



# Pending Issues on Petition for Discretionary Review in the Texas Court of Criminal Appeals

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 @OSPATX

# Search and Seizure

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Foreman, PD-1090—91-18

1. Can a magistrate issuing a warrant infer that an auto body shop will have **surveillance equipment** when no facts in the affidavit referred to such equipment?

2. Does “**plain view**” justify the warrantless seizure of the auto-body-shop’s surveillance equipment when police saw it recording live footage while executing a search warrant?



Crider, PD-1070-19

Does a blood  
seizure warrant  
for BAC also  
authorize  
testing for BAC?





Does TEX. CODE  
CRIM. PROC. art.  
14.03(a)(1)'s  
suspicious places  
warrantless  
arrest  
authorization  
have an exigency  
requirement for  
public arrests?

McGuire, PD-0984-19





“Can an officer act in **objective good faith** by relying on the magistrate’s approval of a warrant that is defective in form?”

WHEELER, PD-0388-19



ARELLANO, PD-0287-19



1. Does TEX. CODE CRIM. PROC. art. 38.23(b)'s “good faith” exception apply to warrants without a magistrate’s name printed or typed under the signature?
2. Who has the burden to negate the “good faith” exception?
3. Does TEX. CODE CRIM. PROC. art. 28.01 § 1(6) governing motion to suppress hearings on motions to suppress allow a trial court to ignore a mode of evidence it made necessary?



TILGHMAN, PD-0676-19

Can police lawfully enter a **hotel room** to help a hotel manager **evict** a guest engaged in criminal activity?



Price, PD-0722-19

Can **luggage** accompanying an arrestee into custody at an airport be searched incident to arrest?



Martin, PD-0563-19

Does a fireman's tip that he saw evidence of guns & drugs while fighting fire provide **exigent circumstances** to justify police entry into that home shortly **after the fire** is out?



Chambers, PD-0424-19

Is a defendant entitled to a TEX. CODE CRIM. PROC. art. 38.23 jury charge instruction when there is a factual dispute regarding the officer's credibility and a conflict between his testimony and the dashcam video?

