78597
Regional Non-Attorney Judges Seminar	May 5-7, 2020	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd. S. Padre Island, TX 78597
Court Administrators & Prosecutors Conference	May 18-20, 2020	Corpus Christi	Omni Corpus Christi Hotel 900 N. Shoreline Blvd., Corpus Christi, TX 78401
Bail & Bonds Exposition & Showcase	June 1-3, 2020	Austin	Omni Southpark 4140 Governor's Row, Austin, TX 78744
Bailiffs & Warrant Officers Conference	June 8-10, 2020	Austin	Omni Southpark 4140 Governor's Row, Austin, TX 78744
Regional Judges & Clerks Seminar	June 22-24, 2020	El Paso	Wyndham El Paso Airport Hotel 2027 Airway Blvd, El Paso, TX 79925
Juvenile Case Managers Conference	July 20-22, 2020	Austin	Omni Southpark 4140 Governor's Row, Austin, TX 78744
New Judges & Clerks Seminars	July 27-31, 2020	Austin	Omni Southpark 4140 Governor's Row, Austin, TX 78744
Impaired Driving Symposium	August 2-3, 2020	Corpus Christi	Omni Corpus Christi Hotel 900 N. Shoreline Blvd., Corpus Christi, TX 78401
Mental Health Conference	August 12-14, 2020	Houston	Omni Westside 13210 Katy Freeway, Houston, TX 77079

Please visit our website at www.tmcec.com/registration/ or email register@tmcec.com for a registration form.
Register Online: register.tmcec.com

ONLINE REGISTRATION

WILL YOUR CITY BE RECOGNIZED?

In AY 2020, TMCEC is actively promoting online registration. All cities who register exclusively online in AY 2020 will be recognized in a future issue of the The Recorder.

1. LOGIN

Visit www.tmcec.com to login and register for events online.
Login Sample id:67493 password:67493ud

2. CHOOSE

Once logged in, click on
Register > Event List
Choose preferred seminar to register

3. REGISTER

Make selections to attend Special Sessions, Room preferences & add CLE
Checkout and proceed to payment

FORGOT USERNAME & PASSWORD?
No worries! Please contact us to retrieve that information.

NEED HELP? For online registration issues and/or questions, email us at info@tmcec.com or call 512.320.8274 and the TMCEC staff will be happy to help.

TEXAS MUNICIPAL COURTS
EDUCATION CENTER
2210 Hancock Drive
AUSTIN, TX 78756
www.tmcec.com

Change Service Requested

Presorted Standard
U.S. Postage
PAID
Austin, Texas
Permit No. 114

TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource materials to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

Texas Municipal Courts Education Center

2020 MTSI TRAFFIC SAFETY AWARDS APPLY TODAY!

If your court engages in traffic safety outreach and impaired driving prevention, TMCEC encourages you to apply for a 2020 MTSI Award!

Hard copy applications have been mailed to all courts. You can also apply today at http://www.tmcec.com/mtsi/mtsi-awards/.

Questions? Contact Ned Minevitz at ned@tmcec.com or (512) 320-8274.

GOOD LUCK!

Funded by a grant from the Texas Department of Transportation

Save a Life