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Voice for the Defense Volume 48, No. 4 Edition

Editor: Michael Mowla

From Editor Michael Mowla:

1.?I summarize each opinion in a manner that allows readers to **generally** use this SDR instead of reading every opinion.

2.?If you determine that a summarized opinion is relevant to one of your cases, I urge you to read the opinion and **not** rely solely upon these summaries.

3.?The summaries reflect the facts and relevant holdings and do **not** reflect **my opinion** of whether the cases correctly: (1) recite the facts presented at trial; or (2) apply the law. My opinions (if any) are preceded by ?Editor?s Note.?

4.?This SDR is for you. Send me suggestions on how I may improve it.

Supreme Court of the United States

***Nielsen v. Preap*, No. 16-1363, 2019 U.S. LEXIS 2088 (U.S. March 19, 2019) (slip op.) [8 U.S.C. §?1226(c) does not require immediate arrest to apply]**

Under 8 U.S.C. §?1227(a), aliens may be removed if they fall within one or more classes of deportable aliens. Under 8 U.S.C. §?1226(a), the Secretary of Homeland Security may arrest and hold an alien pending a decision on whether the alien is to be removed, but the Secretary has the discretion either to detain the alien or to release him on bond or parole. If the alien is detained, he may seek review of his detention by DHS officer and then by an immigration judge per 8 CFR §§?236.1(c)(8) & (d)(1), 1003.19, 1236.1(d)(1). The alien may secure his release if he can convince the officer or immigration judge that he poses no flight risk or danger to the community.

Under 8 U.S.C. §?1226(c), if there is concern that certain deportable criminal aliens continue to engage in crime and fail to appear for their removal hearings, the Secretary must hold them without a chance to apply for release on bond or parole. Such aliens may be released only if the Secretary decides that release is

necessary to provide protection for witnesses or others cooperating with a criminal investigation, or their relatives or associates.

For 8 U.S.C. §?1226(c) to apply, an ?immediate arrest? is not necessary. Criminal aliens who are not arrested immediately upon release are not exempt from mandatory detention under 8 U.S.C. §?1226(c) because both of §?1226(c)?s mandates for arrest and for release apply to any alien linked with a predicate offense identified in 8 U.S.C. §?1226(c)(1)(A)?(D) regardless of exactly when or even whether the alien was released from criminal custody.

United States Court of Appeals for the Fifth Circuit

***United States v. Salinas*, Nos. 18-40361 & 18-40407, 2019 U.S. App. LEXIS 8327 (5th Cir. March 20, 2019) (designated for publication) [But-for causation, enhancement under U.S.S.G. §?2L1.1]**

In deciding whether an enhancement applies, a district court is permitted to draw reasonable inferences from the facts, and these inferences are fact-findings reviewed for clear error. Under the clearly erroneous standard, the Fifth Circuit will uphold a finding so long as it is ?plausible in light of the record as a whole.? The government must prove sentencing enhancements by a preponderance of the evidence. The Fifth Circuit may affirm an enhancement on any ground supported by the record.

Under U.S.S.G. §?2L1.1, if any person died in the course of smuggling, transporting, or harboring an unlawful alien, a 10-level enhancement may be applied. The defendant?s conduct must simply be the but-for cause of the death, not its proximate cause.

Under *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 346?347 (2013), but-for causation requires the government to show merely that the harm would not have occurred in the absence of (but-for) the defendant?s conduct.

Editor?s note: Be sure to read the opinion for a full understanding of the holding and this note. Martinez could have had the same heart attack merely by sitting down. He inserted himself into the scene by illegally entering the country and hired the appellants to transport him (i.e., he was not kidnapped, nor was he an ?innocent bystander? like a person whose vehicle was struck by persons fleeing CBP). Martinez was 28, an age at which a heart attack is not reasonably foreseeable. Nor could the appellants have reasonably foreseen that Martinez was susceptible to the elements or extreme ?excitement? that may cause him to die from exposure or a heart attack (as a child or elderly person may be). Thus, the actions of the appellants may have been a concurrent cause of Martinez?s death, not the ?but-for? cause. Perhaps correlation indeed implies causation.