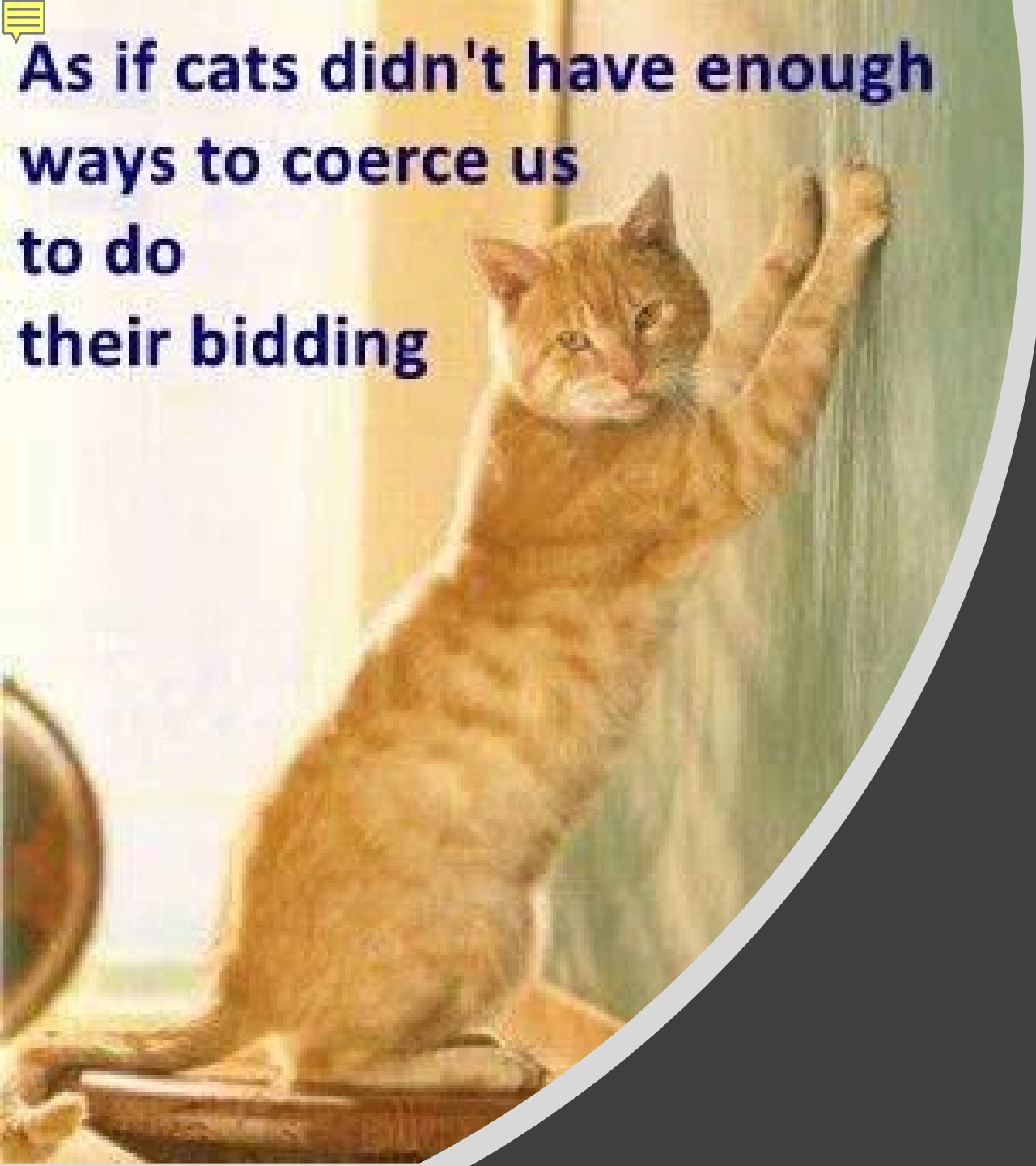




Confessions



**As if cats didn't have enough ways to coerce us to do their bidding**



CASTANEDANIETO, PD-1154—56-19

“Under the *Calloway* rule, is police coercion of a confession a ‘theory of law applicable to the case’ where the appellee argued that he lacked a ‘full understanding’ of his *Miranda* rights in a different statement?”

MATA, PD-0810-19

“Do questions that would objectively aid a search for a kidnapped or missing person fall within *New York v. Quarles’s* public safety exception to *Miranda*?”



# LUJAN, PD-0244-19 & PD-0245-19

Was the in-car **interrogation** of the defendant by the detectives a **continuation** of their station-house interrogation, at which she had been *Mirandized*, when there was a lapse of 6 minutes between the two?



Was the defendant's **confession** to murdering his foster child **involuntary** because detectives warned that, if he did not admit responsibility, both he and his wife could be arrested, resulting in CPS removing their children?

