



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

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Search and Seizure



U GOTTA WARRANT?



Ruiz, PD-1348-17

Was the search of substitute teacher Ruiz's cell-phone for "up-skirt" photos of students by the school principal illegal—breach of computer security—so as to implicate Article 38.23's exclusionary rule?

1. Whether the State's petition for 20 days of cell phone records set forth "specific and articulable facts" under the Federal Stored Communications Act.
2. What is the remedy for a violation of the Stored Communication's Act?





Hankston, PD-0887-15



“Did the Court of Appeals err when it 'utilize[d] Fourth Amendment precedent' in determining Art. 1 Section 9 of the Texas Constitution was not violated when the State obtained Appellant's cell phone records without a warrant in light of *Richardson v. State*, 865 S.W.2d 944 (Tex. Crim. App. 1993)?”

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?





When a suspected intoxicated driver is unconscious, does “implied consent” under the mandatory blood-draw statute satisfy the Fourth Amendment’s consent exception and thus justify a warrantless blood-draw?

Ruiz, PD-0176-18

Jury Issues





Garcia, PD-0035-18

“Is the constitutional harm standard the proper test when there was a mere delay in the election, versus no election, and the jury is charged on a specific incident?”



Beltran De La Torre,
PD-0561-18

1. Is an instruction on “joint possession” a comment on the weight of the evidence?
2. If a “joint possession” instruction is proper, is a “mere presence” instruction authorized?

Ebikam, PD-1199-18

“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.”

I shot the sheriff



**But I swear it was
in self defense**



Jordan, PD-0899-18

What quantum and quality of evidence is needed to be entitled to a “multiple assailants” defensive instruction?





Evidence



Williams, PD-1199-17

Is drug-test-evidence admissible without testimony of the chemist who performed the testing when the certificate of analysis failed to provide the name of the affiant who personally conducted the testing?



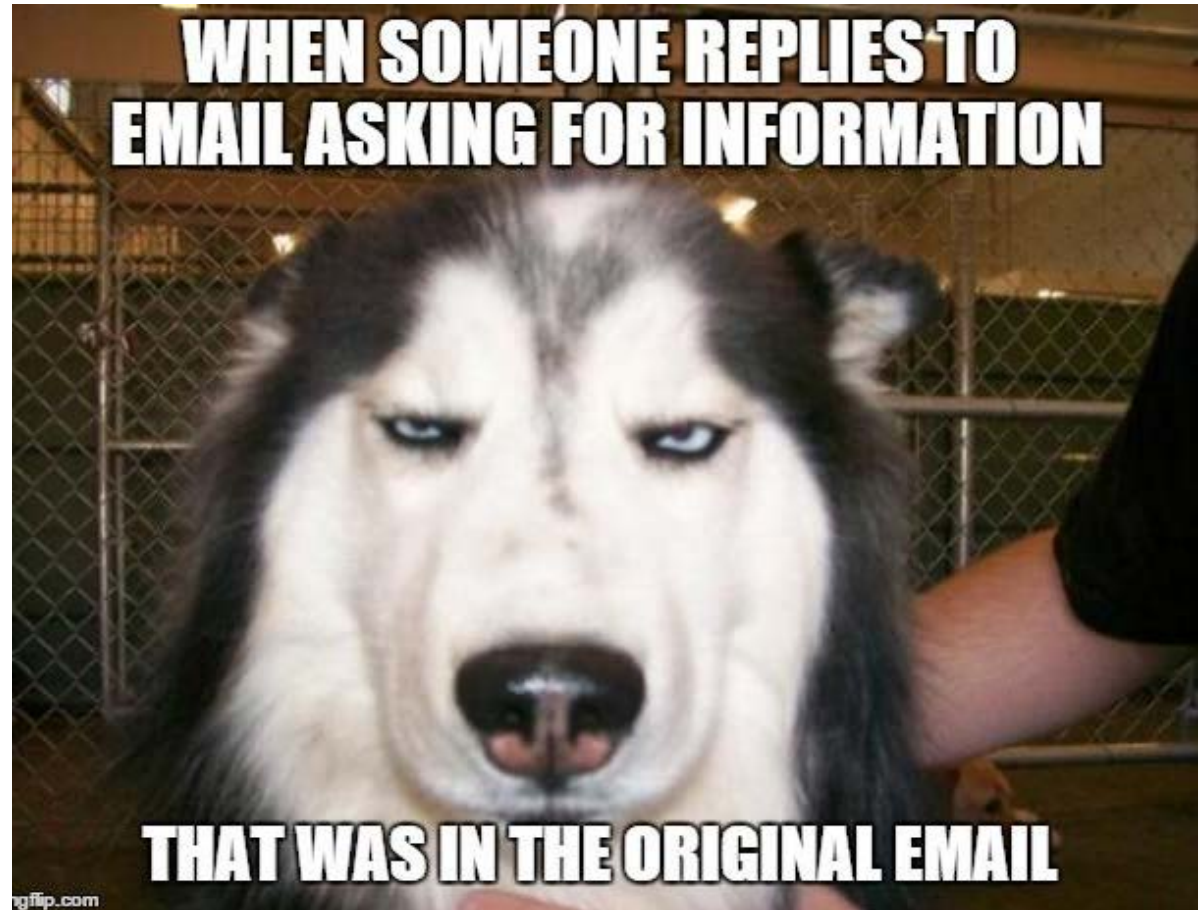
1. Is evidence forgotten by a defendant unknown for purposes of the newly discovered evidence rule?
2. Can a defendant who fails to recall evidence once known but since forgotten exercise due diligence for purposes of newly discovered evidence rule?