***In re U.S. Bureau of Prisons*, No. 18-50512, 2019 U.S. App. LEXIS 7560 (5th Cir. March 14, 2019) (designated for publication) [Contempt orders; BOP calculates back-time credit]**

Under 28 U.S.C. §?1291, civil contempt orders are not appealable final orders. Under *In re Grand Jury Subpoena for Attorney Representing Criminal Defendant Reyes-Requena*, 926 F.2d 1423, 1429 (5th Cir. 1991), an exception exists when the order is not part of continuing litigation since no underlying case awaits final resolution. A decision is final when it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. A civil contempt order is not final for purposes of appeal unless: (1) a finding of contempt is issued, and (2) an appropriate sanction is imposed.

A district court?s ?inherent power to sanction contempt is not a broad reservoir of power ready at an imperial hand, but a limited implied power squeezed from the need to make the court function.? Inherent powers must be exercised with restraint and discretion.

Contempt power is not an appropriate means for a district court to express its disagreement with a federal statute. Threatening government officials with contempt sanctions for complying with federal law is a clear abuse of discretion.

Under 18 U.S.C. §?3585(b) (Sentencing Reform Act of 1984), a defendant shall be given credit for time spent in official detention prior to the date the sentence commences that has not been credited against another sentence and is a result of: (1) the offense for which the sentence was imposed; or (2) any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed.

Under *United States v. Wilson,* 503 U.S. 329, 334 (1992), 18 U.S.C. §?3585(b) does not authorize a district court to compute the credit at sentencing. This responsibility belongs to the Attorney General acting through the BOP. The BOP?s procedures for calculating credit under §?3585(b) are set out in its Sentence Computation Manual.

If a defendant requests that the district court award credit for time served and the court purports to grant or deny this request at sentencing, because the district court lacks the authority to award or deny credit, the BOP is not bound by its decision.

A district court has residual authority to consider a defendant?s time in custody, so if it determines that BOP will not credit time served, the court can reduce the sentence under U.S.S.G. §?5G1.3(b) or §?5K2.23. The district court must calculate the sentence itself and cannot order BOP to award credit. A district court cannot increase a sentence to deny credit the defendant is otherwise entitled under §?3585(b).

Under *Setser v. United States,* 566 U.S. 231, 236 (2012), district courts have discretion to select whether sentences they impose will run concurrently or consecutively with respect to other sentences they impose or that have been imposed in other proceedings, including an anticipated but not yet imposed state sentence. The authority to choose a concurrent or consecutive sentence presupposes the existence of another sentence. If a prisoner completes his federal sentence before another sentence is imposed, under 18 U.S.C. §?3624(a), the BOP lacks the authority to hold him beyond his release date.

A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court?s order. Contempt findings must be supported by clear and convincing evidence that: (1) a court order was in effect, (2) the order required certain conduct by the respondent, and (3) the respondent failed to comply with the order. The district court?s factual findings are reviewed for clear error and underlying conclusions of law de novo.

Texas Court of Criminal Appeals

***Jones v. State*, No. PD-1289-17, 2019 Tex.Crim.App.LEXIS 289 (Tex.Crim.App. March 27, 2019) (designated for publication) [Tex. Rule Evid. 613(b) (Witness? Bias or Interest); harmful constitutional error under Tex. Rule App. Proc. 44.2(a)]**

Under *Alford v. United States,* 282 U.S. 687 (1931), the SCOTUS observed that counsel may not know in advance what pertinent facts may be elicited on cross-examination. Thus, it is necessarily exploratory and the rule that the examiner must indicate the purpose of his inquiry does not in general apply. It is the essence of a fair trial that reasonable latitude be given the cross-examiner even though he is unable to state what facts a reasonable cross-examination might develop. Prejudice occurs from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and credibility to a test, without which the jury cannot fairly appraise them. To say that prejudice can be established only by showing that the cross-examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential to a fair trial.

Under *Carroll v. State,* 916 S.W.2d 494, 497 (Tex.Crim.App. 1996), citing *Alford,* the TCCA held that the defendant should be granted a wide latitude even though he is unable to state what facts he expects to prove through his cross-examination. And under *Spain v. State,* 585 S.W.2d 705, 710 (Tex.Crim.App. 1979), the failure to affirmatively establish the fact sought does not prevent the cross-examination from having probative value in regard to the witness? credibility. An unbelievable denial of the existence of a fact can be more probative as to lack of credibility than an affirmative admission of the fact.