LOPEZ, PD-0956-19



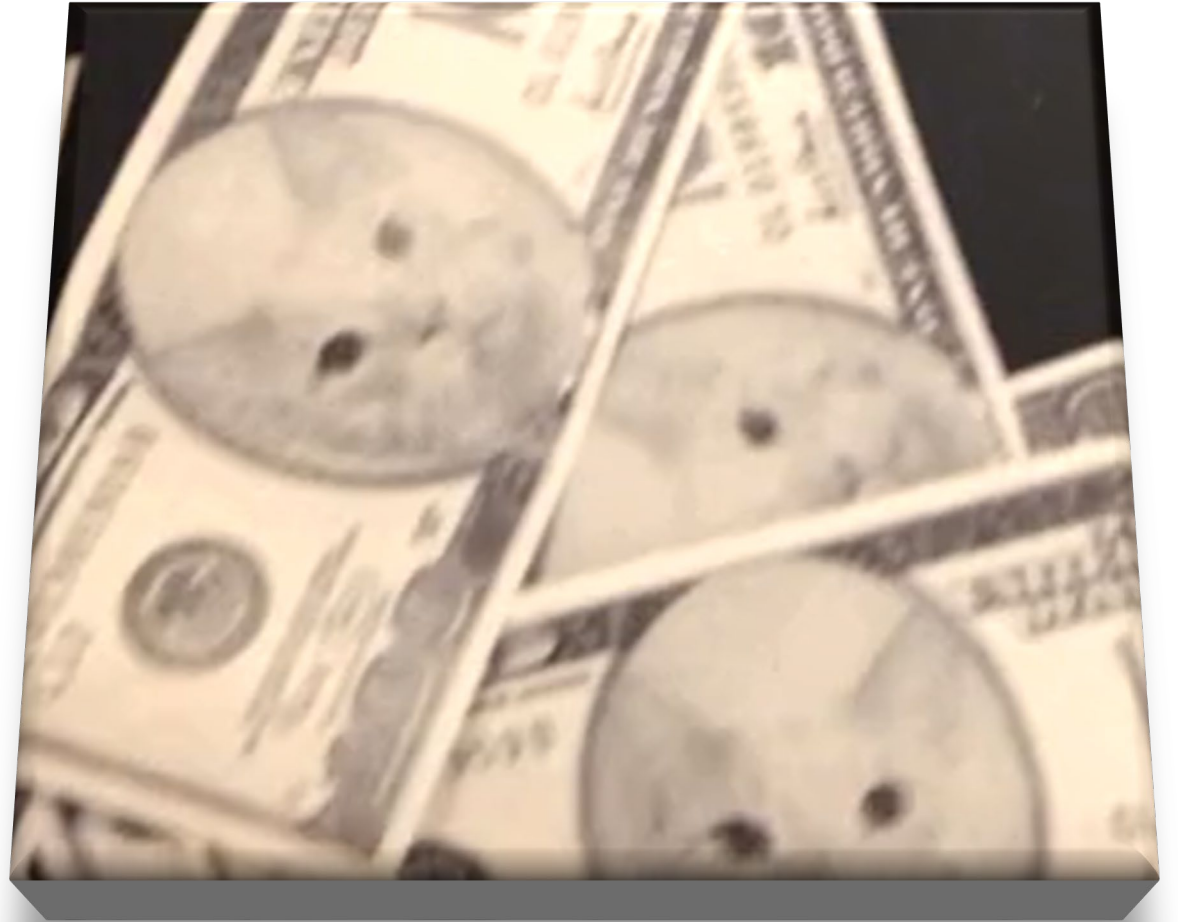


# Defensive Issues



GEORGE, PD-1233-19

“Should **murder**  
always be  
**anticipated** as a  
potential result  
of robbery?”



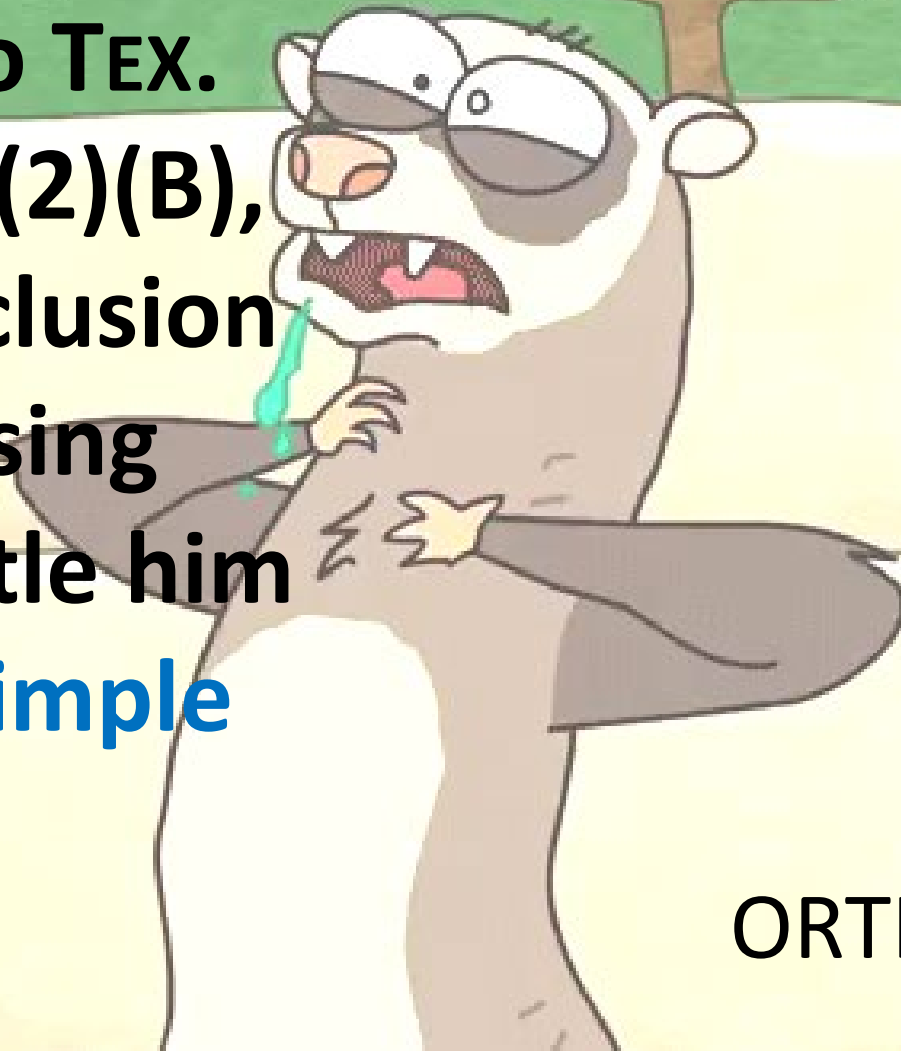
# HERVEY, PD-1101-19



1. “Does a trial court’s *sua sponte* submission of an issue in the jury charge prevent a court of appeals from considering whether the evidence raised such an issue?”

