
MEMORANDUM

TO: JUDGES TRYING CRIMINAL CASES
FROM: DEBORAH SELDEN AND INTERNS JOSH SCHNEIDER, PETER CHICKRIS, AND MARY MARTIN
SUBJECT: 07/02/08 COURT OF CRIMINAL APPEALS OPINIONS
DATE: 11/04/08
CC: JACK THOMPSON

***Blount v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1645-06, 07/02/08].**

WOMACK, J., *delivered the opinion of the Court, in which* KELLER, P.J., *and* PRICE, JOHNSON, KEASLER, HERVEY, HOLCOMB, *and* COCHRAN, J.J., *joined*. MEYERS, J., *dissented*.

FACTS: Defendant was convicted of burglary of a habitation with the intent to commit aggravated assault. Defendant contended that he did not receive adequate notice that there would be an issue that he possessed or exhibited a deadly weapon during the commission of the burglary. The court of appeals reversed the conviction, holding that defendant received no written notice of any kind and that the indictment made no reference to a deadly weapon. The Court of Criminal Appeals (CCA) found that the allegation in the indictment that defendant committed aggravated assault gave defendant sufficient notice that the deadly nature of the weapon alleged in the indictment would be an issue at trial. The CCA reversed the court of appeals and affirmed the trial court's judgment.

JURY CHARGE—DEADLY WEAPON

The Texas Penal Code defines a deadly weapon as anything that, in the manner of its use or intended use, is capable of causing death or serious bodily injury. ***Blount v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1645-06, 07/02/08].**

JURY CHARGE—DEADLY WEAPON

In any allegation that avers a death was caused by a named weapon or instrument, the claim necessarily includes an allegation that the named weapon or instrument was in the manner of its use, capable of causing death. ***Blount v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1645-06, 07/02/08].**

CRIMES—AGGRAVATED ASSAULT

The Texas Penal Code states that aggravated assault may only be committed by: 1) causing serious bodily injury; or 2) exhibiting a deadly weapon during the course of the assault.

Each involves the use of a deadly weapon. *Blount v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1645-06, 07/02/08].

Ex Parte Reynoso, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

Per Curiam. PRICE, J., filed a concurring opinion.

FACTS: A jury convicted defendant of capital murder and sentenced him to death. After his conviction, defendant made repeated efforts to waive his rights to appeal and habeas corpus. Intermittently, defendant would change his mind and attempt to appeal and file new habeas petitions. After initially dismissing his application and declining to appoint counsel, the Court of Criminal Appeals (CCA) granted defendant's motion for rehearing. On further consideration and review, the CCA denied relief because defendant's claim had previously been raised on direct appeal.

DEATH PENALTY—HABEAS CORPUS—TIMELY FILING AND INDIGENCY

An application for writ of habeas corpus in a death penalty case should be filed in the convicting court no later than the 180th day after the court appoints counsel or no later than the 45th day after the date the State's original brief is filed on direct appeal with the CCA, whichever is later. *Ex Parte Reynoso*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

DEATH PENALTY—HABEAS CORPUS—TIMELY FILING AND INDIGENCY

Immediately after judgment is entered in a death penalty case, the convicting court must determine if the defendant is indigent. If the defendant is indigent, the court must determine whether he desires the appointment of counsel to file a writ of habeas corpus on his behalf. If the defendant answers both questions "yes," the court must appoint competent counsel at the earliest practical time, but no later than thirty days after it makes its indigency finding. *Ex Parte Reynoso*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

DEATH PENALTY—HABEAS CORPUS—TIMELY FILING AND INDIGENCY

If the trial court does not reappoint new counsel within 30 days of the date judgment is entered (as required under the Texas Government Code), the deadline for filing the petition for habeas corpus under Code of Criminal Procedure is not extended. *Ex Parte Reynoso*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

DEATH PENALTY—HABEAS CORPUS—TIMELY FILING AND INDIGENCY

Appointments made more than thirty days after finding indigency are considered untimely and not allowed by statute. When the trial court allows timely appointed counsel to withdraw, the defendant is considered to have chosen to proceed *pro se*, at least until the filing

deadlines pass. *Ex Parte Reynoso*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

