

# Beyond Brief Writing

*Breaking the mold* of tedious, superficial briefing through strategic choices, charts and pictures, better issue-framing, and more.

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Writing:  
somewhere between  
torture and fun.

 The Write Practice

"All I want to do at  
the end of the day  
is curl up in bed  
and enjoy a good  
brief"

-SAID NO ONE, EVER.





**The reader is  
an impatient  
bird, perched  
on the thin  
edge of  
distraction or  
sleep.**

*-On Writing Well*  
William Zinsser

# Courts are busy



In FY2020\* there were ....

- 3,450 new writs
- 1,043 new PDRs
- 618 new original proceedings

Courts of Appeals



- 3,631 new criminal cases
- 5,074 new civil

# Courts are busy

8500 Total cases  
-1000 dismiss'd (12% rate)  
7500 briefed cases  
x 1 hr reading (each  
advocate uses  $\frac{1}{2}$   
limit = 15,000  
words @ 250/min)  
7500 hrs/year

**312 days**

Courts of Appeals

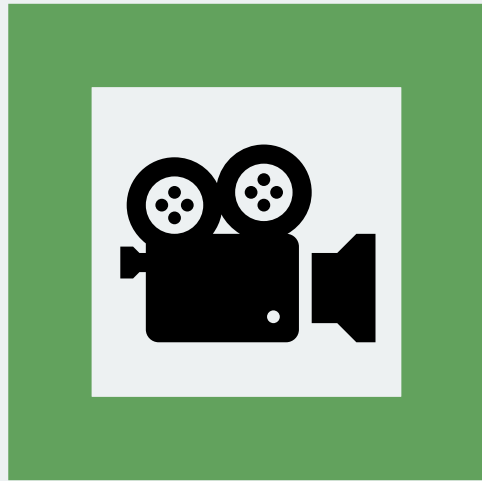


- 3,631 new criminal cases
- 5,074 new civil



# Using Visuals

# Courts Leading by Example



**Videos**



**Photos**



**Charts**

# *Milton v. State*

Milton — 2

protective glass. A copy of the video was included in the record and is available for viewing on the Court's website [here](#). Additionally, here are three screen captures from the video that were also included in the record:





# Photos and Screenshots in Briefs



himself out” as a gang member or associate. CR 38 (motion in limine). At the first out-of-presence hearing, the State called the lead detective to sponsor five photos from Appellant’s Facebook page. 3 RR 121-33; SX 8-12. State’s Exhibit 8 was a red-tinted montage of Appellant’s repeated hand gestures, bordered by the words “Money Power Respect” in Old English font. SX 8. State’s Exhibits 9 & 10 showed Appellant gesturing, and in State’s Exhibit 11, Appellant gestured behind a table laid out with cash and bags of drugs. SX 8-11. In State’s Exhibit 12, Appellant pointed a handgun sideways at the camera alongside a car and two other men, one of whom was also making hand signs. SX 12.



SX 8



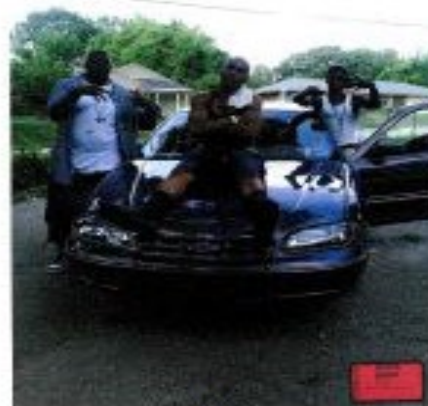
SX 9



SX 10



SX 11



SX 12

*When the photo is what's at issue*

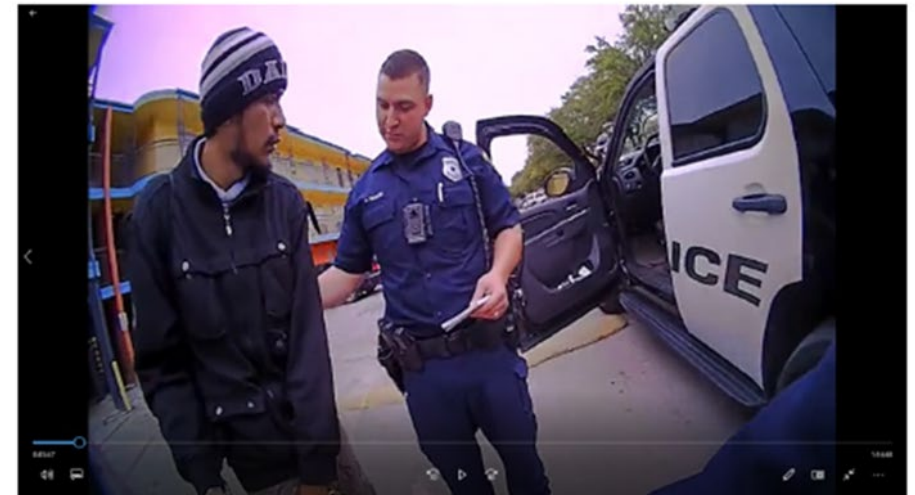
Beham, PD-0638-17

# *Transports you to the scene*

Consensual Encounter  
or  
Investigative  
Detention

Monjaras v. State, PD-0682-21

again requesting permission to search the Appellant. (State's Ex. 2, Officer Sallee's BWC at 3:47-3:54; Officer Starks's BWC at 3:46-3:49).



The charged offense of murder was defined in TE  
was categorized as a first-degree felony.

§ 19.02. Murder

(a) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than voluntary or involuntary manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(b) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

l offense, depending on the facts, was voluntary

made sudden passion a punishment phase R  
§ 19.02(a), (d); Acts 1993, 73rd Leg., ch. 900 (

ec. 19.02. MURDER. (a) In this section:

(1) "Adequate cause" means cause that would commonly produce a degree of anger, resentment, or terror in a person of ordinary temper, sufficient to render the m capable of cool reflection.

(2) "Sudden passion" means passion directly caused by and arising out of provocation the individual killed or another acting with the person killed which passion arise: e time of the offense and is not solely the result of former provocation.

) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to hun e that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than [voluntary or involunt manslaughter, and in the course of and in furtherance of the commission or attempt, o mediate flight from the commission or attempt, he commits or attempts to commit an early dangerous to human life that causes the death of an individual.

) Except as provided by Subsection (d), an [(b)-An] offense under this section is a fel e first degree.

) At the punishment stage of a trial, the defendant may raise the issue as to whether ed the death under the immediate influence of sudden passion arising from an adequ e. If the defendant proves the issue in the affirmative by a preponderance of e, the offense is a felony of the second degree.

Showing the historical development of a statute

# Text Messages

Ukawuachu, PD-0366-17

after the sexual assault.<sup>134</sup> Because the meaning of some of the messages is contested, discussion of specific contents will be reserved for argument. The entire nine-page exhibit, edited only to avoid duplication of messages,<sup>135</sup> is as follows:

Yes I'm about to chill  
with Sam

Where are you?

Where

I'm not gonna do anything!

Where is it? I think that's  
where his taking me

taking

<sup>134</sup> 6 RR 20-21.

<sup>135</sup> It appears as though some of the pages in Court's Ex. 1 might be out of order. Looking at overlapping texts, the order might be 1, 2, 3, 4, 5, 8, 7, 6, 9.