Carsner, PD-0723-18

Heath, PD-0012-19

1. Is a pretrial email stating, "Can I get discovery on this client,?" with no designation of documents sufficient to invoke the Morton Act (Art. 39.14(a))?

2. Does the relinquishment of the evidence at issue estop the State from winning on preservation?



Enhancements



My army is ready, we attack at nightfall



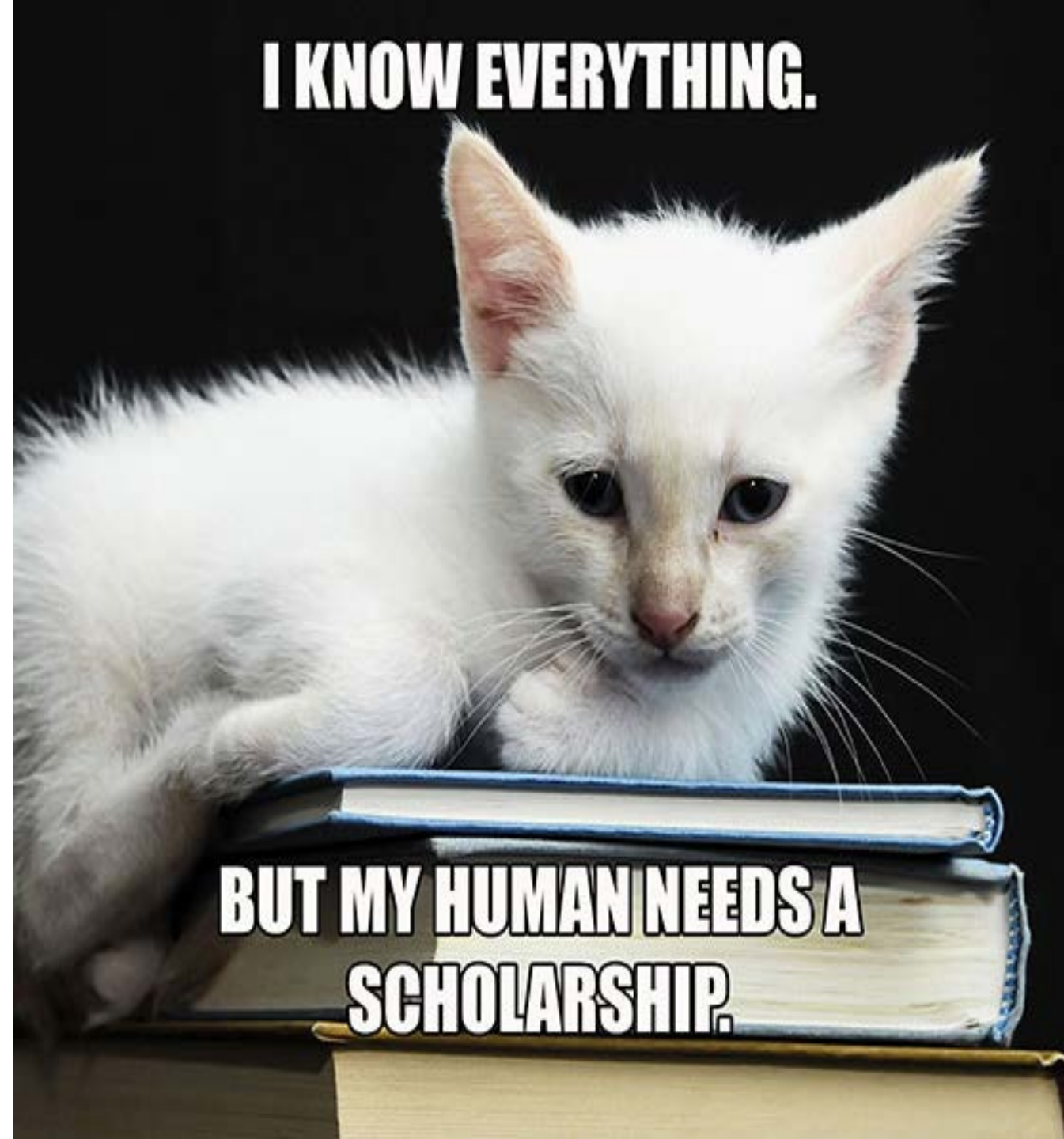
Fisk, PD-1360-17

Under the habitual sex-offender enhancement provision, TEX. PENAL CODE § 12.42(c)(2)(B)(v), how should “substantially similar” for out-of-state convictions be determined?