APPELLATE PROCEDURE—CODE CONSTRUCTION ACT-COMPUTATION OF DEADLINES

The Rules of Appellate Procedure provide that when computing a period of days, the first day is excluded and the last day is included. However, if the last day of any period is a weekend or legal holiday the period is extended to include the next day that is not a weekend or legal holiday. *Ex Parte Reynoso*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

STATUTORY INTERPRETATION—COMMON USAGE

The Code Construction Act requires that words and phrases be read in context and construed according to the rules of grammar and common usage. By enacting a statute, there is a presumption that the entire statute is intended to be effective. *Ex Parte Reynoso*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

APPELLATE PROCEDURE—DEADLINE TIMING

If an extension to file is denied, then the requirement that an extension be filed and ruled upon before the original due date for the filing of the habeas application gives the defendant a potentially short time to complete his application. If the extension is granted, the defendant knows prior to the due date that he has an additional 90 days to file his habeas application. *Ex Parte Reynoso*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

HABEAS CORPUS—UNTIMELY FILING

When a late application for writ of habeas corpus is filed in the CCA, the court may command counsel to show cause as to why the application was untimely filed. After showing cause, the CCA may: 1) find that good cause has not been shown and dismiss the application; 2) permit the counsel to continue representation of the applicant and establish a new filing date; or 3) appoint new counsel to represent the applicant and establish a new filing date. *Ex Parte Reynoso*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75963, 07/02/08].

! State v. Barbernell, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].!

KEASLER, J., delivered the opinion for a unanimous Court.

FACTS: Defendant was charged with misdemeanor DWI. The trial court quashed the indictment because the State failed to allege the specific definition of “intoxicated” that it intended to prove. The court of appeals affirmed. After determining that its holding in *Carter v. State*, 810 S.W.2d 197 (Tex. Crim. App. 1991) evolved from a flawed analysis, the Court of Criminal Appeals (CCA) found that the definitions of “intoxicated” do not describe an act or omission.

Accordingly, the CCA reversed and vacated the judgment of the court of appeals and remanded the case to the trial court.

DWI—DEFINITION

A person commits the offense of “driving while intoxicated” if he is intoxicated while operating a motor vehicle in a public place. *State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].

DWI—INTOXICATED-DEFINITION

The Texas Penal Code presents two definitions of “intoxicated.” Intoxicated means: 1) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, or other substances in the body; or 2) having an blood alcohol concentration of 0.08 or more. *State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].

NOTICE—REQUIREMENTS

The Texas and United States Constitutions grant a criminal defendant the right to fair notice of the specific charged offense; and the Code of Criminal Procedure requires that the offense must: 1) be set forth in plain and intelligible words, and 2) include everything that the State is required to prove. *State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].

CHARGING INSTRUMENT – METHOD OF ANALYSIS

In analyzing whether a charging instrument provides a defendant adequate notice, notice jurisprudence makes it clear that courts must engage in a two-step analysis: 1) the court must identify the elements of an offense; and 2) when the Legislature has defined an element of the offense that describes an act or omission, a court must ask whether the definitions provide alternative manners or means in which the act or omission can be committed. If the answer to the second inquiry is “yes,” a charging instrument will supply adequate notice only if, in addition to setting out the elements of an offense, it also alleges the specific manner and means of commission that the State intends to rely on at trial. *State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].

NOTICE—CRIMINAL INFORMATION

An information is sufficient if it charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant. This degree of certainty gives the defendant notice of the particular offense with which

he has been charged and will enable the court, on conviction, to pronounce the proper judgment.

***State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].**

NOTICE—STATUTORY LANGUAGE

In most cases, a charging instrument that tracks the statutory text of an offense is sufficient to provide a defendant with adequate notice. If the statutory language is not completely descriptive, the charging instrument does not provide a defendant with adequate notice. ***State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].**

NOTICE—STATUTORY LANGUAGE-WHEN INSUFFICIENT

Statutory language is insufficient to support a charging instrument when the statute defines a term in such a way as to create several means of committing an offense, and the definition specifically concerns an act or omission on the part of the defendant. ***State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].**

NOTICE—INSUFFICIENT STATUTORY LANGUAGE

If the prohibited conduct is statutorily defined to include more than one manner or means of commission, the State must, upon timely request, allege the particular manner or means that it seeks to establish. ***State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].**

NOTICE—INSUFFICIENT STATUTORY LANGUAGE – DE NOVO REVIEW

Because the sufficiency of a charging instrument is a question of law, the appellate courts may review a decision to quash *de novo*. ***State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].**

ELEMENTS OF AN OFFENSE - DEFINITION

The Texas Penal Code defines the elements of an offense as the forbidden conduct, the required culpability, the required result, and the negation of an exception to the offense. ***State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].**

!DWI—ELEMENTS – TYPE OF INTOXICANT!