Under Tex. Rule Evid. 613(b) (Witness? Bias or Interest), when examining a witness about bias or interest, a party must first tell the witness the circumstances or statements that tend to show the bias or interest. If examining a witness about a statement?whether oral or written?to prove the witness? bias or interest, a party must tell the witness: (A) the contents of the statement; (B) the time and place of the statement; and (C) the person to whom the statement was made. There is no need, however, to show the written statement if a party uses the statement to prove bias or interest. However, the party must show it (upon request) to opposing counsel. The witness must be given the opportunity to explain or deny the circumstances or statements that tend to show the bias or interest. The witness? proponent may present evidence to rebut the charge of bias or interest. Extrinsic evidence of bias or interest is not admissible unless the witness is first examined about the bias or interest and fails to unequivocally admit it.

Under *Delaware v. Van Arsdall,* 475 U.S. 673 (1986), and Tex. Rule App. Proc. 44.2(a), where there is constitutional error, reviewing courts must reverse unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.

***Ex parte Lalonde*, No. WR-87,660-01, 2019 Tex.Crim.App.LEXIS 287 (Tex.Crim.App. March 27, 2019) (designated for publication) [False evidence must be material to warrant relief]**

Under *Ex parte Chabot,* 300 S.W.3d 768, 770?71 (Tex.Crim.App. 2009), and *Ex parte Ghahremani,* 332 S.W.3d 470, 478 (Tex.Crim.App. 2011), the Due Process Clause of the 14th Amendment is violated when the State uses materially false testimony to obtain a conviction regardless of whether it does so knowingly. The violation can be caused by false testimony elicited by the State or by the State?s failure to correct testimony it knows to be false. Even if no one contends that the prosecutors were aware that they were offering perjured testimony, perjured testimony is treated as ?knowingly used? if the witness was a member of the prosecution team. *Ex parte Napper,* 322 S.W.3d 202, 243 (Tex.Crim.App. 2010).

Under *Ex parte Weinstein,* 421 S.W.3d 656, 665 (Tex.Crim.App. 2014), the false evidence must be material, and the standard of materiality is the harmless error standard of *Chapman v. California,* 386 U.S. 18 (1967): Evidence is material (and harmful) unless it can be determined beyond a reasonable doubt that the testimony made no contribution to the defendant?s conviction or punishment. False testimony is material only if there is a reasonable likelihood that it affected the judgment of the jury. An applicant who proves by a preponderance of the evidence a due-process violation stemming from a use of material, false testimony necessarily proves harm because a false statement is material only if there is a reasonable likelihood that the false testimony affected the judgment of the jury. The applicant must still prove his habeas-corpus claim by a preponderance of the evidence, but in doing so, he must prove that the false testimony was material and thus it was reasonably likely to influence the judgment of the jury. An applicant relying on a due process false-testimony claim must show both materiality of the testimony and that the error in its use was not harmless if the defendant could have raised the claim in the trial court or on direct appeal. If the applicant could not have raised the matter at trial or on appeal, in a habeas proceeding, he must show materiality but need not show the error was not harmless.

***State v. Martinez,* No. PD-0878-17, 2019 Tex.Crim.App. LEXIS 237 (Tex.Crim.App. March 20, 2019) (designated for publication) [There is an expectation of privacy in blood that is drawn for medical purposes]**

There is no expectation of privacy in abandoned property. When a defendant voluntarily abandons property, he lacks stand-ing to contest the reasonableness of the search of the abandoned property. But merely discarding property is not the same as abandonment. Abandonment is a question of intent to be inferred from words spoken, acts done, and other objective facts and relevant circumstances, as a defendant must: (1) intend to aban-don property, and (2) freely decide to abandon the property. If a defendant intended to abandon the property, such abandonment is not voluntary if it is the product of police misconduct. When police take possession of property abandoned independent of police misconduct, there is no seizure under the Fourth Amendment.

Under the third-party doctrine, a person has no legitimate expectation of privacy in information voluntarily turned over to third parties. *Carpenter v. United States*, 138 S.Ct. 2206, 2216 (2018). This is so even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed. The third-party doctrine is a voluntary turnover of information to a third party.