2. “If, under a defensive view of the evidence, the defendant in a murder case drew, pointed, and wrestled over the gun of his own volition, is he nonetheless entitled to a *voluntary-act instruction* if testimony shows that another person’s conduct precipitated the gun’s discharge?”

“When a defendant is charged with ‘**assault by occlusion**’ pursuant to TEX. PENAL CODE § 22.01(b)(2)(B), does the denial of occlusion and admission to causing different injuries entitle him to an instruction on **simple assault**?”



ORTIZ, PD-1061-19

## BARRETT, PD-1362-18

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1. Was misdemeanor assault by striking in the face a **lesser-included offense** of family violence assault by impeding breath or circulation?
2. “Do **multiple physical injuries inflicted in a single attack** constitute separately actionable crimes of assault or are they part of a single assault?”





“Whether a defendant’s failure to **admit** the exact **manner and means** of an assault as set forth in a charging instrument is a sufficient basis to deny a jury charge on self-defense.”

Ebikam, PD-1199-18





Evidence

## WORK, PD-1247-18

Can prior possession and use of contraband be admitted to prove **knowledge of and intent to possess contraband** under of the TEX. R. EVID. 403 and 404(b) and the doctrine of chances?





PUGH, PD-1053-19

Is an **animation** in a pedestrian-vehicle-collision case admissible under *Miller v. State*, 741 S.W.2d 382 (Tex. Crim. App. 1987), which held that reenactments cannot duplicate human behavior and are thus too inherently prejudicial?



# HAGGARD, PD-0635-19

1. Does permitting a key prosecution witness to testify **remotely by videoconference** from Montana violate the **Confrontation Clause**?
2. If it was error, was it **harmful**?

## Zoom Meeting

Audio only



With video



# Enhancements

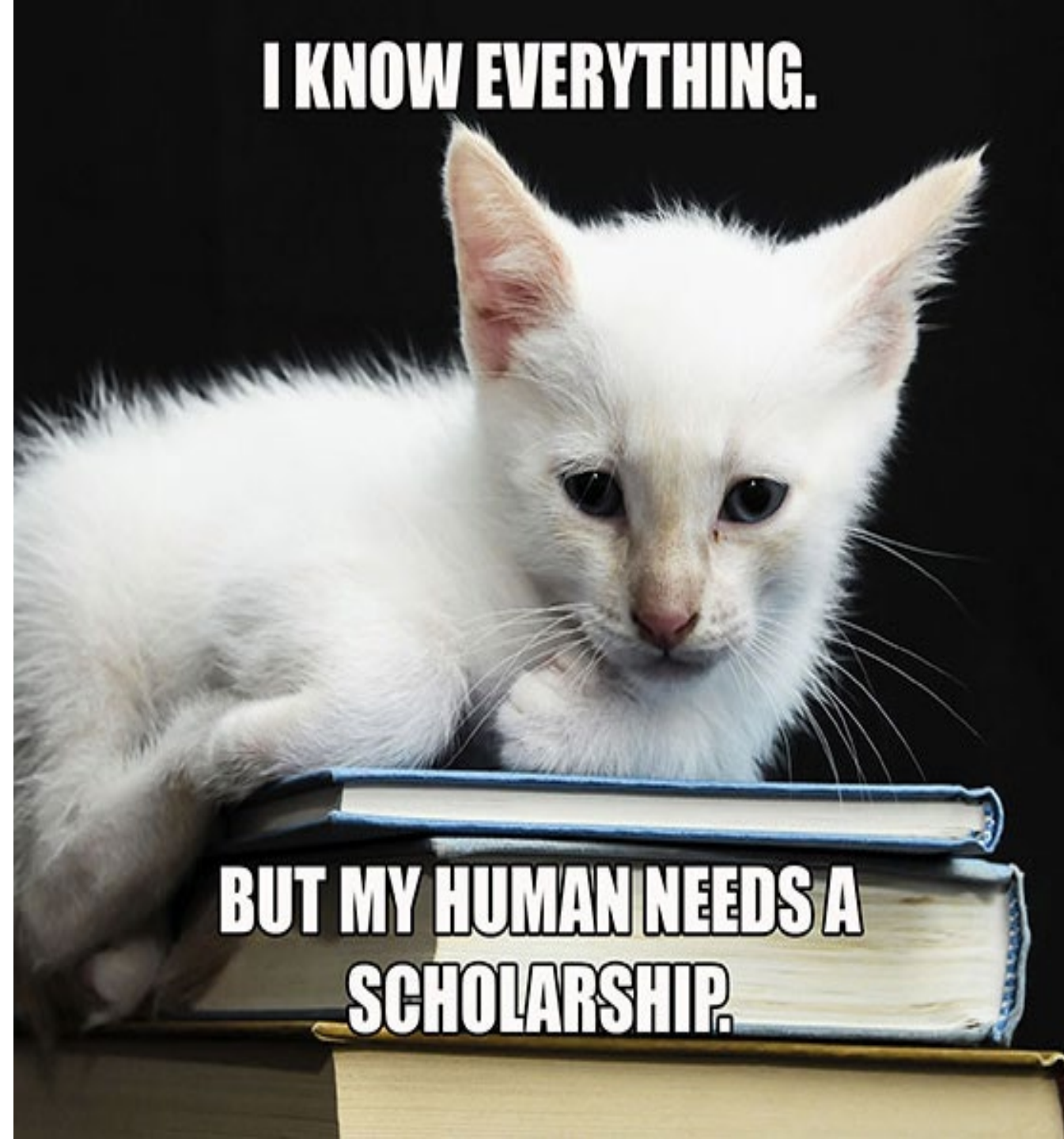
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Holoman, PD-1339-18