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.

Appealability



Franklin, PD-0787-18



1. Is a *Miller v. Alabama* claim forfeitable?
2. Is the age of minority an affirmative defense?
3. If the defendant bears the burden, was Franklin denied the opportunity here?



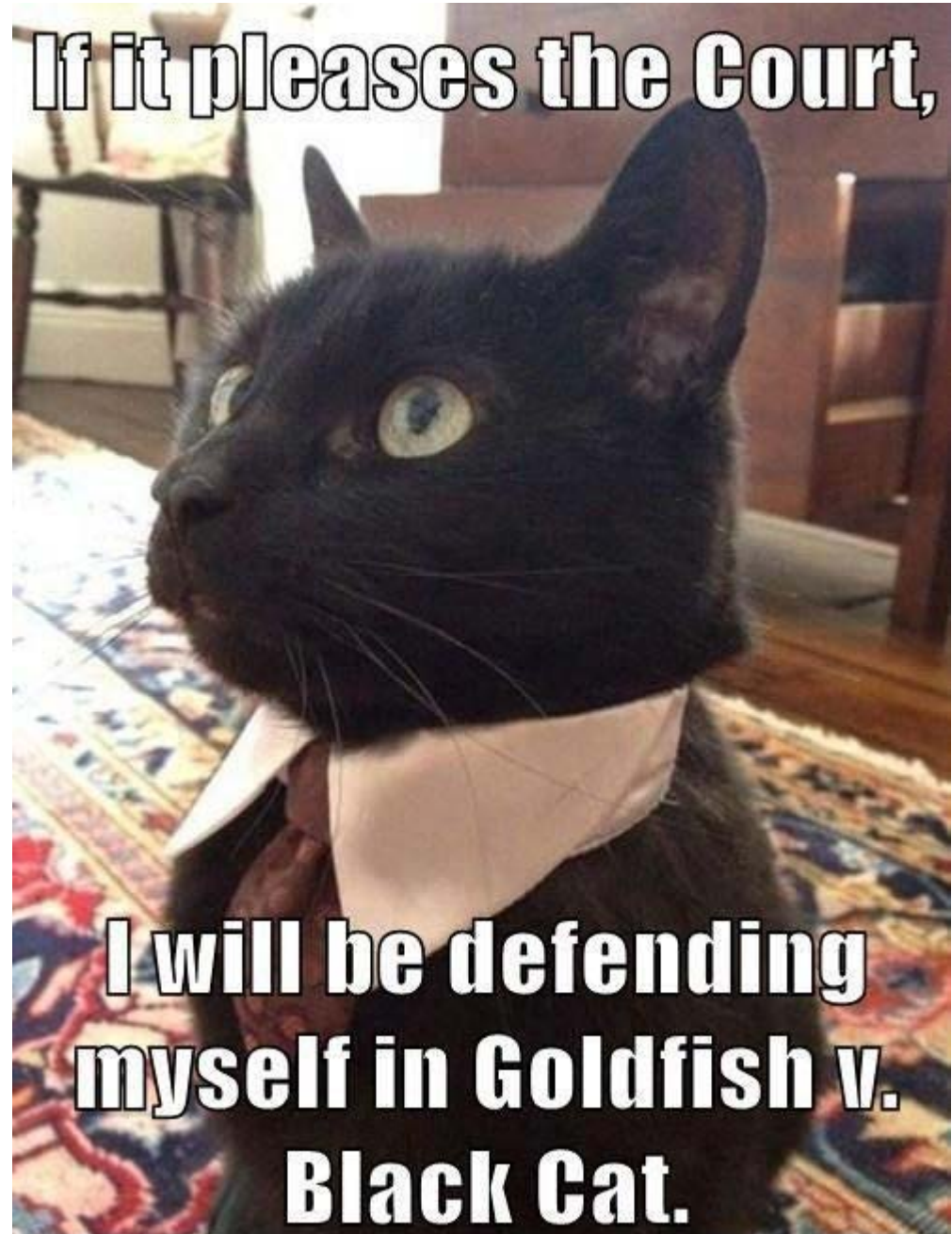
1. When no timely motion to bar prosecution was filed per Article 4.18, is a jurisdictional attack on a certification order barred?