Under *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016), warrantless breath testing incident to arrest was permissible, but warrantless blood testing incident to arrest is prohibited.

The analysis of biological samples such as blood is a search infringing upon privacy interests subject to the Fourth Amendment. There is an expectation of privacy in blood that is drawn for medical purposes. The expectation is not as great as an individual has in the sanctity of his own body against the initial draw of blood. But it is greater than an individual has in the results of tests that have already been performed on the blood.

Texas Courts of Appeals

***Clark v. State*, No. 09-17-00401-CR, 2019 Tex. App. LEXIS 2371 (Tex.App.?Beaumont March 27, 2019) (designated for publication) [Legally sufficient evidence for deadly weapon finding using a vehicle]**

Under *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), and *Brooks v. State*, 323 S.W.3d 893, 895 (Tex.Crim.App. 2010), to determine legal sufficiency, after viewing the evidence in the light most favorable to the verdict, a reviewing court considers whether the factfinder was rationally justified in finding the essential elements of the crime beyond a reasonable doubt. The reviewing court does not substitute its judgment for that of the factfinder by reevaluating the weight or credibility of the evi-dence but defers to the factfinder?s resolution of conflicts in testimony, weighing of evidence, and drawing reasonable inferences from the facts.

Under *Sierra v. State*, 280 S.W.3d 250, 255 (Tex.Crim.App. 2009), to determine whether the evidence was legally sufficient to show the use of a vehicle as a deadly weapon, the court views the evidence in the light most favorable to the verdict to determine whether a rational factfinder could find beyond a reasonable doubt that the vehicle was used or exhibited as a deadly weapon while committing the underlying crime. To be legally sufficient to sustain a deadly weapon finding, the evidence must show: (1) the object was something that in the manner of its use or intended use was capable of causing death or serious bodily injury; (2) the weapon was used or exhibited during the transaction from which the felony conviction was obtained; and (3) other peo-ple were actually endangered. While the danger to motorists must be actual and not hypothetical, it does not require pursuing officers or other motorists to be in a zone of danger, take evasive action, or require a collision. If a vehicle is used in a manner making it capable of causing death or serious bodily injury, it may become a deadly weapon. A defendant is not required to have specific intent to use a vehicle as a deadly weapon.

***Harris v. State*, No. 03-17-00539-CR, 2019 Tex. App.-LEXIS 1874 (Tex.App.?Austin March 13, 2019) (designated for publication) [challenges for cause; evidence of a no-bill]**

Under *Buntion v. State*, 482 S.W.3d 58, 83 (Tex.Crim.App. 2016), to preserve a complaint about the denial of a challenge for cause, a party must show that he: (1) used all of his peremptory strikes; (2) asked for and was refused additional peremptory strikes; and (3) was then forced to take an identified, objectionable juror whom the party would not have otherwise accepted had the trial court granted his challenge for cause (or had the trial court granted him an additional peremptory challenge to strike the juror). The objection must have been made at a time and in a manner so that it can be corrected.

Under *Rachal v. State*, 917 S.W.2d 799, 807 (Tex.Crim.App. 1996), the grand jury determines whether evidence exists to formally charge a person with an offense. A no-bill is merely a finding that the evidence brought before that particular grand jury did not convince them to formally charge the offense alleged.

***Mitchell v. State*, No. 06-18-00013-CR & 06-18-00014-CR, 2019 Tex. App.-LEXIS 2017 (Tex.App.?Texarkana March 14, 2019) (designated for publication) [egregious-harm standard in the jury charge]**

The standard to determine whether sufficient harm resulted from a jury-charge error to require reversal depends upon whether an appellant objected to the charge at trial. *Abdnor v. State*, 871 S.W.2d 726, 732 (Tex.Crim.App. 1994). If a timely objection was made during trial, the finding of ?some harm? requires reversal. If error is urged for the first time on appeal, the reviewing court may reverse only upon the finding of ?egregious harm.? *See also Ngo v. State*, 175 S.W.3d 738, 743?744 (Tex.Crim.App. 2005). Under *Almanza v. State*, 686 S.W.2d 157, 171 (Tex.Crim.App. 1985), and *Stuhler v. State*, 218 S.W.3d 706, 719 (Tex.Crim.App. 2007), jury-charge error is egregiously harmful if it affects the very basis of the case, deprives the defendant of a valuable right, or vitally affects a defensive theory. To determine whether unobjected-to jury-charge error was so egregious that a defendant was denied a fair and impartial trial, a reviewing court should examine: (1) the entire jury charge; (2) the state of the evidence; (3) the arguments of counsel; and (4) any other relevant information in the record. Under *Hutch v. State*, 922 S.W.2d 166, 171 (Tex.Crim.App. 1996), direct evidence of harm is not required to establish egregious harm.

