the Jasuta / Schulman report

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TIBA's Case of the Week

Fifth Court of Appeals

Case Name: ***Demond Depree Bluntson v. The State of Texas***

- **OFFENSE**: Aggravated Assault of a Public Servant
- **COUNTY**: Webb
- **C/A CASE No**. 05-18-00360-CR
- **DATE OF OPINION**: May 5, 2026 **OPINION**: Justice Gino Rossini
- **DISPOSITION**: Conviction Reversed
- **TRIAL COURT**: 49th D/C; Hon. Jose Lopez
- **LAWYERS**: Hilary Sheard (Defense); David L. Reuthinger (State)

[**Background Facts**] Appellant was holed-up in a motel room at the Holiday Inn in Laredo with two children he had abducted. Patrol officer Esteban Reyes was dispatched to the Holiday Inn for the welfare check. He arrived at the hotel at 11:49 a.m. and confirmed with the front desk clerk that Brandy Cerny was a registered guest of Room 1408 and had been since June 17, 2012. Reyes and the desk clerk went to Room 1408 and knocked on the door multiple times. They identified themselves as "front desk" and "Laredo Police" and explained that they wanted to talk. No one responded to their knocks. Both men heard, from inside the room, a male voice "mumbling words," small children "whimpering" and crying, and then the sound of water running. Reyes again identified himself as a police officer and asked if the children were okay. Again, no one responded. Feeling that "something was wrong" and fearing for the safety of the missing persons, Reyes instructed the clerk to open the door with the master key card, which the clerk had obtained from housekeeping. The key unlocked the door, but the door did not open because the inside security chain was latched. Reyes radioed for backup and the desk clerk went downstairs to get approval from his supervisor to break the security chain, if necessary, which she gave. Officer Raul Medina was dispatched to the hotel as backup. He arrived at the Holiday Inn at 12:03 p.m. and went to Room 1408, where Reyes briefed him on the situation. The officers again attempted to contact the room's occupants. They knocked, announced themselves as Laredo Police, and explained that they were checking on Brandy and the children. The only response was a male voice stating that "there's [sic] kids inside." Believing that the children in the room were in danger and that the situation was an emergency, the officers directed the desk clerk to cut the chain. The desk clerk contacted maintenance to bring bolt cutters to the room. When maintenance arrived, the desk clerk again unlocked the door with the master key, and the maintenance worker cut the security chain. Medina attempted to push the door open, but

something was blocking the door. At that point, a gunshot rang out from inside the room. A bullet came through the door about five inches below the peephole, narrowly missing the officers. The officers and hotel employees took cover. Less than a minute later, they heard four more shots. The officers radioed for additional backup and a supervisor. After backup officers and a supervisor arrived at the hotel, the police forced entry into the room. Officer Heriberto Avalos kicked at the door with his legs while lying on his back on the floor. When the opening was large enough, Avalos made his way into the room past a furniture barricade. He found Appellant lying on the floor with the two children. A black Hi-Point nine-millimeter Luger handgun was on the second box spring. Appellant had a laceration on the top of his head. Both boys had been shot in the head. Twenty-one-month-old D.B. had been shot in the forehead over his left eye and was dead; six-year-old J.T. had been shot in the right temple but was still alive. Avalos apprehended and handcuffed Appellant and then administered CPR to J.T., who was eventually airlifted to the hospital where he died.

[**Procedural History**] In May of 2016, Appellant was convicted of the instant aggravated assaults and capital murder. After abating the appeal and remanding the cause to the trial court to conduct a retrospective competency review [***Bluntson I***, AP-77,067 (Tex.Cr.App. 06/30/2021)(not designated for publication)], the Court of Criminal Appeals reinstated the appeal and affirmed the trial court's judgment of conviction for the capital murder counts but reversed the death sentences and remanded the cause for a new punishment trial. ***Bluntson v. State***; 728 S.W.3d 87 (Tex.Cr.App. 2025) (see 𝔊𝔖, Vol. 33, No. 18; 05/12/2025)(***Bluntson II***).

[**Ed. Note**] On return to the trial court Appellant was sentenced to life without parole. Additionally, the opinion in ***Bluntson II*** resolved all pending issues in the instant case except Appellant's 13th and 14th claims].

[𝔊𝔖 **25 Charging Instruments / Amendments**]: The original indictment alleged aggravated assault with a deadly weapon. Prior to trial, the State moved to amend the indictment so as to include an "on a peace officer" allegation. The defense argued that the allegations on the face of the indictment determine the accusation that the grand jury has heard, two counts of aggravated assault against a named individual, not two counts of aggravated assault against a public servant, and that "Article 1, Section 10, of the Texas Constitution requires that the accusation appear on the face of the indictment." The State argued that the defense, in its previously filed motion to suppress evidence, had referred to counts III and IV as being charges for aggravated assault of a public servant and thus had acknowledged that the State was pursuing those charges. The court allowed the amendment, and, on appeal, in his 14th point of error, Appellant asserts that the trial court erred in granting the State's motion to amend the indictment to add elements increasing the punishment to correspond with first-degree-felony aggravated assault against a public servant, rather than the original indictment's allegations of second-degree-felony aggravated assault.

Holding:"[W]here an indictment facially charges a complete offense, the State is held to the offense charged in the indictment, regardless of whether the State intended to charge that offense." ***Thomason v. State***, 892 S.W.2d 8 (Tex.Cr.App. 1994). The Court of Criminal Appeals reaffirmed this rule in ***Delarosa v. State***, 677 S.W.3d 668 (Tex.Cr.App. 2023)(see 𝔊𝔖, Vol. 31, No.