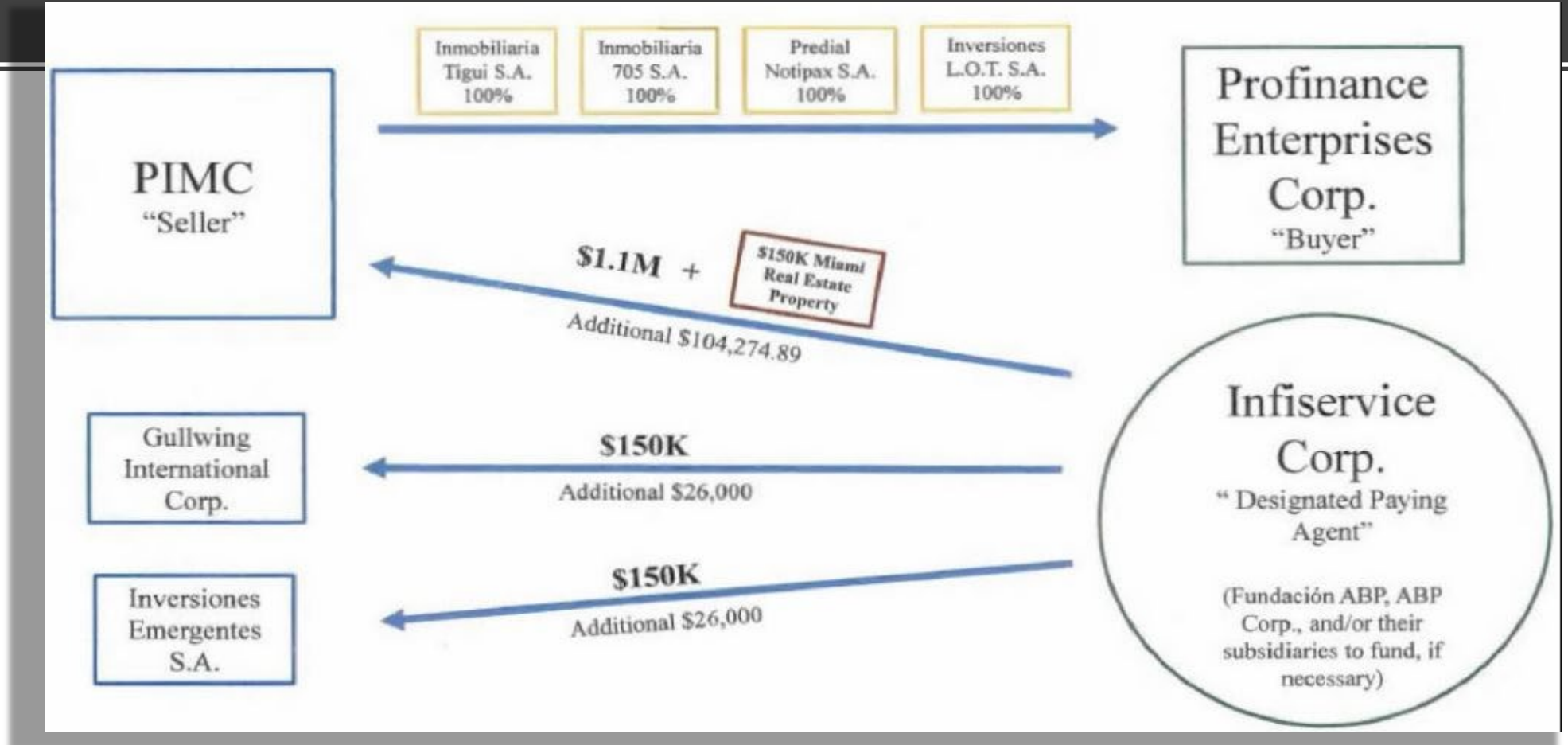
# Charts in Briefs



# Complex Indictments

Para-graph	Kind of Sexual Assault	Means of penetrating vagina	Aggravating Factor
1	penetrate vagina	penis	causing s.b.i. <sup>7</sup>
2	penetrate vagina	unknown object	causing s.b.i.
3	penetrate vagina	fingers	causing s.b.i.
4	penetrate vagina	penis	place in fear of s.b.i.
5	penetrate vagina	unknown object	place in fear of s.b.i.
6	penetrate vagina	fingers	place in fear of s.b.i.
7	penetrate vagina	unknown object	deadly weapon
8	penetrate vagina	penis	deadly weapon
9	penetrate vagina	fingers	deadly weapon
10	penetrate mouth	---	causing s.b.i.
11	penetrate mouth	---	place in fear of s.b.i.
12	penetrate mouth	---	deadly weapon
13	D's mouth to V's vagina	---	causing s.b.i.
14	D's mouth to V's vagina	---	place in fear of s.b.i.
15	D's mouth to V's vagina	---	deadly weapon

# Complex Transactions





# COMPARE OR CONTRAST

## Testimony

## Statute/Charge

## Elements

Ms. McNeil Testimony at October 5, 2015, Hearing (ECF No. 1-4)	Ms. McNeil Testimony at June 4, 2018, Hearing (ECF No. 1-11)
Witnesses say my son was crawling, begging for his life	Rodgers left Christian crawling and begging for his life
Marcus-you know the moment-you could have let him live	Marcus-you know the moment you could have let him live
Ms. McNeil Testimony at October 5, 2015, Hearing (ECF No. 1-4)	Ms. McNeil Testimony at June 4, 2018, Hearing (ECF No. 1-11)
Marcus-who made you God? God has been known to show mercy	Who made you God? God can show mercy
Christian will never be a father; Christian was 24 years old and had no children; he will never be a grandfather or great-grandfather	[Christian] didn't have any children; he will never be a father
I will never be a grandmother	I will never be a grandmother
Christian was devastated when his sister and grandmother died; Christian's sister was his "best buddy"	Christian lost his other best buddy, my daughter
One can get over, eventually, losing someone to natural death; but you can never get over cold blooded murder	One can get over (inaudible) a natural death but you can never get over cold-blooded murder

# Speedy Trial Claims

Delay Time Frame	Reason for Delay	Number of Days (245 total)
Jan. 22 – Mar. 20 <sup>6</sup>	Motion to dismiss for lack of subject-matter jurisdiction	59
Mar. 21 – Aug. 4	COVID-19 & prohibition on new jury trials	137
Aug. 5 – Sept. 14	Rule 20 evaluations	41
Sept. 15 – Sept. 22	Insufficient jury pool	8

Agency	Dedicated Criminal Justice General Revenue Items	Total General Revenue, 2018 & 2019, respectively	Criminal Justice Purpose
Attorney General	Crime Victims' Compensation	\$220,056,253	Criminal Prosecutions Division <sup>2</sup>
	AG Law Enforcement Account	\$225,603,213	Criminal Appeals Division <sup>3</sup>
	Sexual Assault Program <sup>1</sup>		Juvenile Crime Intervention <sup>4</sup>
Governor	Criminal Justice Planning Sexual Assault Program	\$195,423,008	Anti-Gang Programs <sup>5</sup>
	Crime Stoppers Assistance	\$57,166,771	Behavioral Health <sup>7</sup>
	Drug Court		Bullet-Resistant Vests <sup>4</sup>
	Prostitution Prevention Programs		Criminal Justice <sup>9</sup> (2018: \$38,471,220) <sup>10</sup>
	Child Sex Trafficking Unit <sup>5</sup>		

<sup>1</sup> Budget, at I-3.

<sup>2</sup>

<https://www.texasattorneygeneral.gov/divisions/criminal-justice/criminal-prosecutions>.

<sup>3</sup>

<https://www.texasattorneygeneral.gov/divisions/criminal-justice/criminal-appeals>.

<sup>4</sup>

<https://www.texasattorneygeneral.gov/divisions/criminal-justice/gangs-juvenile-justice>.

<sup>5</sup> Budget, at I-52-53, I-58, I-59.

<sup>6</sup> Budget, at I-58.

<sup>7</sup> Budget, at I-59.

<sup>8</sup> Budget, at I-59.

<sup>9</sup> There are over twenty criminal justice programs in the Governor's Office. <https://gov.texas.gov/organization/cjd/programs>.

<sup>10</sup>

<https://gov.texas.gov/uploads/files/organization/financial-services/Operating-Budget-FY2018.pdf>, at 16.

Agency	Dedicated Criminal Justice General Revenue Items	Total General Revenue, 2018 & 2019, respectively	Criminal Justice Purpose
Court of Criminal Appeals	Judicial and Court Personnel Training Fund <sup>11</sup>	\$6,535,680	State court of last resort for all criminal cases <sup>12</sup>
		\$6,285,681	
Courts of Appeals	1 <sup>st</sup> COA	FY18 45% of 4,380,427-\$1,971,192	Criminal cases filed in FY18 (only) comprised 45% of the COAs' docket <sup>13</sup>
	2 <sup>nd</sup> COA	FY18 45% 3,365,590-\$1,514,515	
	3 <sup>rd</sup> COA	FY18 45% 2,830,454-\$1,273,704	
	4 <sup>th</sup> COA	FY18 45% 3,363,979-\$1,513,790	
	5 <sup>th</sup> COA	FY18 45% 6,007,149-\$2,703,217	
	6 <sup>th</sup> COA	FY18 45% 1,563,862-\$703,737	
	7 <sup>th</sup> COA	FY18 45% 1,942,356-\$874,060	
	8 <sup>th</sup> COA	FY18 45% 1,561,866-\$702,839	
	9 <sup>th</sup> COA	FY18 45% 1,944,049-\$874,822	
	10 <sup>th</sup> COA	FY 18 45% 1,613,505-\$726,077	
	11 <sup>th</sup> COA	FY18 45% 1,562,875-\$703,293	
	12 <sup>th</sup> COA	FY18 45% 1,560,977-\$702,439	
	13 <sup>th</sup> COA	FY18 45% 2,816,011-\$1,267,204	
	14 <sup>th</sup> COA	FY18 45% 4,386,229-\$1,973,803	
	<b>Total: \$17,504,692</b>		

