the Jasuta / Schulman report

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TIBA's Case of the Week

Houston / First Court of Appeals

Case Name: ***Corey Lewis Campbell v. The State of Texas***

- **OFFENSE**: Murder
- **COUNTY**: Harris
- **C/A CASE No**. 01-23-00389-CR
- **DATE OF OPINION**: December 16, 2025 **OPINION**: N/A
- **DISPOSITION**: Rehearing and Reconsideration *En Banc* Denied
- **TRIAL COURT**: 232nd D/C; Hon. Josh Hill
- **LAWYERS**: Daucie Schindler (Defense); Melissa Stryker (State)

(**Background Facts**): In its unpublished opinion on original submission, the Court of Appeals found that the trial court did not err by allowing the bishop of Appellant's mother's church to testify that Appellant had admitted the killing and subsequent flight to North Carolina, even though those statements are privileged under North Carolina law, and did not err by refusing to submit jury questions on the lesser-included offenses of criminally negligent homicide and manslaughter. On December 15, 2025, in two unpublished Orders, the Court denied Appellant's motion for rehearing and motion for *en banc* reconsideration.

Concurring / Dissenting Opinions: Justice David Gunn filed an unpublished opinion concurring in the denial of *en banc* reconsideration in which he pointed out that, although the Court acts through three-member panels, it "commonly receives" motions requesting the *en banc* "to revisit a panel's work." Then noting that such motions "fail so frequently, and often with such speed," he endeavors to educate the bar with some comments which may be helpful. He suggests that those "who would contemplate pursuing en banc reconsideration in this Court typically need to ask themselves two questions. First, what factors make such a request appropriate? Second, if the request is appropriate, how should it look? In his 7 page opinion, he endeavors to answer those questions.

Sidebars

(Tom Gray) I would interpret the manner in which Justice Gunn expresses his frustration in two sentences: "*Read the rules. If you do not meet the limitations in the rule, do not file a motion for en banc consideration*." As a member of the Supreme Court Advisory

Committee (SCAC) I was there for the discussion when the rule was recently amended. The primary argument for amending the rule was to discourage the filing of motions for *en banc* consideration. There are times when they are appropriate but the vast majority are a waste of the electrons and time spent and you run the risk of having a justice glaze over a good point in a motion for rehearing by also tossing out a frivolous motion for *en banc* consideration. The complaint from the multi-panel courts at the SCAC meetings was that while the filing of the motion was common, few were justified. Obviously the change in the rule has not stemmed the flow of filings and Justice Gunn would like to change that or at least get better motions. He has a reputation as a legal scholar and is well regarded as a civil appellate advocate and esteemed CLE speaker. In his continuing quest to educate the appellate bar, albeit a new audience for him, the criminal appellate geeks, he has tried to give us a template of what such a motion should look like. While it might be a nominal violation of the Nathan Hecht rule that we do not write rules by opinion, it does remind me of the effort I once made to provide criminal appellate attorneys with a template for an "***Anders***" brief that I thought was helpful. My effort was met with a published disagreement by another justice on the court and I do not recall the proposed form, published in what is essentially an obscure text, ever being used by any other appellate attorneys thereafter. As a former appellate court justice I will say that it works better if you read the rules and abide by them. Some justices on your panel will take notice. And while I admire Justice Gunn's effort, I must recognize the reality that we are a hard headed bunch and probably file the motion for reasons other than the criteria expressed in the rule. But I will suggest that if you have a situation in which you drew a concurring or dissenting opinion from the original panel, such a motion may be useful to provide the outlier with information and arguments to potentially get the other justices on the panel to flip, or bring other justices on the court into the discussion and possibly into deciding the issue.

(**John G. Jasuta**) This advisory opinion should be published.

(**Stanley Schneider**): Justice Gunn's concurring opinion is very well written and presents important considerations for practitioners in drafting motions for rehearing and requests for *en banc* consideration of the case. The rules of appellate procedure provide a guide for drafting briefs and pleadings. It is rare that we get guidance on what criteria judges use in reviewing our pleadings.

(**Greg Sherwood**): While Justice Gunn, who presented several CLE presentations while in private practice, may have wanted to instruct the bar by writing his concurring opinion, he failed to do that because this is an unpublished opinion, and very few practitioners read unpublished criminal opinions. (Former CCA Judge Slaughter also made this error with many of her early unpublished opinions lamenting the failure of attorneys to timely provide their clients with copies of the opinion and instructions on how to file a *pro se* petition for discretionary review, and corrected that by making her later opinions on this subject published). Civil unpublished opinions do have precedential value, and may be read by civil appellate practitioners, but unpublished criminal opinions do not, meaning most lawyers

won't read them. This concurring opinion does have good suggestions on how one should draft an *en banc* rehearing motion, and his opinion should be redesignated as a published opinion.

(**David A. Schulman**) Justice Gunn's opinion is a very good teaching tool, which is why John and I decided to make it the Case of the Week. Personally, I agree with Greg and John that it should have been a published opinion, and believe that everyone who accepts representation on appeals of criminal cases should read it.