2. Does *Manuel v. State* bar a jurisdictional attack when it could have been made for the first time on appeal from an order deferring adjudication?

Bell, PD-1383-18

Pleas

If it pleases the Court,



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

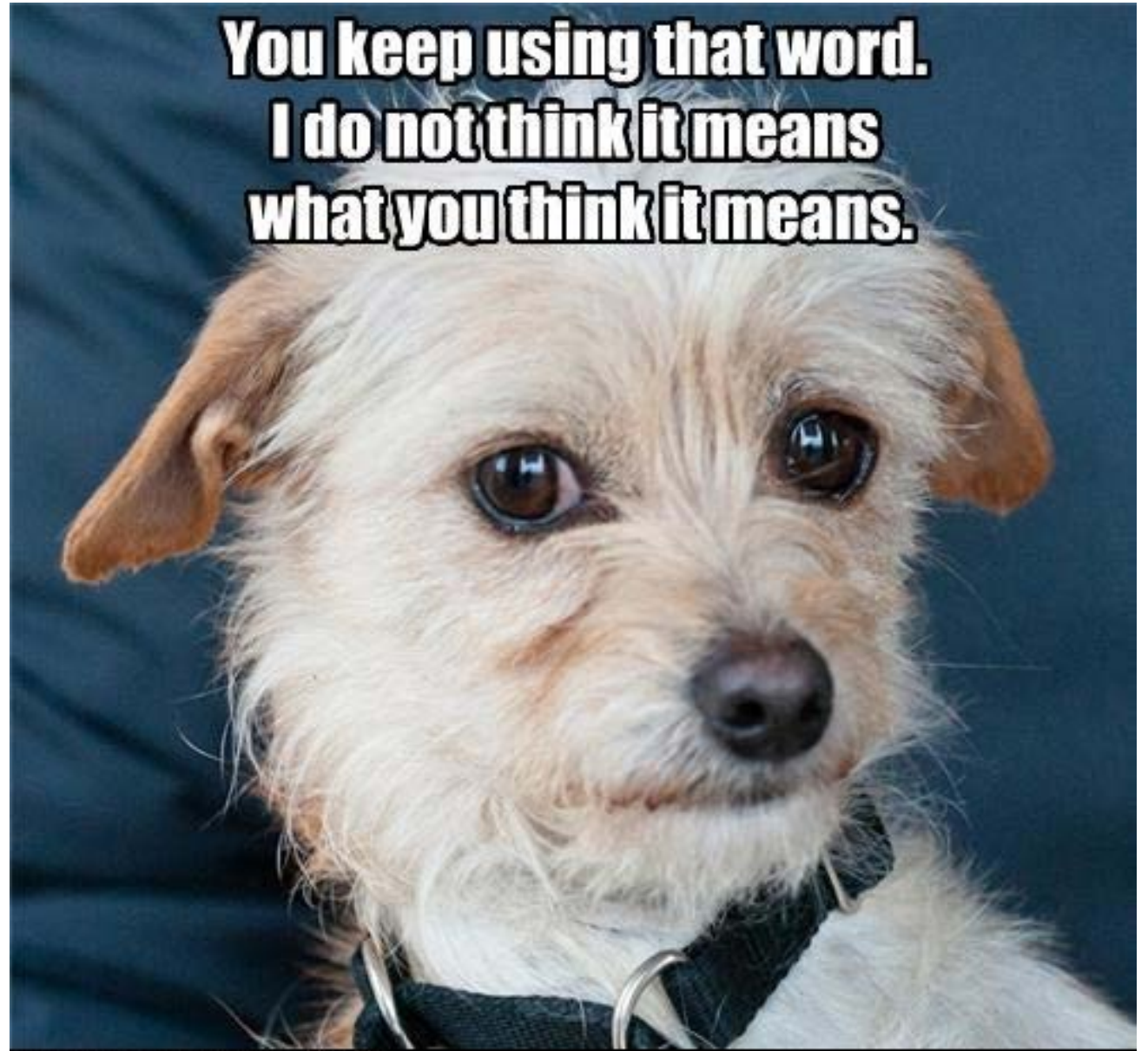
Loch, PD-0894-18



1. 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?

2. Was the failure to admonish about immigration consequences harmful when Appellant was already deportable, the evidence of guilt was overwhelming, and he was morally motivated to plead guilty?