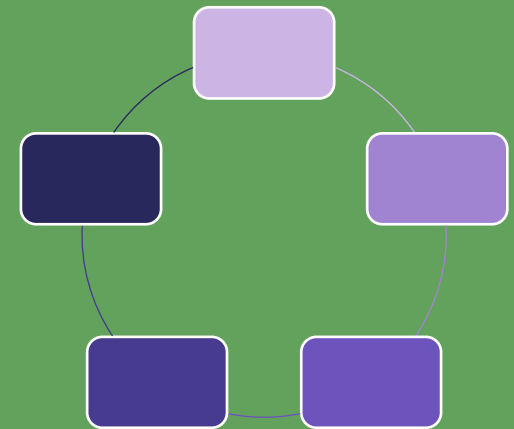
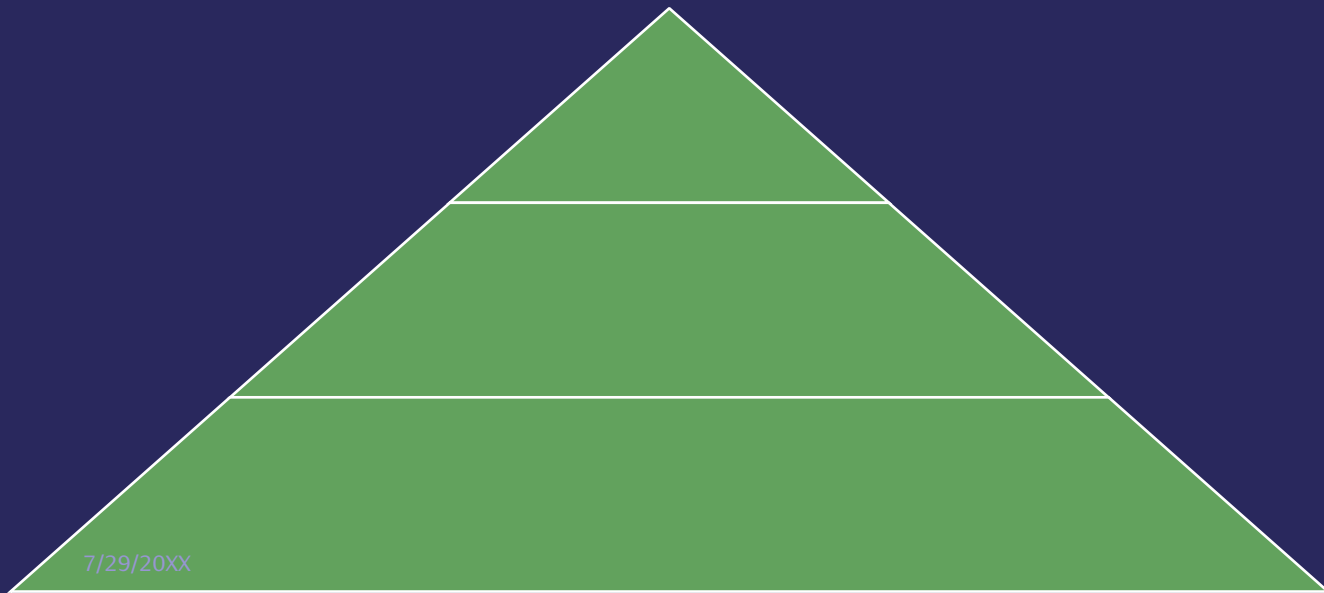
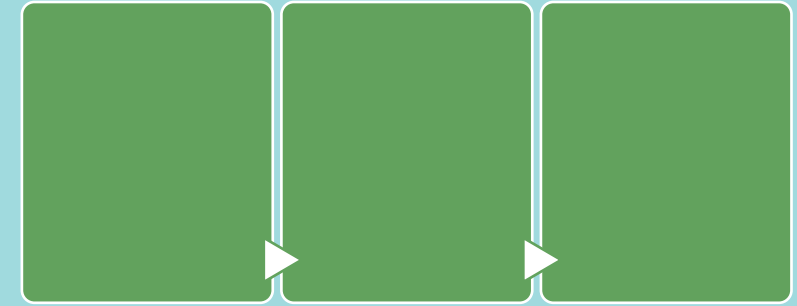
<sup>11</sup> Budget, at IV-3.

<sup>12</sup> TEX. CONST. Art. V, § 5.

<sup>13</sup> Office of Court Administration, Annual Statistical Report for the Texas Judiciary, Fiscal Year 2018, at p.15, available at <https://www.txcourts.gov/media/1443455/2018-ar-statistical-final.pdf>.

## Distilling Comprehensive Data

# Use PowerPoint to Create Charts and Graphs



"All right stop  
Collaborate and  
listen"

*Warnings*



**ISE ISE BABY**

- Rule 2.2(4), Statewide Electronic Filing in Criminal Cases
- Rule 3.1D., Technology Standards

*An e-filed document  
may not contain  
embedded multi-media  
video, audio, or  
programming*



# Avoid Ethical Concerns

- Cropping
- Size alterations
- Omitting text
- Avoid word count
- Private Information
- Obscene, offensive, or pornographic even if in record

Tex. R. Prof. Responsibility 3.03(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal.

Tex. Rule App. P. 9.4(i): Document Length Limits

Tex. R. App. P. 9.10: Privacy Protection for Documents in Criminal Cases

# Treat Photos & Videos Like Anything Else

*...Think about them  
Critically*

- Fallacy: Image is objective truth
- Interpretation is always involved
- Address angle, timing, lighting, context





# **Hyperlinks and Appendices**



# Hyperlinking Cases

- Technology Standards:  
“e-filed documents may not contain...feature restrictions including password protection”

constitutional violation and a violation of the Art. 38.23 exclusionary rule. In the case at bar there is an accepted violation of the Texas Constitution. There is only disagreement as to the standard of harm to be applied.

In *Carpenter*, the Supreme Court held that people have a reasonable expectation of privacy under the Fourth Amendment in cell site location information and, therefore, a search warrant supported by probable cause is required to obtain seven or more days of that information. The decision in *Dixon* was based in part on the Court’s earlier decision in *Love*, and a violation of the Fourth Amendment. Whatever else it stands for, *Love* made clear that consistent with *Riley v. California*, 573 U.S. 373 (2014), cell phone records are protected by the Fourth Amendment. That they are also protected by the Texas Constitution has now been decided by this Court.

The Court in *Love* held that cell phone records obtained via a subpoena, rather than a properly issued search warrant, were not admissible. *Love*, 543 S.W.3d at 844. In *Dixon* the error found by the Court of Appeals<sup>2</sup> but held to have been harmless by the Court of Criminal Appeals was the admission of cell phone records that were obtained without probable cause. Similarly, the error

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<sup>2</sup> See *Dixon v. State*, 566 S.W.3d 348 (Tex.App. - Amarillo 2018).