The type of intoxicant used is not an element of a DWI offense. The mere fact that the DWI statute defines intoxication separately does not automatically elevate the type of intoxicant used to the status of an element of the offense. ***State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].**

DWI—ELEMENTS

The definitions of “intoxicated” in the Texas Penal Code do not concern an act or omission and do not create two different manners and means of committing DWI. Accordingly, the definitions of “intoxicated” are evidentiary and need not be alleged in a charging instrument. *State v. Barbernell*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-0867-07, 07/02/08].

Ex Parte Forward, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75705, 07/02/08].

KELLER, P.J., *delivered the opinion of the Court in which WOMACK, KEASLER, HERVEY, and COCHRAN, JJ., joined.* JOHNSON, J., *filed a dissenting opinion in which MEYERS, PRICE, and HOLCOMB, JJ., joined.*

FACTS: In 1992, defendant was convicted of aggravated robbery and sentenced to eight years imprisonment. While on mandatory supervision release, defendant committed the offense of possession of a firearm by a felon; he was convicted and sentenced to ten years imprisonment. The trial court ordered the firearm sentence to run consecutively with the robbery sentence. In a post-conviction habeas corpus petition, defendant claimed that he is eligible to be released on mandatory supervision because the sentences were added together and treated as one sentence. The Court of Criminal Appeals (CCA) denied relief, finding that because one of the sentences was ineligible for mandatory supervision he could never be released to mandatory supervision on that sentence.

PAROLE—ELIGIBILITY CALCULATION

After September 1, 1987, parole eligibility is calculated separately for each sentence and mandatory supervision eligibility is calculated only for the final sentence in the series. *Ex Parte Forward*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75705, 07/02/08].

PAROLE—MANDATORY SUPERVISION

In 1987, the Legislature made certain offenses ineligible for mandatory supervision. This bar to mandatory supervision eligibility has been extended to offenders who have been previously convicted of an offense on the ineligibility list, even if the sentence being served is not for an offense on that list. *Ex Parte Forward*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75705, 07/02/08].

PAROLE—MANDATORY SUPERVISION—SAVINGS CLAUSE

The savings clause applicable to the mandatory supervision guidelines requires the pre-1987 law to be applied to determinations of *when* an inmate is eligible for mandatory supervision. However, the savings clause also requires the use of post-1987 law to determine

whether the inmate is eligible for mandatory supervision. *Ex Parte Forward*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75705, 07/02/08].

STATUTORY INTERPRETATION—CONCURRENT AMENDMENTS

When interpreting a statute, the reviewing court must generally presume that the entire statute is intended to be effective. When statutory amendments are made in the same legislative session and do not reference each other, the amendments shall be harmonized, if possible, so that effect is given to each. *Ex Parte Forward*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75705, 07/02/08].

STATUTORY INTERPRETATION—CODE OF CRIMINAL PROCEDURE

The Texas Code of Criminal Procedure requires that its provisions be liberally construed so as to attain the legislative objective of the prevention, suppression, and punishment of crime. *Ex Parte Forward*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75705, 07/02/08].

PAROLE—MANDATORY SUPERVISION

Because the Legislature specifically sought to deny the benefit of mandatory supervision to offenders who committed certain types of offenses, the savings clause of the Texas Code of Criminal Procedure is given effect by denying mandatory supervision for a period of time represented by all sentences that are ineligible for mandatory supervision. *Ex Parte Forward*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75705, 07/02/08].

Sims v. State, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

PRICE, J., *delivered the opinion for a unanimous Court.*

FACTS: A jury convicted defendant of aggravated assault with a deadly weapon and sentenced her to four years imprisonment. During the punishment phase of trial and over defendant's objection, the State introduced character evidence based on a single incident. The court of appeals found that the evidence was properly admitted and affirmed the trial court. Finding no error in admitting the evidence, the Court of Criminal Appeals (CCA) affirmed the court of appeals.