“Is a **prior conviction for family violence** under  
TEX. PENAL CODE  
§ 22.01(b)(2)(A) always  
a guilt issue simply  
because it can be, and  
often is, used as a  
jurisdictional element?”



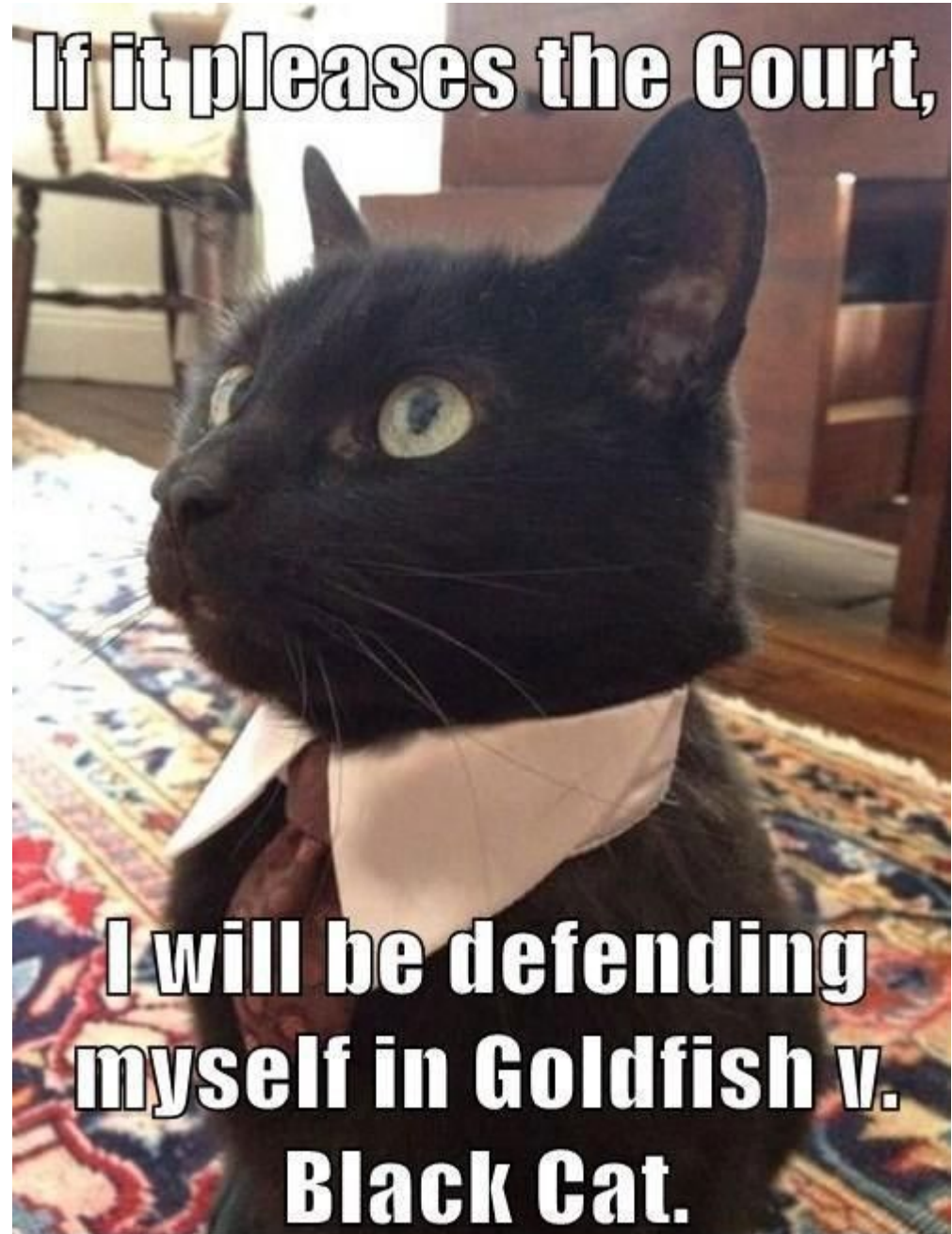
**I KNOW EVERYTHING.**

**BUT MY HUMAN NEEDS A  
SCHOLARSHIP.**

Pleas

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**If it pleases the Court,**