# Other Uses for Hyperlinks

- **Legislative History**
- **Internal Links to Appendices**

[How To Video](#)



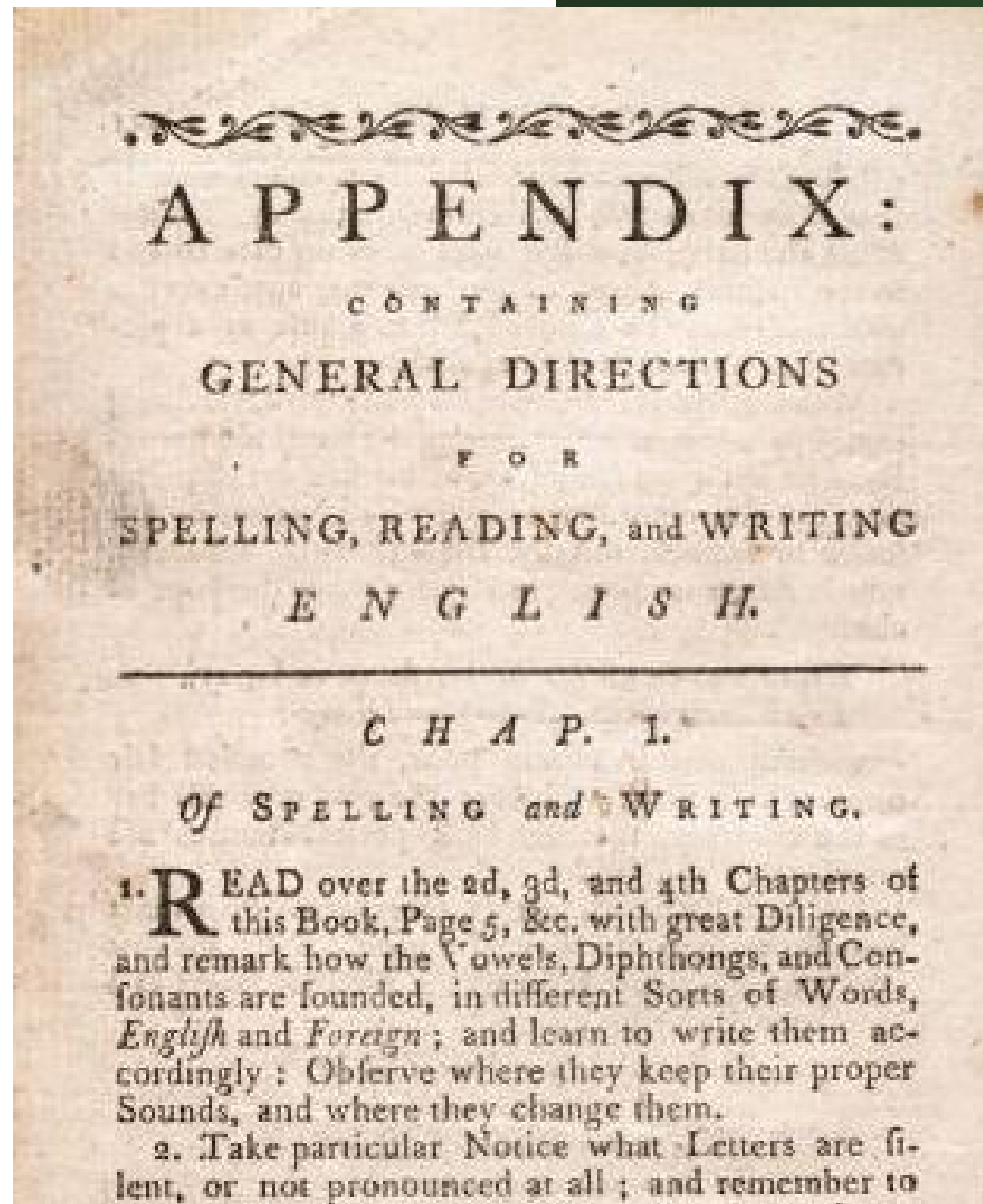
Back Button  
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For the Reader



**Alt and  
Left  
Arrow**



- Indictment
  - Jury Charge
  - Judgment
- 
- Unpublished cases
  - Out-of-state statutes
  - Statute at issue

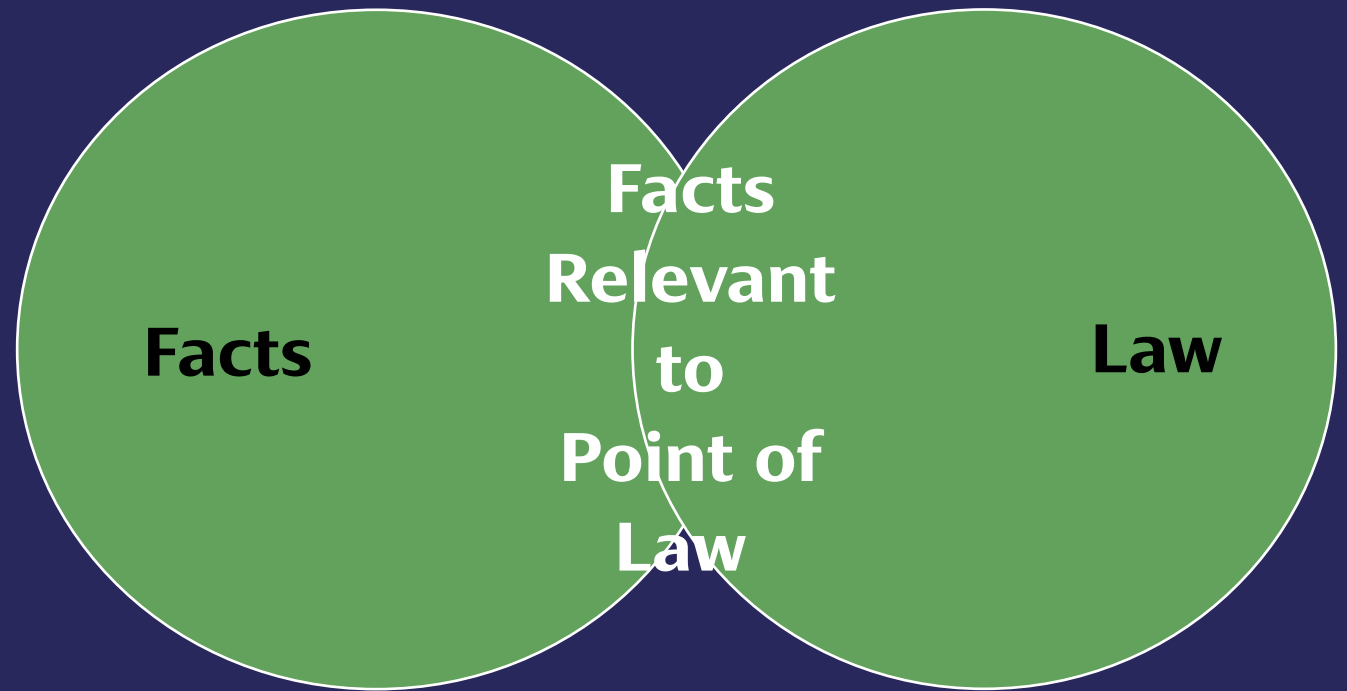




## **Making Strategic Choices**

*Where to begin . . .*

**Facts**



# Draft Facts First

Avoid wasted time by knowing what you're dealing with

Avoid relying on faulty memory

Avoid relying on opposing party's or court's rendition

## **Myth Busting About Facts**

- Fact section is not a replacement for the appellate court's review of the record
- You can reference facts in your analysis that were not previously mentioned in your fact section
- You don't need an elaborate fact section for a purely procedural issue





# Fact Considerations

## Relevance

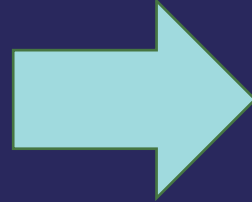
- Avoid irrelevant facts
  - Names & dates suggest importance
- Eliminate redundant facts

## Ethics

- Advocacy without argument (Tex. R. App. P. 38.1(g))



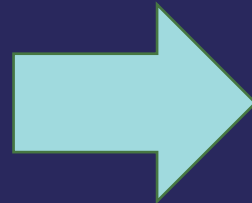
**Where to  
brief  
issue-  
specific  
facts**



**Statement of Facts**

**Summary of the  
Argument**

**Argument**



# Statutory Construction

Plain Text, Extra-Textual, or Both?

*Be prepared for both.*

Texas Legislature Online: <https://capitol.texas.gov/>

Texas State Library and Archives Commission: <https://www.tsl.texas.gov/ldn>

Texas State Law Library: <https://www.sll.texas.gov/>

Texas Legislative Reference Library: <https://lrl.texas.gov/index.cfm?nomobile=true>

# Statutory Construction is Often About More than Your Case

Are other statutes worded similarly and thus will be impacted by your case?

How does the scheme of other codes impact your case?