35; 10/09/2023), holding that the body of the indictment, not the caption, controls. *** The Court of Criminal Appeals more recently addressed an accused's constitutional right to grand-jury screening in ***Crawford v. State***, 710 S.W.3d 774 (Tex.Cr.App. 2025)(see 𝔊𝔖, Vol. 33, No. 16; 04/28/2025). *** As we have noted, (Appellant)'s point of error fourteen rests squarely on application of his right under Texas Constitution article I, section 10 to have a grand jury pass upon the question of whether there is probable cause to believe that he committed a particular offense with the elements necessary to increase the punishment grade for that offense. As addressed below, because this point challenges the trial court's order granting the State's motion to amend counts III and IV, it also involves application of Article I, section 12 of the Texas Constitution and article 28.10 of the Code of Criminal Procedure. *** [**Merits**] In this case, the factual allegations in the original indictment were facially complete in alleging the base offense of aggravated assault; so in the absence of an amendment, the State was bound to prove the base offense and not aggravated assault of a public servant as indicated on the indictment's back. *** In seeking the amendment to add that (1) (Appellant) knew that Raul Medina and Esteban Reyes were public servants, and (2) the assault occurred while Medina and Reyes were lawfully discharging an official duty . . . the State bypassed the grand jury's screening and authorization of the additional elements necessary for prosecution for an enhanced grade of punishment for aggravated assault. *** We therefore conclude that the trial court erred in granting the motion to amend the indictment. [**Harm Analysis**] Next, we must determine whether that error warrants reversal. The appellate rules set forth separate harm-analysis standards for constitutional and "other" errors. (Appellant) contends he was denied his right under the Texas Constitution to have a grand jury determine whether there was probable cause to believe that (1) (Appellant) knew that Raul Medina and Esteban Reyes were public servants and (2) Medina and Reyes were lawfully discharging a public duty. As discussed above, by amending the indictment to allege these additional elements increasing the punishment grade, the State changed a facially complete original indictment for second-degree aggravated assault into an amended indictment containing additional elements to charge first-degree aggravated assault. (Appellant) was denied his constitutional right to a grand jury's authorization of the added elements. Accordingly, we apply appellate rule 44.2(a) in conducting our harm analysis. *** We conclude that the order granting the motion to amend the indictment was reversible error, so we must and do sustain (Appellant)'s fourteenth point of error. Sustaining that point of error requires that we reverse the amended judgment of conviction on counts III and IV and remand this case to the trial court for further proceedings consistent with this opinion.

[**Ed. Note**] The Court of Appeals held that, in light of their disposition of the fourteenth point of error, the thirteenth point of err, "in which he complains, on Confrontation Clause grounds, of the trial court's permitting a state psychologist to testify by video link in the punishment phase of his trial," in moot.

Sidebars

[**Joseph Varela**] Do not confuse the issue in this case as one of notice. A defendant has a right to notice in the indictment, but he also has a separate Fifth Amendment right to have a grand jury finding on the elements of his charge. See ***Woodard v. State***, 322 S.W.3d 648

(Tex.Cr.App. 2010)(see 🕮, Vol. 18, No. 39; 10/11/2010). Bluntson's case was reversed because the State was allowed to amend an indictment to add an additional element which made it allege a greater offense, one which carried a higher range of punishment. The grand jury had originally indicted Bluntson for second-degree aggravated assault. The State was permitted, over objection, to amend the indictment to add on the element of public servant, which made it a first degree. This violated Bluntson's constitutional right to have a grand jury pass on all the elements of the indictment. Watch for amendments to indictments that charge a new or different crime --- watch also that the jury charge doesn't authorize a conviction for a false "lesser" or some other offense that wasn't charged. ***Alvarez v. State***, 570 S.W.3d 792 (Tex.App. - Houston [1st] 2018)[see 🕮, Vol. 26, No. 35; 09/03/2018] .

[**Shana Stein Faulhaber**] Issue 13 may have been declared moot by the Fifth, but some of us have a soft spot for abandoned dogs and abandoned constitutional questions. It's me. I'm some people. So let's talk about it. The pandemic normalized remote testimony so thoroughly that we almost stopped asking whether it's actually okay. Convenience became efficiency, efficiency became routine, and routine quietly elbowed confrontation clean out of the room. If both sides agree to remote testimony, fine. So be it. But when the accused doesn't agree, the Sixth Amendment deserves more respect than a stable Wi-Fi connection. There's a reason trials aren't conducted by affidavit. If words alone were enough, both sides could simply email in questions and call it a day. But confrontation isn't satisfied by words alone. Jurors evaluate hesitation, posture, eye contact, defensiveness, confidence, and the thousand tiny human signals that do not transmit cleanly through a webcam. Cross-examination isn't just intellectual sparring; it's presence. There is power in standing in the ring with a witness and forcing accountability in real time. And let's be real: people plumb don't act right on the internet.

[**Michael F. Stauffacher**] I believe the appellate court's opinion is spot on. This is not an amendment but an addition of key elements that not only raise the offense level, but change what must be proved at trial. Crucial elements never considered by the grand jury in this case. The opinion follows the holding and spirit of the CCA's reasoning in Crawford v. State. There was no allegation in the indictment before the grand jury that the complainants were peace officers, or police officers, lawfully discharging a public duty, or that the defendant knew they were. The State unconstitutionally added layers to the indictment cake after it had been baked before the grand jury and the appellate court correctly called foul.