**I will be defending  
myself in Goldfish v.  
Black Cat.**

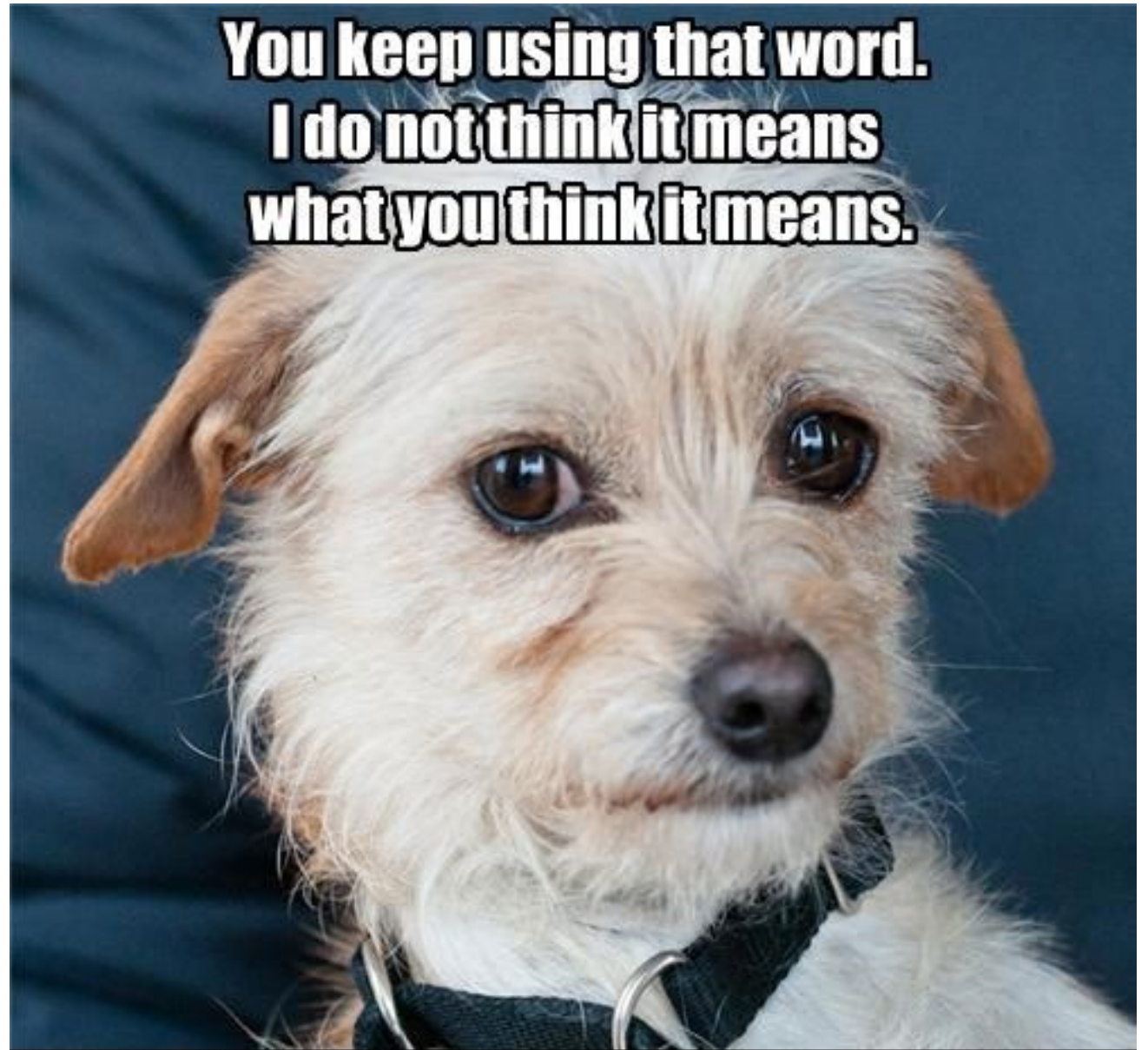
Loch, PD-0894-18



Is the failure to admonish about **immigration consequences** harmful when the defendant was already deportable, or knew he was deportable, at the time of his guilty plea due to prior convictions?