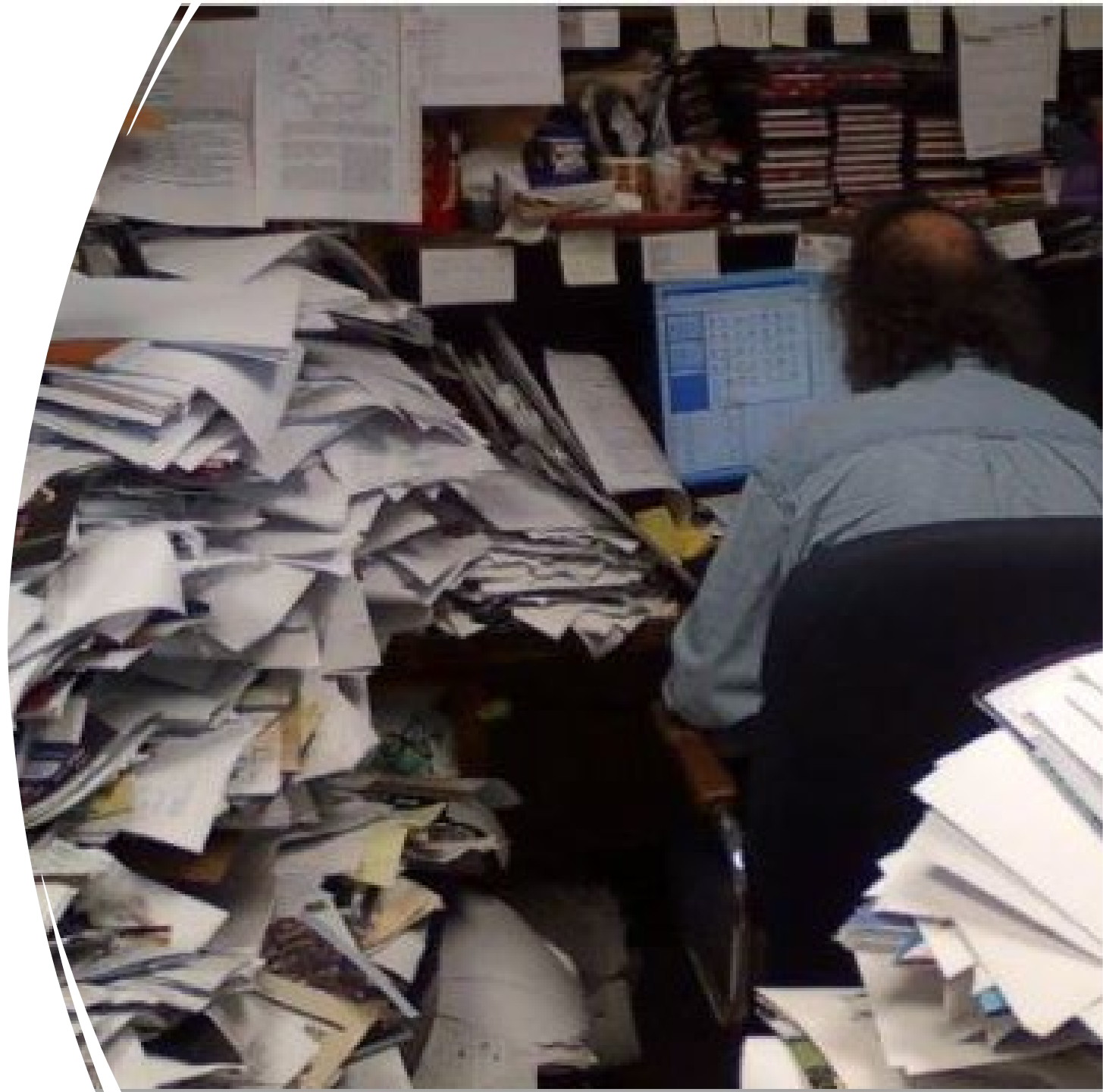
If your argument prevails, will the rule be tenable when applied to future cases?

How would your construction be applied with other subsections in a statute?

# Sufficiency

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- Begin with concise statement why you win
- Tailor boilerplate SOR
- Trim quotes to their essence
- Know the significance of facts & explain it





# Be Strategic ... about What You Argue



## Nonstarters

- The child was not credible
- Implausible that child was abused while others were home
- *Hooper* block quotes. Enough said.

## Consider instead

- Statutory construction—State failed to prove element b/c wasn't even trying
- Matter of law

**Be Strategic  
... about  
*How You  
Argue***

## Irrational verdict

- Contravenes human experience
- Conflicts with physical evidence
- Imagination not inference



*Melgar,*  
PD-0243-20

# Strategy for the Argument Section

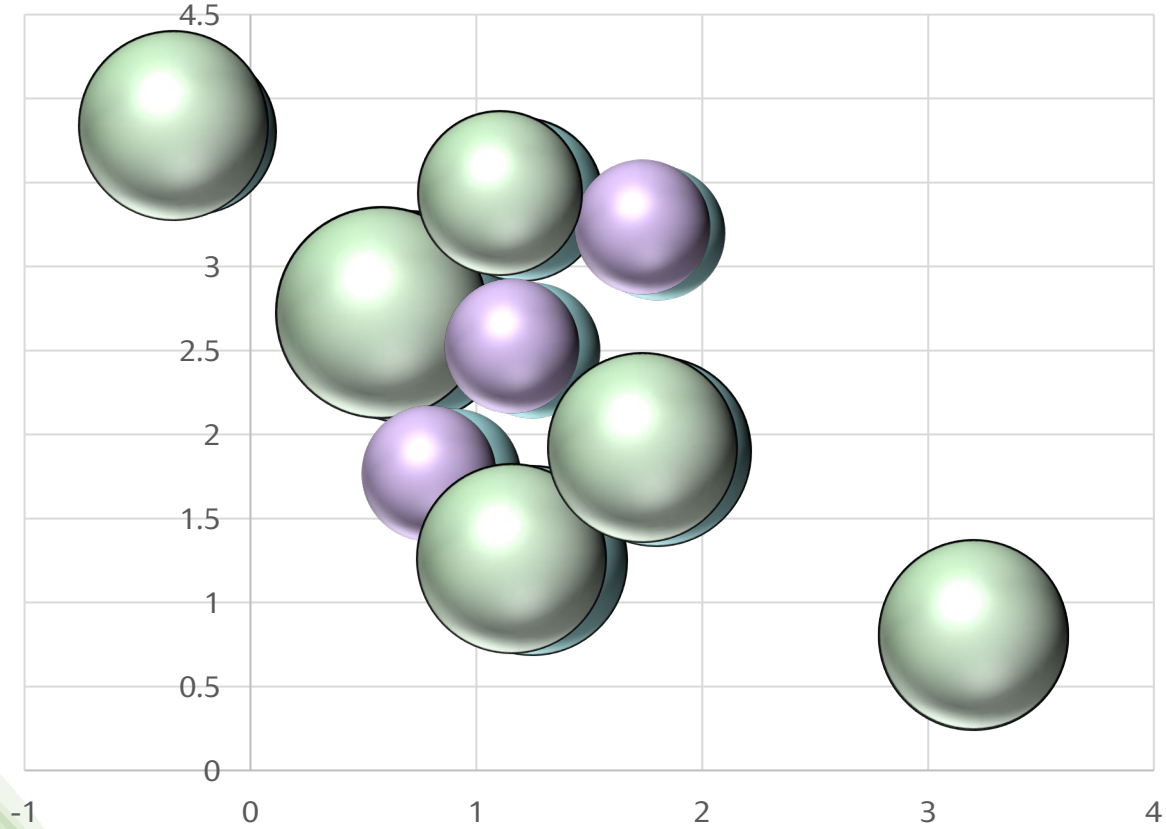
- Stacks of Cases Don't Impress
- String Cite Sparingly
- Consider what each case means to your argument before you brief it
- Front-load & Sign-post