Statutory Construction





1. Is “possession with intent to deliver” a predicate offense for engaging in organized criminal activity (EOCA)?
2. If not, is reformation a remedy?

Parker, PD-0474-17
Hughitt, PD-0275/76-18
Walker, PD-0399-17



Ross, PD-1066-17

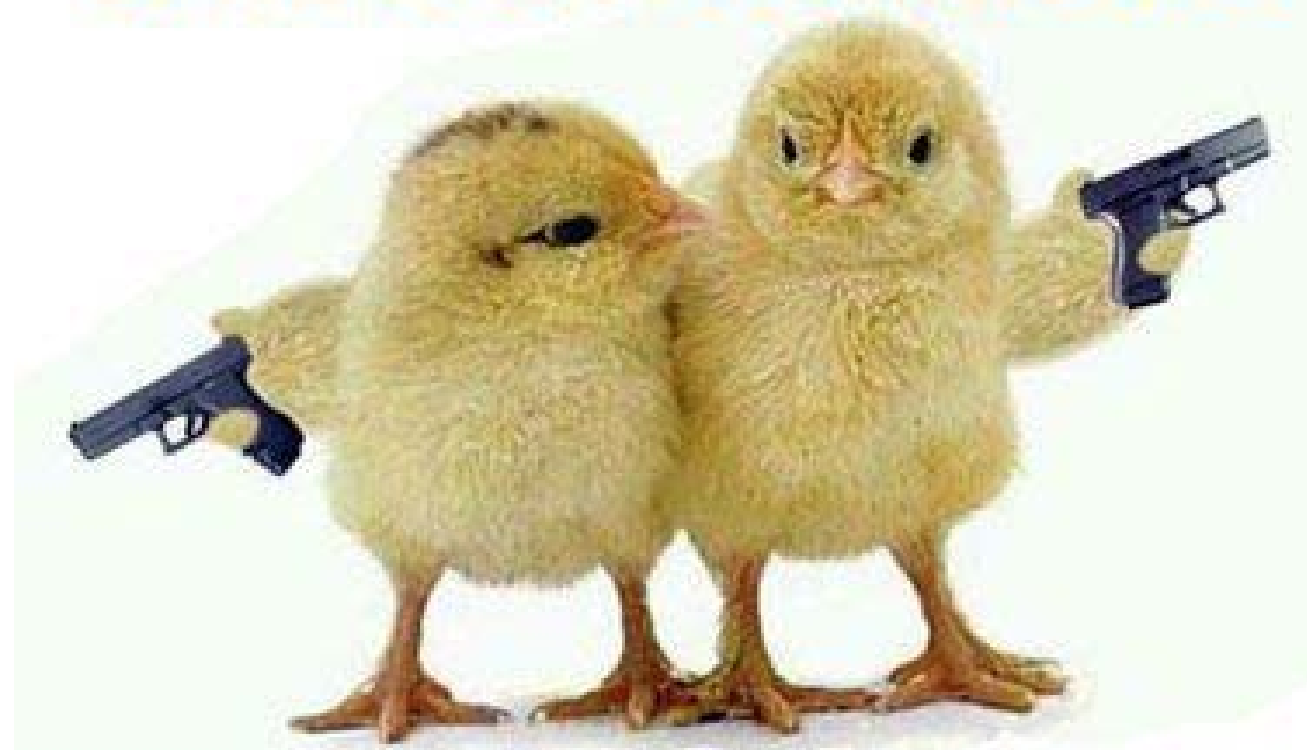
1. Does a charging instrument that tracks the offense of disorderly conduct by displaying a firearm provide adequate notice?
2. Did the COA conflate First Amendment vagueness with Sixth Amendment notice requirements?
3. Is “alarm” inherently vague?