# Statutory Construction

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What is the meaning of “material” in Art. 39.14(a) of the Michael Morton Act?

Watkins, PD-1015-18







KUYKENDALL, PD-0003-20

“What is the **unit** of prosecution for **failure to appear**, TEX. PENAL CODE § 38.10?”





Does TEX. TRANSP.  
CODE § 545.060(a)  
require a person to  
“drive as nearly as  
practical entirely  
within a **single lane**,”  
whether or not  
movement between  
lanes may be made  
safely?

Hardin, PD-0799-19



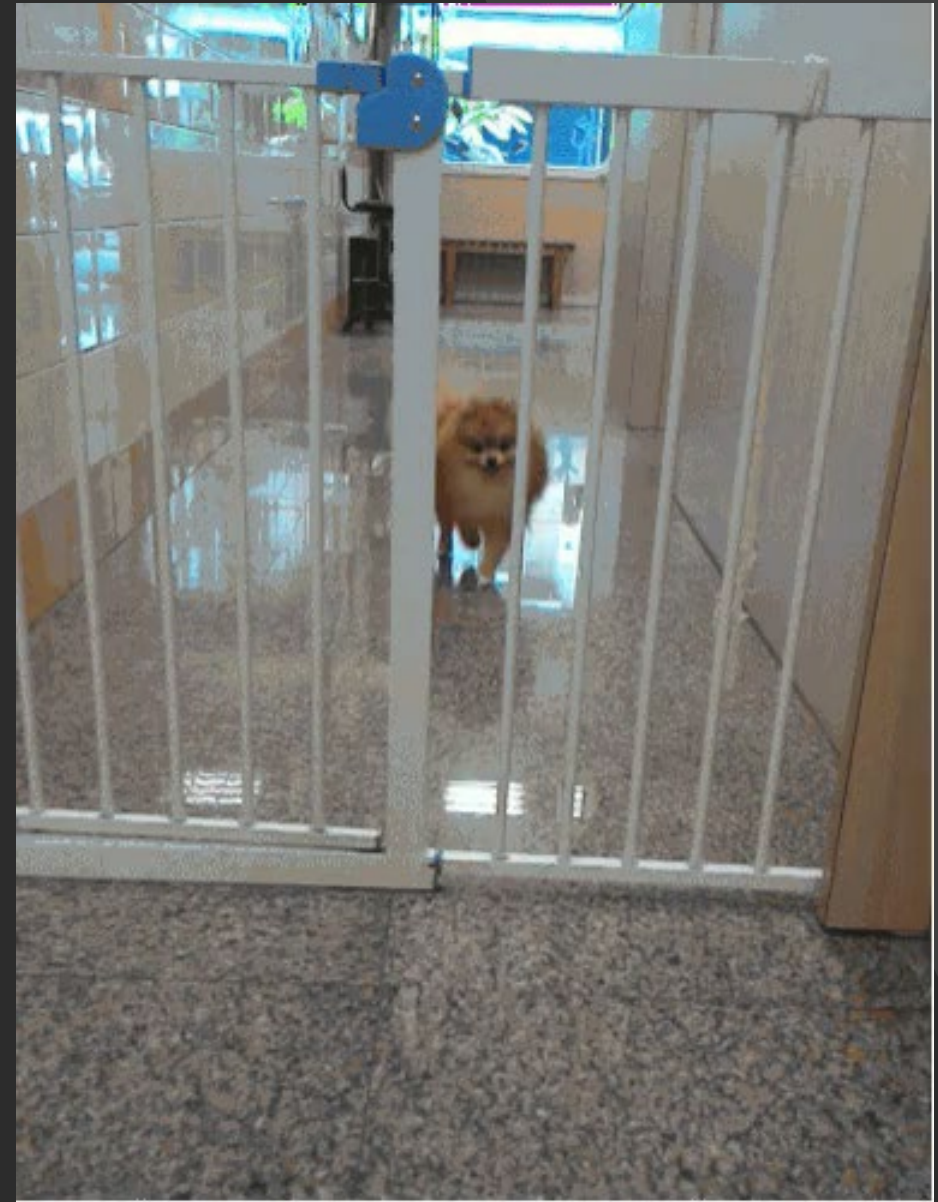


Evidentiary  
Sufficiency

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Nicholson, PD-0963-19

Does the **evading-arrest** statute require proof of knowledge that the attempted arrest or detention is lawful?



