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⚖ Vol. 18, No. 22; June 14, 2010

Case Name: [Ronald Lee Wilson v. The State of Texas](#)

- OFFENSE: Capital Murder - Life Sentence
- COUNTY: Bexar
- COURT OF APPEALS: San Antonio 2009
- C/A CITATION: 277 S.W.3d 446
- C/A RESULT: Conviction Reversed
- CCA. CASE No. PD-0307-09 DATE OF OPINION: June 9, 2010
- DISPOSITION: State's Motion for Rehearing Denied
- OPINION: Per Curiam VOTE: 8-1
- TRIAL COURT: 290th D/C; Hon. Sharon MacRae
- LAWYERS: [Roderick Glass](#) (Defense); [Allison Fox](#) (State)

Ed Note: (Procedural History) The Court of Appeals reversed this conviction in 2009 (see ⚖, Vol. [17, No. 1](#); 01/12/2009). The Court of Criminal Appeals originally affirmed the Court of Appeals' action in March of this year (see ⚖, [Vol. 18, No. 9](#); 03/08/2010), then the State filed motion for rehearing.

⚖ 340 Preservation of Error: Although the Court denies the State's motion for rehearing, it proceeds to discuss the State's first ground for rehearing, alleging the Appellant's failure to preserve his complaint in the trial court.

Holding: Appellant properly preserved a complaint that the officer violated Sec. 37.10, P.C., by falsifying a legitimate government document. Only in Appellant's brief did he mention the more inclusive Sec. 37.09, relating to the tampering with physical evidence. Yet, the court of appeals shifted the ground by relying on Sec. 37.09, rather than 37.10. The State did not raise any preservation issue in its PDR, instead seeking review of the court of appeals' holding. It is true that the more recent "preservation is a systemic requirement" line of cases, under which it is now the duty of the appellate courts to ensure that a claim is preserved in the trial court before addressing it, has eroded the former rule such that the State's failure to raise preservation to the court of appeals is no longer a bar to raising it for the first time on PDR. However, even if the State's motion for rehearing was granted, the result would be to remand the case to the court of appeals to address the same exclusionary-rule claim using Appellant's preserved Sec. 37.10 basis rather than the Sec. 37.09 basis - i.e., deception in the creation of apparent evidence and its use to influence a suspect to give a confession does not violate the Texas exclusionary rule, regardless of whether what is created is a fake government document or some other fake evidence. There seems little point in expending scarce judicial resources in that endeavor.

Concurring / Dissenting Opinions: Judge Keasler dissented and was joined by Presiding Judge Keller and Judge Hervey. He disagreed with the majority that granting rehearing is "of no consequence" under the circumstances of the case. The State's failure to call the court of appeals' attention to the failure to preserve the claim for review does not change the fact that the alleged error under Sec. 37.09 was not properly preserved, and the Court of Appeals was obligated to address preservation in the first instance.