# You must disclose controlling adverse authority, but...



**Not every case can (or should) be harmonized**

**Keep it to the Record**

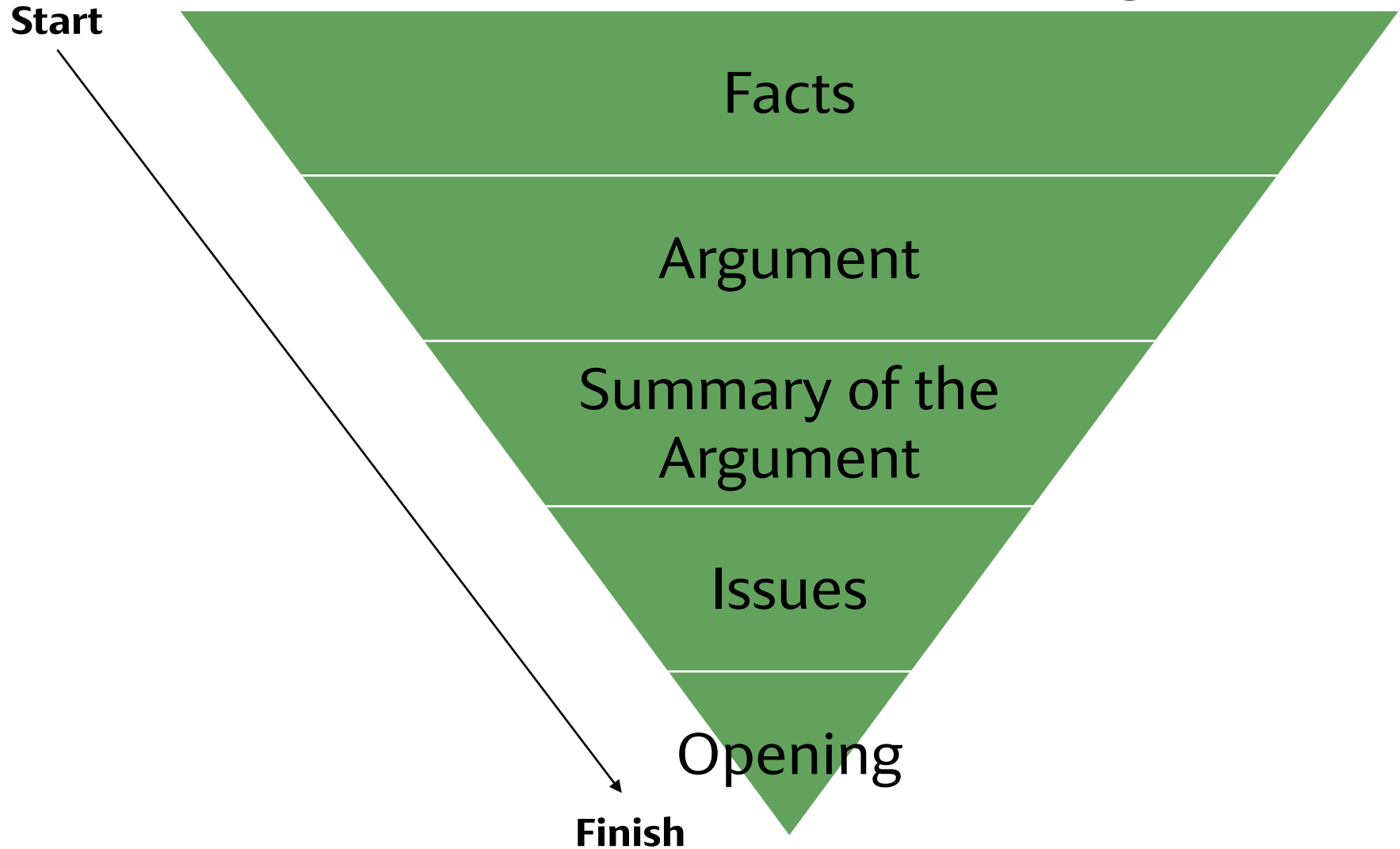
- Actual scientific evidence not subject to judicial notice
- Facts or materials not in the appellate record
- Forensic Science Commission report (Tex. Code Crim. Proc. art. 38.01 Sec. 11)

## "Swell Stuff" Prohibited

*Hernandez v. State*, 116 S.W.3d 26 (Tex. Crim. App. 2003)



# Reducing the Points of Your Case for More Efficient Briefing



ARGUMENT.....	12-29
1. Hicks’ Opinion Testimony was Admissible as Rebuttal Evidence.....	12-21
a. Generally, opinion testimony about a witness’ credibility is prohibited. .....	12-13
b. Specific-allegation credibility opinion is proper rebuttal once the door is opened. ....	13
c. Hicks’ lay opinion testimony about Chance’s credibility.....	13-18
d. Hicks’ lay opinion about Chance’s credibility was proper rebuttal. . . .....	18-21
e. Conclusion: The lower-court majority erred by failing to recognize that Hicks’ credibility opinion testimony was proper rebuttal.....	21

**Using Headings Persuasively  
with the Table of Contents in Mind**

# **Framing the Issue**

the appellate practitioner

"The task of a writer is not to solve the problem but to correctly pose the question."

--Anton Chekhov



# Overloaded Issue Statement

(in a PDR the CCA  
granted)

The court of appeals misapplied the **standard for reviewing relevance determinations** where its analysis for determining whether the trial court **abused its discretion** in excluding relevant evidence looked to whether, based on the trial court's personal evaluation of competing or available inferences, it is reasonable to reject the State's proffered inferences, when the proper standard looks to whether an appellate court can state with confidence that by no reasonable perception of common experience could it be determined that the proffered inference is one that is reasonably available from the evidence.





# Rewrite

In affirming the trial court's decision to exclude evidence as irrelevant, did the court of appeals wrongly disregard the State's relevance theory because the trial court did not believe it, even though a rational factfinder could have?

**Think**

**280**





“Whether the Fourteenth Court of Appeals improperly acted as a ‘thirteenth juror’ by re-evaluating the weight and credibility of the evidence showing that the complainant’s gunshot wounds constituted serious bodily injury?”



Has a woman sustained "serious bodily injury" when she is shot through her breast and her thigh?

# Revising your issue statement

Will discovery of an arrest warrant necessarily render an attempted seizure on the warrant "lawful" (despite an earlier illegality) for purposes of evading arrest?

When <sup>discover</sup> both the police and motorist know of <sup>arrest warrant</sup> a warrant for his arrest, does an <sup>illegality?</sup> (unlawful seizure) <sup>earlier</sup> before that point still make it "unlawful" to detain the motorist and, when he flees, prevent a conviction for evading, <sup>or does discovery of the</sup> warrant purge any taint, ~~just as in the Fourth Amendment~~ <sup>Converse</sup> context?

Day, 614 SW3d 121

# Revising: What to Look For

- Too specific facts
- Irrelevant law
- Repetitive & implied concepts
- Wordiness

When <sup>discovery</sup> both the police and motorist know of <sup>arrest warrant</sup> a warrant for his arrest, does an <sup>illegality?</sup> unlawful seizure <sup>earlier</sup> before that point still make it "unlawful" to detain the motorist and, when he flees, prevent a conviction for evading, or does <sup>discovery</sup> of the warrant purge any taint, ~~just as in the Fourth Amendment~~ <sup>Converse</sup> context?

# "Deep Issue"



- 1) *Major Premise*—Principle of Law
- 2) *Minor Premise*—Facts of the Case
- 3) *Question* (conclusion)



# *Derichsweiler --Defense Framing*

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◀ *Major*—An officer must have reasonable suspicion that crime is afoot to stop a motorist. ▶

*Minor* —Defendant was merely grinning at others in two parking lots.

*Question*—Could the officer legally stop the Defendant?

## --*State's Framing*



*Major*—Reasonable suspicion requires no completed crime; imminency of crime is enough.

*Minor* —Defendant circled the parking lot to repeatedly block in and suss out drive-thru patrons in multiple locations.

*Question*—Was the stop justified by the officer's reasonable belief that some crime was imminent?



Jeffrey Fisher, *Hemphill v. NY*

Introducing evidence at trial is often deemed to "open the door" to the admission of responsive evidence that would otherwise be barred by the rules of evidence.

**QUESTION PRESENTED:** Does a criminal defendant who opens the door to responsive evidence forfeit his right to exclude evidence otherwise barred by the Confrontation Clause?

# Is Your Issue “Deep” Enough?

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*Question*—Are anticipatory search warrants prohibited under Texas law?

*Parker, PD-0388-21*

***Major Premise / Controlling Principle?***

## STATE

*Parts* of the Texas warrant statute expressly require probable cause that the items sought "are" (rather than "will be") at the place to be searched. But not the part that applies to warrants for contraband.

This anticipatory search warrant was for contraband.

It is thus permissible.

## DEFENSE

This Court has construed Art. 18.01(b)'s "probable cause...for [a warrant's] issuance" language to require that the object be at the search location "at the time of its issuance." It's the basis for staleness.

Anticipatory search warrants cannot satisfy this requirement.