EVIDENCE—BIFURCATED TRIALS

In 1965, the Legislature created a bifurcated criminal trial process with separate guilt / innocence and punishment phases. Such a bifurcated procedure was designed to take the blindfolds off the judge and jury when assessing punishment. Admission of evidence relevant to the punishment determination is no longer constrained by considerations of what would be

inadmissible at the guilt phase of trial. *Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

EVIDENCE—CHARACTER EVIDENCE

During the guilt phase of trial, the Texas Rules of Evidence generally forbid the introduction of character evidence. *Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

EVIDENCE—CHARACTER EVIDENCE

While character evidence offered to prove conduct or a state of mind conforming to that character is relevant during the guilt phase of trial, the rules of evidence generally prohibit its use because such evidence is generally laden with prejudice, distraction, time consumption, and surprise. *Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

EVIDENCE-RELEVANCE-PUNISHMENT

Evidence that is “relevant” to a punishment determination is simply that evidence that will assist the fact finder in deciding the appropriate sentence in a particular circumstance. *Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

EVIDENCE—CHARACTER EVIDENCE

Character evidence is generally inadmissible because it weighs too much with the jury and over persuades them to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. *Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

EVIDENCE—CHARACTER EVIDENCE—SPECIFIC INSTANCES

To be qualified to give opinion testimony at the guilt phase of trial, the witness must be familiar with the underlying facts or information on which the opinion is based. Rule 405 of the Texas Rules of Evidence, however, does not allow a character witness to testify on direct examination about any specific instances of conduct that led to the formulation of his opinion. Inquiry into specific instances of conduct is permissible only: 1) to cross-examine a character witness; or 2) when a person’s character is an essential element of a charge, claim, or defense. *Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

EVIDENCE—CHARACTER EVIDENCE—EXTRANEOUS OFFENSES

Evidence of extraneous offenses is generally inadmissible during the guilt phase of trial to prove conformity because the evidence is inherently prejudicial, tends to confuse the issues,

and forces the accused to defend himself against charges that are not part of the present case.

***Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].**

EVIDENCE – CHARACTER-OPINION/EXTRANEOUS OFFENSE

Both character evidence in the form of opinion testimony and extraneous evidence testimony may be admissible at trial, even if the opinion testimony is based on facts brought forth from the extraneous offense testimony. ***Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].**

EVIDENCE—CHARACTER EVIDENCE—EXTRANEOUS OFFENSES

Rule 404(b) of the Texas Rules of Evidence allows the admission of extraneous-offense evidence at the guilt phase of trial for specific, non-character conformity purposes, such as motive, opportunity, intent, preparation, or common plan. ***Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].**

EVIDENCE—CHARACTER EVIDENCE—SENTENCING

The Texas Code of Criminal procedure allows admission of any evidence that the trial court deems relevant to sentencing. Relevant sentencing evidence includes, but is not limited to, both character evidence in the form of opinion testimony as well as extraneous offense evidence. ***Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].**

EVIDENCE—CHARACTER EVIDENCE—SENTENCING

Relevancy of evidence in sentencing is simply a question of what is helpful to the jury in determining the appropriate sentence for a particular defendant in a particular case. ***Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].**

EVIDENCE—CHARACTER EVIDENCE—COMMUNITY SUPERVISION

The trial court may reasonably deem any character trait that pertains to the defendant's suitability for community supervision to be a relevant matter. ***Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].**

EVIDENCE—CHARACTER EVIDENCE

During the punishment phase of trial, a witness's opinion of the defendant's character must be based on enough personal association with the defendant so that it is rational to infer that his opinion of the defendant's character is based on the witness's personal experience with the defendant. ***Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].**

EVIDENCE—CHARACTER EVIDENCE

Community reliability is only a factor in assessing the admissibility of character evidence in the form of reputation testimony. Opinion testimony is based solely upon the specific witness's perception of the person in question. *Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

EVIDENCE—CHARACTER EVIDENCE—SPECIFIC MISCONDUCT

The Texas Code of Criminal Procedure expressly allows admission of specific misconduct evidence during the punishment phase of trial. *Sims v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1575-07, 07/02/08].