Musa-Valle-PD-1047-18

Which law—state or city—banning the discharge of a firearm applies when a city’s ordinance was enacted under the doctrine of home-rule cities under TEXAS PENAL CODE § 42.12(d)?

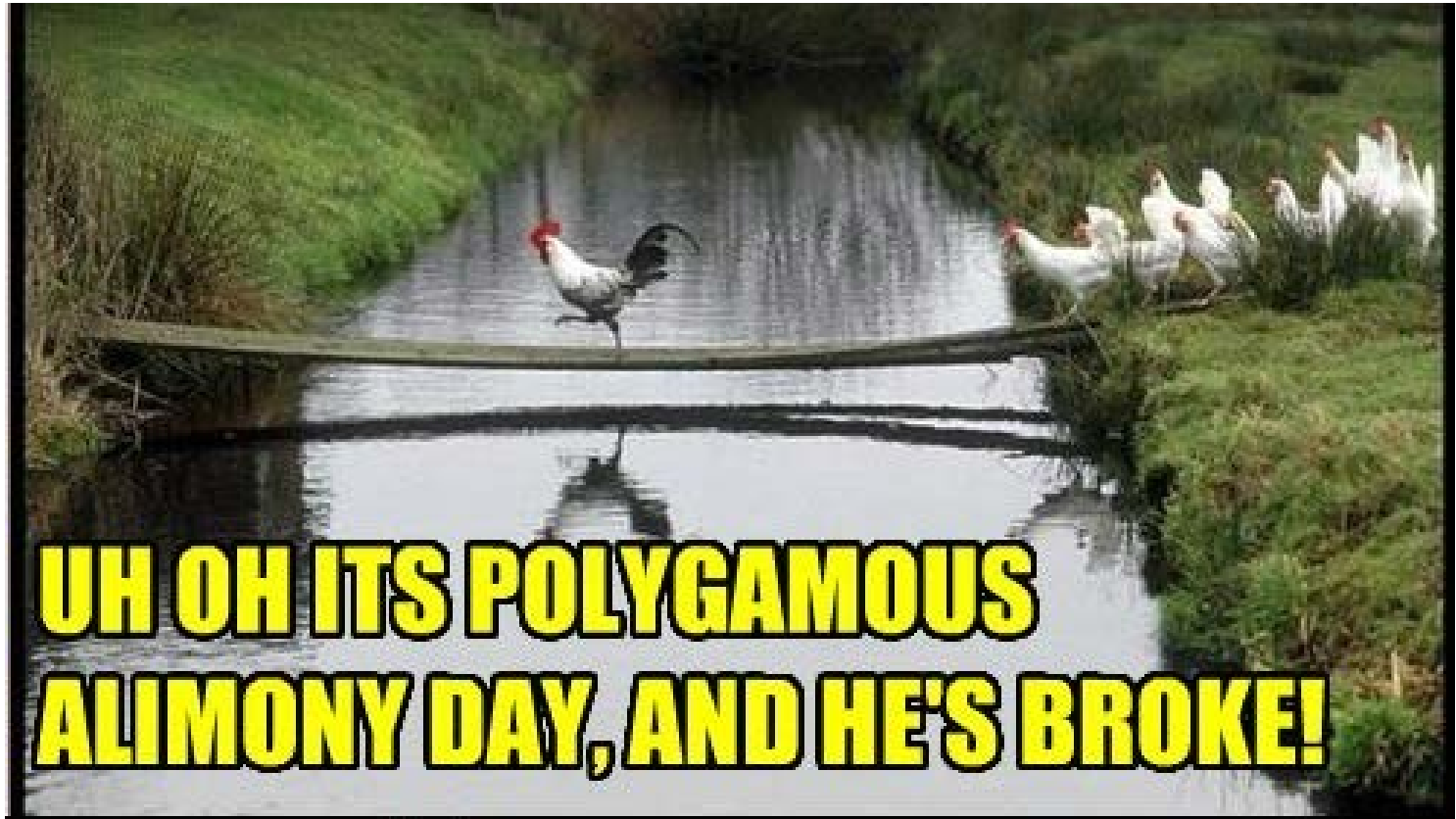
CHICKS WITH GUNS





“Is a peace officer moonlighting as private security ‘lawfully discharging an official duty’ for purposes of proving assault on a public servant when acting under TEX. ALCO. BEV. CODE § 101.07, which dictates: ‘all peace officers in the state’ ‘shall enforce the provisions of this code.’”

Cuevas, PD-0314-18



**UH OH ITS POLYGAMOUS
ALIMONY DAY, AND HE'S BROKE!**

Lopez, PD-1382-18
Senn, PD-1265-18
Rodriguez, PD-0013-15-19

Does the sexual assault bigamy enhancement, which raises the offense to a first-degree felony if the defendant was prohibited from marrying or purporting to marry the victim or living as if married to the victim, require proof of actual bigamy?

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

Watkins, PD-1015-18





**MAYBE ITS
BECAUSE
IM A DOG**

**BUT THIS CASE LOOKS PRETTY
BLACK AND WHITE TO ME**

zipmeme

Evidentiary
Sufficiency



Fraser, PD-0711-17

“Can the felonies of reckless or criminally negligent **injury to a child** or reckless or criminally negligent **child endangerment** underlie a felony-murder conviction when the act underlying the felony and the act clearly dangerous to human life are one and the same?”