Under Tex. Code Crim. Proc. Art. 36.13, the jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed by that law. Under *Delgado v. State*, 235 S.W.3d 244, 249 (Tex.Crim.App. 2007 and Tex. Code Crim. Proc. Art. 36.14), a trial court must submit a charge setting forth the law applicable to the case. The purpose of the jury charge is to inform the jury of the applicable law and guide them in its application. It is not the function of the charge merely to avoid misleading or confusing the jury: It is the function of the charge to lead and prevent confusion.

Under *Lawton v. State*, 913 S.W.2d 542, 551 (Tex.Crim.App. 1995), overruled on other grounds by *Mosley v. State*, 983 S.W.2d 249, 263 (Tex.Crim.App. 1998), and Tex. Penal Code §?1.03(a), conduct does not constitute an offense unless it is defined as so by statute, ordinance, order of a commissioners court, or rule authorized by and lawfully adopted under a statute.

Under *Zuckerman v. State*, 591 S.W.2d 495, 496 (Tex.Crim.App. 1979), a jury charge is fundamentally defective if it authorizes conviction on acts that are not the offense charged. A charge allowing conviction under alternative theories is defective if one of the theories is legally invalid.

Editor?s note: The entire relevant law on jury charge error is:

- The standard to determine whether sufficient harm resulted from a jury-charge error to require reversal depends upon whether an appellant objected to the charge at trial. *Abdnor v. State*, 871 S.W.2d 726, 732 (Tex.Crim.App. 1994). If a timely objection was made during trial, the finding of ?some harm? requires reversal. If error is urged for the first time on appeal, the reviewing court may reverse only

upon the finding of ?egregious harm.? *See also Ngo v. State,* 175 S.W.3d 738, 743?744 (Tex.Crim.App. 2005). Under *Almanza v. State,* 686 S.W.2d 157, 171 (Tex.Crim.App. 1985), and *Stuhler v. State,* 218 S.W.3d 706, 719 (Tex.Crim.App. 2007), jury-charge error is egregiously harmful if it affects the very basis of the case, deprives the defendant of a valuable right, or vitally affects a defensive theory. To determine whether unobjected-to jury-charge error was so egregious that a defendant was denied a fair and impartial trial, a reviewing court should examine: (1) the entire jury charge; (2) the state of the evidence; (3) the arguments of counsel; and (4) any other relevant information in the record. Under *Hutch v. State,* 922 S.W.2d 166, 171 (Tex.Crim.App. 1996), direct evidence of harm is not required to establish egregious harm.