LANG, PD-1124-19

“Is **reformation** unauthorized unless the State pled all the elements and statutorily required notice allegations of the lesser-included offense?”



# Constitutionality

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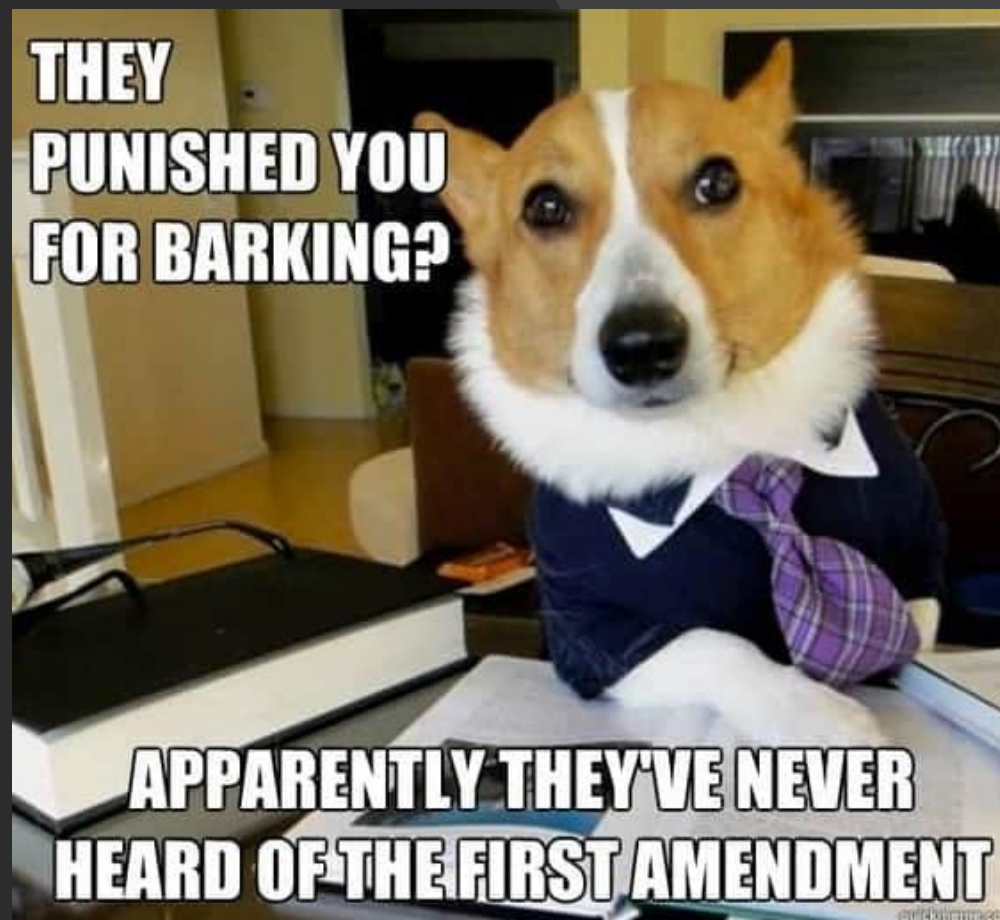


Jones, PD-0552-18

Is Texas' "Revenge Porn" statute constitutional, or does it violate the First Amendment?

## Ex parte Sanders, PD-0469-19

Is TEX. PEN. CODE § 42.07(a)(7) prohibiting **electronic harassment** intended to annoy, harass, alarm, etc., a content-based restriction that curtail a real and substantial amount of protected speech?







# Ex parte Barton, PD-1123-19

1. “The court of appeals decided a facial overbreadth claim that was not **preserved** at trial or raised on appeal.”
2. “Is TEX. PENAL CODE § 42.07(a)(7), which prohibits **harassing electronic communications**, facially unconstitutional?”



Ex parte Nuncio, PD-0478-19

Is Texas' **harassment statute**,  
TEX. PEN. CODE Sec. 42.07(a)(1),  
(b)(3), which prohibits  
obscene communication,  
unconstitutionally **overbroad**  
and **vague**?

# DULIN, PD-0856-19 & PD-0857-19



1. “Should an improper and **prematurely assessed** nonobligatory ‘**Time Payment Fee**’ that penalizes the failure to timely pay a court-cost, fee, or restitution be struck?”
2. “In striking down court-costs and fees, does the judiciary violate **separation of powers** by infringing on the Legislature’s power to enact costs, fees, and the state’s budget and the Governor’s budget power?”
3. “Is the ‘Time Payment Fee’ **proper** because it imposes a time-frame for court-cost and fee payment and disincentivizes late payment and the failure to pay?”

Thank you