Ex Parte Williams, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75721, 07/02/08].

Per curiam.

FACTS: In 1982, defendant was convicted of murder and sentenced to 25 years imprisonment. In 1990, while he was incarcerated, defendant was convicted of possession of a deadly weapon in a penal institution and aggravated assault of a correctional officer; he was sentenced to a single 40-year cumulated sentence. Defendant filed a post-conviction habeas petition in which he claimed TDCJ is improperly calculating his time credit and improperly denying him release on mandatory supervision. Finding defendant to be eligible for mandatory supervision on his original conviction, the Court of Criminal Appeals (CCA) granted relief. The CCA held that the sentences should be served consecutively and that defendant's mandatory release should be recalculated including all three sentencing, including his mandatory – supervision - eligible sentence and his mandatory-supervision-ineligible sentences.

MANDATORY SUPERVISION – ELIGIBILITY

An inmate's eligibility for mandatory supervision is controlled by the mandatory-supervision statute in effect on the date of the commission of the offense for which the inmate is incarcerated. *Ex Parte Williams*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [AP-75721, 07/02/08].

Warner v. State, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].

WOMACK, J., *delivered the opinion of the Court in which* MEYERS, JOHNSON, KEASLER, HERVEY, HOLCOMB, *and* COCHRAN, JJ., *joined*. KELLER, P.J., *dissented*.

FACTS: A jury convicted defendant of felony escape. Defendant wrested free from an officer who was trying to arrest him. Finding the evidence legally insufficient, the court of appeals

reversed the conviction and acquitted defendant. The Court of Criminal Appeals (CCA) agreed and affirmed the court of appeals.

OFFENSES— MISDEMEANOR ESCAPE

A person commits the misdemeanor offense of escape if he escapes from custody when he is: 1) under arrest, charged with, or convicted of an offense; or 2) in custody pursuant to a lawful order of a court. *Warner v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].

OFFENSES—FELONY ESCAPE-3RD DEGREE

A person commits the third-degree felony offense of escape if he escapes from custody when he is: 1) under arrest for, charged with, or convicted of a felony; or 2) is confined in a secure correctional facility; or 3) is confined to a secure correctional facility as defined by the family code, other than a halfway house operated or under contract with the Texas Youth Commission; or 4) in the custody of a juvenile probation officer for violating an order imposed by the juvenile court under the Family Code. *Warner v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].

OFFENSES—FELONY ESCAPE – 2ND DEGREE

A person commits the second-degree felony offense of escape if he is punishable of another offense of escape and causes bodily harm to effect his escape. *Warner v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].

OFFENSES-FELONY ESCAPE – 1ST DEGREE

A person committed the first degree felony offense escape if, to affect his escape, he: (1) causes serious bodily injury; or (2) uses or threatens to use a deadly weapon. . *Warner v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].

OFFENSES-FELONY ESCAPE – 2007 AMENDMENT

In 2007, the Legislature amended the escape statute as follows: A person commits an offense if he escapes from custody when he is: (1) under arrest for, charged with, or convicted of an offense; (2) in custody pursuant to a lawful order of a court; (3) detained in a secure detention facility, as that term is defined by Section 51.02, Family Code; or (4) in the custody of a juvenile probation officer for violating an order imposed by the juvenile court under Section 51.02, Family Code. *Warner v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].

OFFENSES—ESCAPE—DEFINITION OF ARREST

For purposes of the escape statute, an “arrest” is complete when a person’s liberty of movement is successfully restricted or restrained, whether this restraint is achieved by an officer’s physical force or the suspect’s submission to the officer’s authority. An arrest is complete only if a reasonable person in the suspect’s position would have understood the situation to constitute a restraint on freedom of movement of the degree which the law associates with formal arrest. *Warner v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].

OFFENSES—ESCAPE—DEFINITION OF ARREST

An escape can occur only after an officer has successfully restrained or restricted a suspect. *Warner v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].

CUSTODY—ARREST

Arrest is a subset of custody. A person may be in custody while being “charged with,” “convicted of an offense,” “pursuant to a lawful order of a court,” or while “detained in a secure detention facility.” *Warner v. State*, ___ S.W.3d ___ (Tex. Crim. App. 2008) [PD-1644-06, 07/02/08].