- Under Tex. Code Crim. Proc. Art. 36.13, the jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed by that law. Under *Delgado v. State,* 235 S.W.3d 244, 249 (Tex.Crim.App. 2007 and Tex. Code Crim. Proc. Art. 36.14), a trial court must submit a charge setting forth the law applicable to the case. The purpose of the jury charge is to inform the jury of the applicable law and guide them in its application. It is not the function of the charge merely to avoid misleading or confusing the jury: It is the function of the charge to lead and prevent confusion.
- Under Tex. Penal Code §?36.05(a), a person commits tampering with a witness if with intent to influence the witness he coerces a witness or a prospective witness in an official proceeding to: (1) testify falsely; (2) withhold any testimony, information, document, or thing; (3) elude legal process summoning him to testify or supply evidence; (4) absent himself from an official proceeding to which he has been legally summoned; or (5) abstain from, discontinue, or delay the prosecution of another.
- The indictment charged Mitchell only with tampering under Tex. Penal Code §?36.05(a)(1) (to testify falsely). The abstract portion of the jury charge instructed the jury that ?a person commits the offense of tampering with a witness if, with intent to influence the witness, he coerces a witness or prospective witness in an official proceeding to testify falsely.? The application portion, which tracked the indictment, authorized the jury to convict Mitchell of tampering with a witness if it found beyond a reasonable doubt that Mitchell coerced Lauren ?by writing letters to her asking her to lie, and/or asking her to go see his counsel, that he will help her, and/or asking her not to go see the DA with intent to influence her to testify falsely.?
- Asking Lauren to lie amounts to witness tampering, but the jury charge is fundamentally defective because the application portion allowed the jury to convict him of witness tampering for encouraging Lauren to meet with his attorney or encouraging her not to meet with the DA, neither of which is tampering with a witness. Asking her not to see the DA is not tampering with a witness.
- Under *Lawton v. State,* 913 S.W.2d 542, 551 (Tex.Crim.App. 1995), overruled on other grounds by *Mosley v. State,* 983 S.W.2d 249, 263 (Tex.Crim.App. 1998), and Tex. Penal Code §?1.03(a), conduct does not constitute an offense unless it is de-fined as so by statute, ordinance, order of a commissioners court, or rule authorized by and lawfully adopted under a statute.
- Under *Zuckerman v. State,* 591 S.W.2d 495, 496 (Tex.Crim.App. 1979), a jury charge is fundamentally defective if it authorizes conviction on acts that are not the offense charged. A charge allowing conviction under alternative theories is defective if one of the theories is legally invalid.
- Because the charge authorized the jury to convict Mitchell under three alternative grounds, and one (encouraging Lauren not to meet with the DA) is not an offense, the jury charge was defective because it authorized conviction for actions that are not tampering with a witness.
- One of the three theories permitted the jury to convict Mitchell for conduct that is not an offense, and the court is not free to presume the jury based its conviction on a legally valid ground. The evidence did not support such a conclusion, and the state emphasized the erroneous language of the charge.
- The judgment is reversed and case is remanded for a new trial.

***Morrison v. State*, No. 06-17-00159-CR, 2019 Tex. App. LEXIS 2343 (Tex.App.?Texarkana March 27, 2019) (designated for publication) [State may not review indigent defendant?s attorney?s billing records submitted prior to trial as required by Art. 26.05]**

Under *Weatherford v. Bursey,* 429 U.S. 545, 552 (1977), and *Murphy v. State,* 112 S.W.3d 592, 602

(Tex.Crim.App. 2003), the State violates a defendant?s Sixth Amendment right to counsel if it purposefully intrudes into that relationship and the intrusion produces, directly or indirectly, evidence offered at trial. An intrusion produces, directly or indirectly, evidence offered at trial when the: (1) State?s evidence originated in the intrusion, (2) intrusion is used in any other way to the substantial detriment of the defendant, or (3) State learns details about the defendant?s trial preparation.

Under *Maine v. Moulton*, 474 U.S. 159, 170?171 (1985), the State has an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel. A purposeful intrusion can occur even where the State does not create the circumstances that made the information available if the State exploits an opportunity to obtain information otherwise protected from disclosure.

Under *In re Natl. Lloyds Ins. Co.*, 532 S.W.3d 794, 803 (Tex. 2017), attorney billing records are attorney work product. Discovery of billing records in their entirety would provide a roadmap of how the party plans to litigate.

Under *Washington v. State*, 856 S.W.2d 184, 189?190 (Tex.Crim.App. 1993), the TCCA held that the attorney-work-product privilege has generally been limited to documents which themselves do not contain admissible evidence of the offense but instead are summaries of the evidence or discussions about the offense that have been prepared for the internal use of attorneys and investigators.

Under *Skinner v. State*, 956 S.W.2d 532, 538?39 (Tex.Crim.App. 1997), a document that contains comments by the attorney containing his strategy or opinions of the strengths and weaknesses of the case is highly privileged work product and is the type of document intended to be protected by the work-product doctrine.

Under Tex. Code Crim. Proc. Art. 26.05, only attorneys appointed to represent indigent defendants are required to submit their itemized bills to the trial court for payment. Thus, only indigent defendants are at risk of disclosing non-discoverable information to the State as part of the compensation procedure.

Under *Griffin v. Illinois*, 351 U.S. 12, 17 (1956), both equal protection and due process emphasize the central aim of our entire judicial system?all people charged with crime must, so far as the law is concerned, stand on an equality before the bar of justice in every American court.
