

**Court of Criminal Appeals**  
**February 10, 2016**

***Blea v. State***

No. PD-0245-15

Case Summary written by Eric Clinton, Staff Member.

JUDGE ALCALA delivered the opinion of the court.

In July 2010, Juan Blea, the appellant, went to his parents' apartment in order to visit his daughter and her mother. When he arrived, the appellant noticed a "hickey" on the mother's neck. After being told that the mark came from another man the night before, appellant became angry and threatened to kill the mother and began to physically assault her. The victim was unable to specifically describe the assault, but felt as if "something had been broken or injured during the assault."

When the appellant's parents returned home, they observed that the victim was in pain and called the police. The responding officer called for an ambulance to take the victim to the hospital, where she stayed for four days. Her injuries included a collapsed lung, "lacerated liver, two rib fractures, and a fractured maxillary sinus bone." The appellant was convicted of first-degree aggravated assault of a family member.

The elements of first-degree aggravated assault of a family member require evidence that (1) the actor used a deadly weapon during the assault and (2) the actor caused serious bodily injury to a family member. Further, the court recognizes "serious bodily injury" as being "bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of a bodily organ."

The court of appeals remanded the case, finding that that the evidence failed to establish that the victim suffered serious bodily injury. The court's majority explained that the victim's collapsed lung and lacerated liver did not show that she faced a substantial risk of death. Despite noting that both of those injuries are potentially life threatening, the court of appeals held that there was no evidence that the victim, in this particular situation, ever faced a substantial risk of death.

The state challenged this ruling, claiming the jury could have inferred, from the totality of the evidence, that the victim faced a substantial risk of death.

Issue: How should the court weigh the effects of medical treatment when determining whether particular injuries constitute serious bodily injury?

The Court of Criminal Appeals noted that there were inconsistencies in the court's precedent. For one, a vast majority of the court's decisions have held that the court should focus on the degree of risk posed by the injury, without regard for the effect of medical treatment. In one case, however, a plurality of the court held that the effects of medical treatment should be taken into effect.

The court found three reasons why it should disregard the plurality opinion. First, the plain language of the statute—"creates a substantial risk of death"—refers only to the injury caused by the actor, and does not give any consideration to medical treatment. Second, the plurality opinion is an isolated case that is inconsistent with other Court of Criminal Appeals holdings. Finally, the court notes that a plurality opinion is not binding precedent. Thus, courts should not consider the "amelioration or exacerbation of an injury by actions not attributable to the offender, such as medical treatment" when evaluating whether the victim suffered serious bodily injury.

After determining that courts should give no weight to the effect that medical treatment had on the injury, the Court of Criminal Appeals had to consider whether a jury could have rationally found that the victim faced a substantial risk of death. The court noted a nurse's testimony that "lung injuries such as these can affect a persons blood pressure and 'vital signs.'" Additionally, the nurse described the victims liver injury as one that could cause a patient to "bleed to death very quickly." Due to this evidence, the Court of Criminal Appeals concluded that the evidence was sufficient to show that the victim suffered serious bodily injury and reinstated the trial court's judgment.

***Ex Parte Molina***

No. WR-83,799-01

Case Summary written by Eric Matthews, Staff Member.

JUDGE YEARY delivered an opinion for the unanimous court.

The trial court convicted Molina of aggravated robbery and sentenced him to 16 years' confinement. The Fourteenth Court of Appeals affirmed his conviction. Molina then brought an application for writ of habeas corpus, claiming that he was not credited for the time he spent in jail prior to his conviction. Molina claimed he was entitled to a one-year credit because he never bonded out on the charge. He did not claim to have exhausted all administrative remedies to resolve the credit; therefore, the issue for the Court of Criminal Appeals was whether exhaustion of all such remedies is required regarding a claim that the judgment was incorrect.

Texas Government Code § 501.0081(b)(1) provides that a claim of a time-served credit error is not allowed in an application for a writ of habeas corpus until the inmate “receives a written decision issued by the highest authority provided for in the resolution system.” The court, however, determined that this language did not apply to Molina’s time-credit claim because his claim of an incorrect judgment was not subject to the authority of the Department of Criminal Justice—the relevant “resolution system.” Only the judicial system has authority to correct a judicial error, and therefore, authority to consider his claim. The court stated that to interpret the Code to include every time-served credit error claim would lead to the absurd result that the Department of Criminal Justice must, in certain cases, alter a judgment—something it has no authority to do.

The court dismissed Molina’s claim, not based on 501.0081(b)(1), but on the grounds that his application for habeas corpus was an improper remedy. Because he only alleged that his judgment was incorrect, the proper remedy would be to first seek a *nunc pro tunc* judgment, and if that failed, an application for writ of mandamus.

***Daniel v. State***

No. AP-77,034

Case Summary written by Luke Luttrell, Staff Member.

JUDGE MEYERS delivered the opinion of the court.

In February 2014, a jury convicted the appellant of the capital murder of a police officer—Jaime Padron—and the trial judge sentenced the appellant to death. Direct appeal to the Court of Criminal Appeals is automatic. Upon appeal, the appellant raised three points of error.

In his first point of error, the appellant asserted that the evidence was insufficient to support the jury's answer to the future dangerousness special issue. The appellant believed that applying the *Keeton* criteria of future dangerousness review showed that he was not a future danger. He argued that he acted without forethought and deliberateness because he was highly intoxicated on Xanax bars at the time and suffering from depression. The court disagreed. The court found that the evidence showed that he went to Wal-Mart to shop lift and brought a loaded gun because he “was foreseeing cops preventing [him] from leaving the store.” It also found that he had an escalating pattern of disrespect for the law. Therefore, point of error one was overruled.

In the appellants' second point of error, he complained about the trial court's refusal to grant his challenge for cause against prospective juror Marcus Reading. The appellant argued that Reading was challengeable for cause because he had a bias or leaning towards death in a case involving the death of a police officer. The court found that the record showed that the appellant did not request additional strikes or identify an objectionable juror who sat on the jury. Consequently, he did not demonstrate harm and point of error two was overruled.

In appellant's third point of error, he contended that the trial court erroneously denied his right “to fully voir dire the State's expert witness, Dr. Mauro, as to her basis and opinion and that violated Texas Rule of Evidence 705(b). The court found that the record showed that the trial court permitted the appellant to examine Mauro about the underlying facts or data in accordance with Rule 705(b). To the extent that the appellant was complaining that the trial court improperly limited his voir dire examination of Mauro, he failed to preserve the

complaint for review. Therefore, point of error number three was overruled and the judgment of the trial court was affirmed.