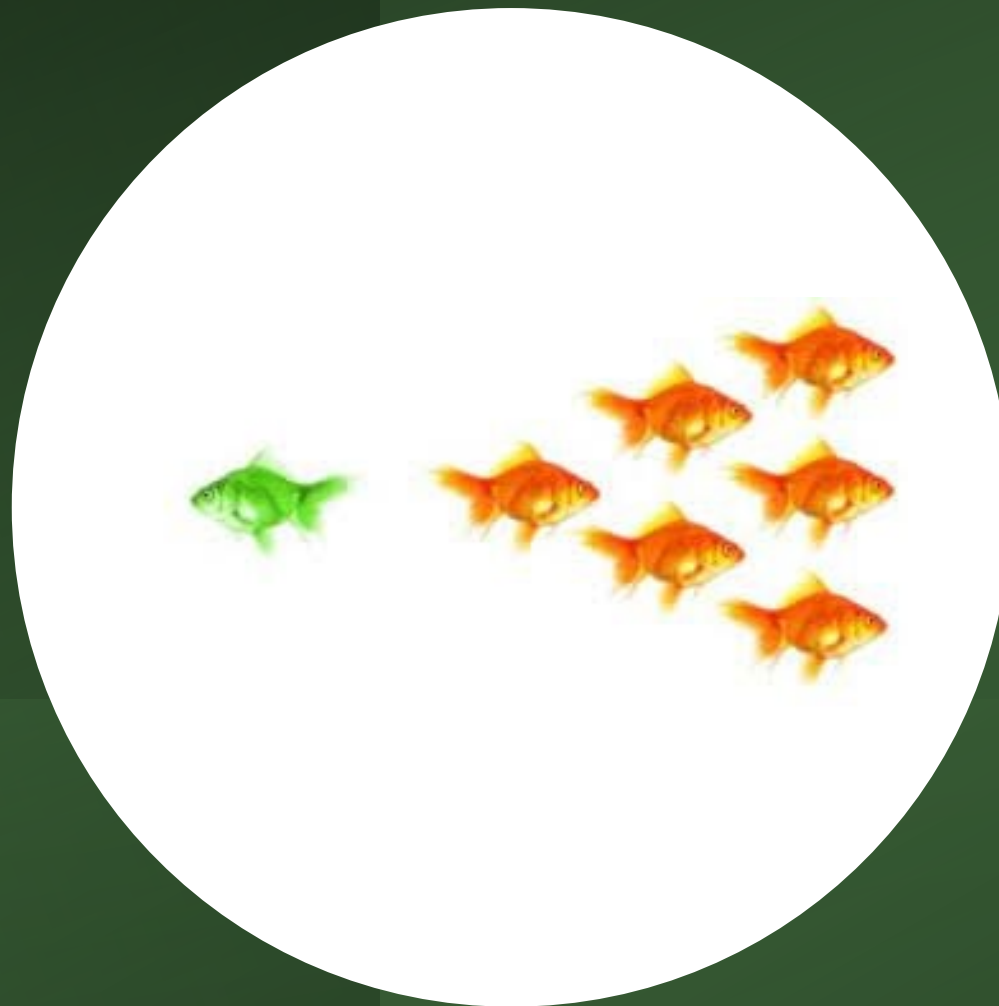
Ergo, they are illegal.

**Use  
Deep Issue as an  
Executive Summary**

Opening  
Paragraph in  
Beginning  
of Brief

Opening  
Paragraph to  
Start Each Issue

**Breaking the Mold**



**Things to Help you Grow**

# Mistakes are Universal

**Let go of a bad argument.**

**If you realize you made one, fess up and correct it if possible.**

**Learn from your analytical mistakes.**

**Be professional when others make them.**



# Be Curious

- Embrace possibilities outside of your initial impressions.
- Test your hypotheses and take the side trails; see them through to the end.
- Consider including it to let the court know you thought about it and why you discounted it.

did state open its window?

What did Gladys say the time Δ was @ her house? Why would state (indirect as opposed to re-direct) get into credibility?

again? during cross? — or did state elicit it for his benefit?

18

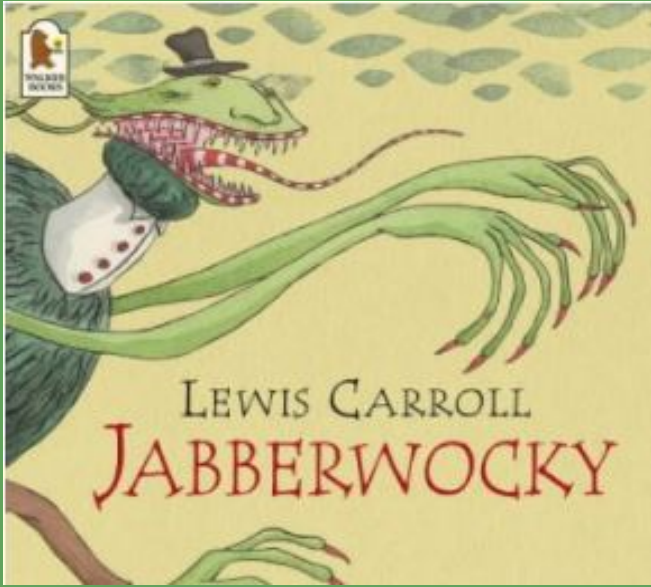
Like they are trying to be open & honest?!

7 The State does not rely on Gladys' direct testimony elicited by the State about lying and coaching as a basis for the rebuttal testimony. The defense elicited its own credibility testimony because it was helpful to their case, even though Gladys was a State's witness. Appellant cannot now complain about the admissibility of the evidence when offered by the State on direct examination because it was not objected to and was elicited for his benefit on cross-examination. Cf. *Prystash v. State*, 3 S.W.3d 522, 531 (Tex. Crim. App. 1999) (a party can be estopped from complaining about unauthorized jury-charge submission that he procured).

# Criticism improves your skills and work-product

Gladys could be characterized as a hostile State's witness. The State does not rely on Gladys' initial direct testimony elicited by the State about Chance lying and being coached as a basis for Hicks' rebuttal testimony. 3 RR 121. The defense elicited its own credibility testimony because it helped its case. Appellant cannot now complain about the defense-elicited admission being a predicate because he brought it out on cross-examination for his benefit, and it was not necessary responsive evidence or offered to rebut to the State's initial evidence. Cf. *Prystash v. State*, 3 S.W.3d 522, 531 (Tex. Crim. App. 1999) (a party can be estopped from complaining about unauthorized jury-charge submission that he procured); *Hammons v. State*, 239 S.W.3d 798, 806 (Tex. Crim. App. 2007) ("the fact that the State might 'bring out its own uglies' on direct examination in anticipation of an attack on a witness's credibility does not preclude the introduction of a witness's prior consistent statement as rebuttal evidence after a witness has, in fact, been impeached on cross-examination with an express or implied accusation of recent fabrication."); *Daggett v. State*, 187 S.W.3d 444, 454 (Tex. Crim. App. 2005) ("if extraneous offense evidence is improperly introduced during the State's case-in-chief, any error may be cured by the defendant's subsequent testimony which 'opens the door' to rebuttal.").





## Make Up Words

- Create shorthand for repetitive, wordy phrases:

The issue here is whether the defendant was entitled to an instruction on self-defense.

The issue here is entitlement.

- Coin a phrase for a doctrine

# Freedom from Citations

- Don't hold back just because it hasn't been said before.
- Show your thought process.
  - But don't displace research, if possible.
    - Find analogous principles.



**Think in Terms of  
Systems and  
Consequences**

**Do county courts have concurrent jurisdiction with district courts over official misconduct cases?**

**Will litigants appear before a non-lawyer statutory county court judge?**

**Will the number of jurors differ?**

**Will the practice and procedures differ?**

**Will admonishments for a guilty or nolo plea differ?**

**Does the type of prosecutor matter?**

**Will the ability to remove an officer be restricted when a case is tried in county court?**

# Gaming Out Statutory Sections Affected

Prichard, PD-0712-16

A person commits an offense if the person intentionally, knowingly, or recklessly:			
Subsection	Prohibition	Starting Offense Level	42.092(c) Max Offense Level
(b)(1)	<i>tortures an animal</i> or in a cruel manner kills or causes serious bodily injury to an animal;	State Jail Felony	Felony 3
(b)(2)	without the owner's effective consent, kills, <i>administers poison</i> to, or causes serious bodily injury to an animal;	State Jail Felony	Felony 3
(b)(3)	<i>fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody;</i>	Class A	State Jail Felony
(b)(4)	<i>abandons unreasonably an animal in the person's custody;</i>	Class A	State Jail Felony
(b)(5)	<i>transports or confines an animal in a cruel manner;</i>	Class A	State Jail Felony
(b)(6)	<i>without the owner's effective consent, causes bodily injury to an animal;</i>	Class A	State Jail Felony
(b)(7)	<i>causes one animal to fight with another animal, if either animal is not a dog;</i>	State Jail Felony	Felony 3
(b)(8)	<i>uses a live animal as a lure in dog race training or in dog coursing on a racetrack; or</i>	State Jail Felony	Felony 3
(b)(9)	<i>seriously overworks an animal.</i>	Class A	State Jail Felony