Was the evidence sufficient to prove that Stahmann tampered with a pill bottle by concealment and alteration when he threw it over a fence after an accident and bystanders reported the throwing and the bottle's location to police?



Stahmann, PD-0556-18



Curry-PD-0577-18

1. “The court of appeals erred in determining that the evidence was sufficient to support Appellant’s conviction for accident involving injury–failure to stop and render aid.”

2. “The court of appeals erred in affirming the trial court’s refusal to give jury instruction on mistake of fact.”



Metcalfe, PD-1246-18

Was the evidence sufficient to support Metcalfe's guilt as a party for the sexual assault of her daughter by the step-father when her daughter reported the abuse and Metcalfe turned a blind eye during future assaults and allowed the step-father to return home after expelling him upon catching him in the act?

Constitutionality





Jones, PD-0552-18

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



Allen PD-1042-18

Is the summoning witness/mileage fee constitutional since it is not directed to a criminal justice purpose, or is it a recoupment cost?



**ALL OF THOSE
INNOCENT FIELD MICE**

**AND I JUST BOPPED
THEM ON THEIR HEADS**

Miranda, PD-1340-18

Is the corpus delicti rule, which requires evidence corroborating a confession, satisfied by evidence establishing a "criminal episode" involving offenses connected or constituting a scheme or plan or the repeated commission of the same offense?

Thank you