# Legal it Up

Standard of  
review

Revisiting  
point of  
origin

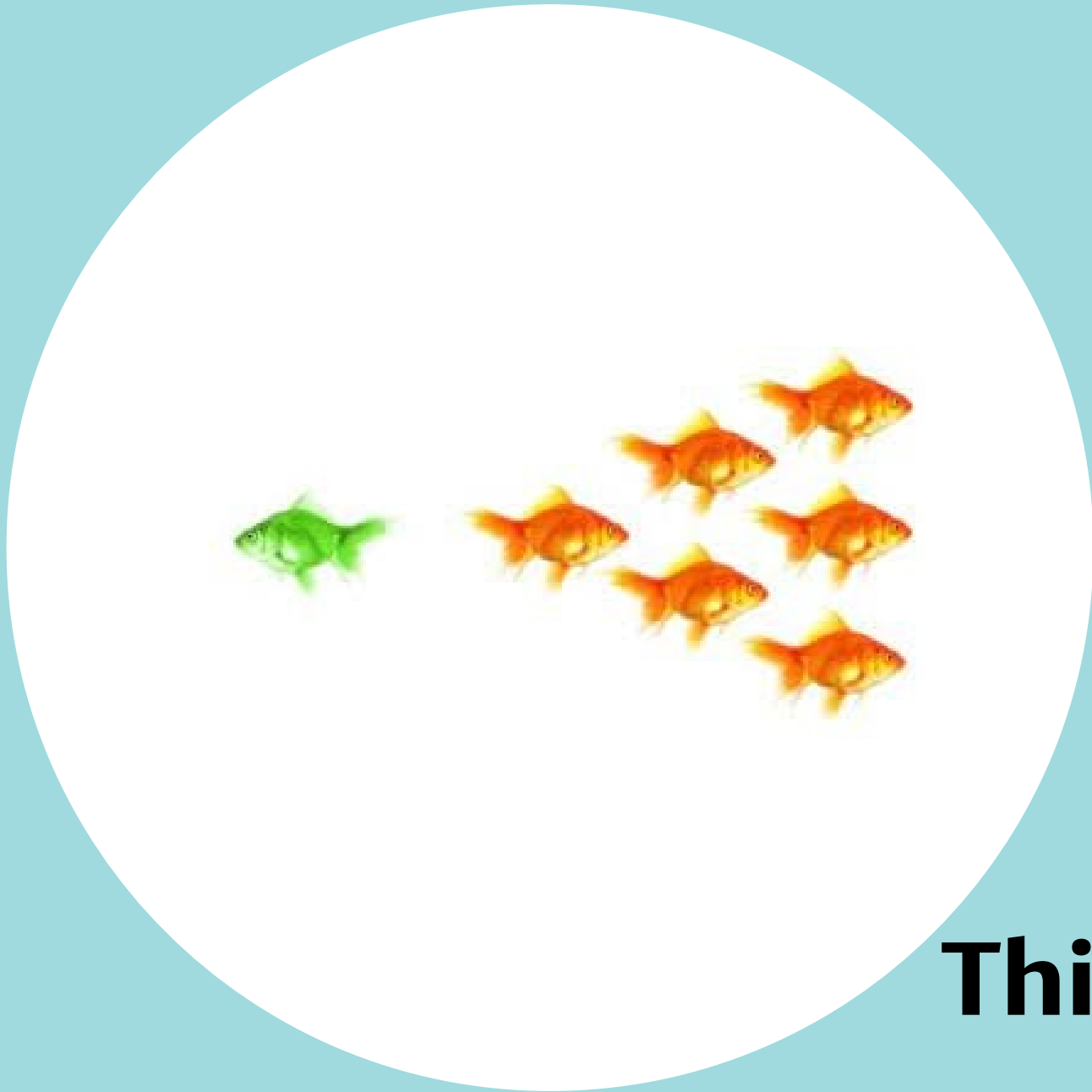
Undermined  
by newer law

**It's difficult to know what  
you don't know.**



Be patient and  
humble; know that  
it takes time and  
effort for these  
skills to develop.

And ask for help  
when you need it.



# Breaking the Mold

**Things to Remember**





Challenge your assumptions,  
and question everything.

# Preservation

Don't get lost in the merits.

Reliability of scientific evidence for admissibility under TEX. R. EVID. 702	The defendant must specifically object to the reliability under Tex. R. Evid. 702, or the trial court can raise the issue sua sponte. <i>State v. Esparza</i> , 413 S.W.3d 81, 86-87 (Tex. Crim. App. 2013).	The State's burden of production and persuasion to prove admissibly is only triggered by a specific 702 reliability objection by the defense or a sua sponte inquiry by the trial court. <i>Esparza</i> , 413 S.W.3d at 86-88. The quantum of evidence for the State to establish reliability under Rule 702 is clear and convincing evidence. <i>Hall v. State</i> , 297 S.W.3d 294, 295-96 (Tex. Crim. App. 2009) (citing <i>Kelly v. State</i> , 824 S.W.2d 568 (Tex. Crim. App. 1992)).
Reliability of scientific evidence to support a finding of reasonable suspicion or probable cause for a traffic stop	The defendant must object to the reliability of any scientific basis, like LIDAR technology, supporting a stop. See, e.g., <i>Hall v. State</i> , 297 S.W.3d 294, 295-96 (Tex. Crim. App. 2009).	The State's burden to establish probable cause/reasonable suspicion must be supported by reliable scientific evidence if it is the basis for a traffic stop. <i>Hall</i> , 297 S.W.3d at 298 ("there was absolutely no evidence to show that use of LIDAR technology to measure speed supplies reasonably trustworthy information or that the trial judge took judicial notice of this fact[.]").
Reliability of reasonable suspicion based on an officers training and experience	A defendant must specifically challenge the officer's knowledge of facts that supply reasonable suspicion. See, e.g., <i>Ramirez-Tamayo v. State</i> , 537 S.W.3d 29, 32-33 (Tex. Crim. App. 2017) (detection of narcotics to continued detention for narcotics possession after conducting a traffic stop).	The State does not have to include extensive details about the officer's experience and training if it can be reasonably inferred that the officer could make rational inferences and deductions from training and experience. <i>Ramirez-Tamayo</i> , 537 S.W.3d at 37. Nor does an officer have to pinpoint a Penal Code violation; reasonable suspicion that something of criminal nature is brewing is sufficient. <i>Johnson v. State</i> , 622 S.W.3d 378, 388 (Tex. Crim. App. 2021). Reasonable suspicion does not require the negation of an innocent explanation. <i>Id.</i>
Reliability of citizen-informant for reasonable suspicion or probable cause	A defendant must challenge the reliability of an informant and, in some cases, the existence of corroborating information. See, e.g., <i>State v. Ford</i> , 537 S.W.3d 19, 21-22 (Tex. Crim. App. 2017) (reliability of the information provided by a store employee to the officer and lack of corroborating information).	A citizen-informant is inherently reliable and can therefore provide a sufficient basis for reasonable suspicion or probable cause. <i>State v. Duarte</i> , 389 S.W.3d 349, 357 (Tex. Crim. App. 2012). Corroborating information may further support a citizen informant's reliability. <i>Ford</i> , 537 S.W.3d at 26.
Reliability of confidential informant or anonymous tipster	A defendant must challenge the reliability of a CI or anonymous tipster. See, e.g., <i>Duarte</i> , 389 S.W.3d at 351 (probable cause not supported by first-time informant tip); <i>Moreno v. State</i> , 415 S.W.3d 284, 285 (Tex. Crim. App. 2013) (arguing no probable cause to support warrant due to lack of information about the reliability of unknown participant). When at issue in an affidavit, credibility and reliability are determined within the four corners. <i>Diaz v. State</i> , ___ S.W.3d ___, No. PD-0712-20, 2021 WL 4979167, at *2 (Tex. Crim. App. 2021).	Reliability can be proven by a successful track record or because "it is corroborated, it is a statement against penal interest, it is consistent with other information, it is a detailed, first-hand account, or it is paired with an accurate prediction of the subject's future behavior." <i>Diaz</i> , 2021 WL 4979167, at *2.

**Don't underestimate specificity requirements**

# Category of Right at Issue

*Marin v. State,*  
851 S.W.2d 275 (1993)

Systemic

Waivable Only

Forfeitable

# Oral Argument

- Don't split it
- Don't rebuff questions for later
- Oral Argument Bench Exhibits?





7/29/20XX

**Closing Wisdom:**

***Trust Your Own  
Voice  
and  
Individuality***

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