

HONORABLE GORDON GOODMAN'S DISSENTING
OPINIONS THAT RESULTED IN REVERSALS
BY THE COURT OF CRIMINAL APPEALS

1. **State v. Stephens** [Separation of Powers under the Texas Constitution]
Court of Appeals of Texas, Houston (1st Dist.). July 09, 2020 608 S.W.3d 245 2020 WL 3866654
NO. 01-19-00209-CR, NO. 01-19-00243-CR
Opinion issued July 9, 2020
Rehearing Denied October 6, 2020
Rehearing En Banc Denied October 6, 2020
Discretionary Review Granted February 10, 2021
Rehearing Denied September 28, 2022
Judgment Reversed by State v. Stephens
Court of Criminal Appeals of Texas. 663 S.W.3d 45, NO. PD-1032-20, NO. PD-1033-20, DELIVERED: December 15, 2021
"In his dissent, Justice Goodman writes that the Attorney General's prosecution of Stephens violates the Constitution's separation of powers mandate. Id. at 261. Specifically, Justice Goodman disagrees that the Legislature can authorize the Attorney General, a member of the executive department, to prosecute election-law violations because that is a power more properly assigned to the judicial department. Id. at 259."
*"Therefore, Justice Goodman's dissent rightly characterized as a "non-sequitur" the court of appeals' conclusion, because even though "... the Constitution expressly gives the Attorney General duties that are both executive and judicial in function despite his status as an officer of the executive department, it does not follow that the Legislature may give him any additional judicial duty it desires." Stephens, 608 S.W.3d at 260. Absent a request from the district attorney, and without the district attorney's supervisory authority, the Attorney General violates the separation of powers provision by assuming a *57 power that is more "properly attached" to a member of the judicial branch of government. See State ex rel. Hill v. Pirtle, 887 S.W.2d 921, 928 (Tex. Crim. App. 1994). Since none of the Attorney General's enumerated duties concern criminal or electoral matters, Election Code section 273.021 is unconstitutional."*
2. **Johnson v. State** [Prohibition of Appellate Court Acting as Advocate]
Court of Appeals of Texas, Houston (1st Dist.). May 28, 2020 606 S.W.3d 386 2020 WL 2782372 NO. 01-18-00897-CR
Opinion issued May 28, 2020
Discretionary Review Granted October 21, 2020
Judgment Reversed by Johnson v. State
Court of Criminal Appeals of Texas. 624 S.W.3d 579, NO. PD-0553-20, Delivered: June 16, 2021

“Justice Goodman dissented and would have held that the record was insufficient to support the ineffective assistance claim. Justice Goodman pointed out that although Appellant filed the medical records with the court of appeals, they are not part of the record, and, according to Texas Rule of Appellate Procedure 34.1, the court cannot consider documents that are not in the record. See Prine v. State, 537 S.W.3d 113, 117 (Tex. Crim. App. 2017)(holding a claim that depends on documents that are not in the record is without merit).”

*“Justice Goodman also wrote that the majority was incorrect to imagine that over 1000 pages of medical records would simply be given to the jury to evaluate on their own. Without an expert to interpret *585 them, there was no error in excluding the records even if the predicate was laid. Not having an expert and not pressing for admission could have been a reasonable strategy. Counsel's reasoning is not shown by the silent record but he might have decided it was not worth the risk. In addition to Appellant's mental problems, the records show some of his criminal history, including indecency with a child, violence with hospital staff, gang issues, and drug abuse. Justice Goodman pointed out that Appellant's brief did not discuss the contents of the records so it does not present the ineffective assistance of counsel claim for review and that the majority improperly acted as an advocate in deciding which statements in the records are dispositive.”*

*“Justice Goodman noted in his dissent that the medical records contained information regarding Appellant's significant criminal history, including convictions for indecency with a child and unlawful possession of a weapon, past violent behavior with medical staff and a friend, gang issues, and drug abuse. It might very well have been counsel's strategy all along not to pursue admission of the medical records, but instead, to allow the jury to know medical records existed in support of the mental impairment claim, without risking having any of the jurors see the harmful *587 information that was contained in the records.”*

3. **Monjaras v. State** [Lack of Consent to Search and Seizure under the U.S. Constitution]
Court of Appeals of Texas, Houston (1st Dist.). July 27, 2021 631 S.W.3d 794 2021 WL 3159679

NO. 01-19-00608-CR

Opinion issued July 27, 2021

Discretionary Review Granted December 8, 2021

Reversed and Remanded by Monjaras v. State

Court of Criminal Appeals of Texas. 664 S.W.3d 921, NO. PD-0582-21, Delivered:
November 23, 2022

“Justice Goodman dissented, arguing that while the initial encounter between Appellant and law enforcement was consensual, the encounter escalated into an investigative detention before Officer Sallee's search of Appellant because “[w]hen Monjaras hesitated to consent, the officers detained him by compelling his compliance through a show of their official authority, which included instructing Monjaras as to how he was to behave, flanking him, intruding into his personal space, and touching his person.” Id. at 826 (Goodman, J., dissenting).”

“We agree with Justice Goodman that the initial encounter between Appellant and Officers Sallee and Starks was consensual. See Monjaras, 631 S.W.3d at 818 (Goodman, J., dissenting). Judging the interaction by the totality of the circumstances and in the shoes of an objectively reasonable person, we cannot say that Appellant initially would have felt compelled to continue talking to the officers. See Castleberry, 332 S.W.3d at 467.”

“While beginning as a consensual encounter, Appellant's interaction with Officers Sallee and Starks rose to the level of an investigative detention when Officer Starks stepped towards Appellant, stated “manos, manos” (“hands, hands”), and showed Appellant to hold his hands out while Officer Sallee had his hand on Appellant's back.”

4. **In re State ex rel. Wice** [Authority of District Court Judges to hear cases under the Texas Constitution]

Court of Appeals of Texas, Houston (1st Dist.). May 27, 2021 629 S.W.3d 715 2021 WL 2149332

NO. 01-20-00477-CR, NO. 01-20-00478-CR, NO. 01-20-00479-CR

Opinion issued May 27, 2021

Writ of Mandamus Granted by In re State of Texas, ex rel. Brian W. Wice, relator
Court of Criminal Appeals of Texas. 668 S.W.3d 662, NO. WR-93,089-01, Delivered: June 14, 2023

“But Justice Goodman dissented and argued that Article V, Section 11 of the Texas Constitution provided Judge Gallagher with the authority to issue the venue transfer order, after his assignment order to the First Administrative Judicial Region expired. Justice Goodman noted in his concurring and dissenting opinion:

“As for the majority's contention that applying Article V, Section 11 in this instance would undermine the Court Administration Act, the majority puts the cart before the horse. Our Constitution is supreme. If its provisions undermine a statute, it is the statute in this case that must give way. Courts have repeatedly said so with respect to Article V, Section 11 of our Constitution.””

“Today we fulfill our duty by upholding our Constitution's rule of law and affirming the wisdom of its framers. Thus, Judge Gallagher had constitutional and statutory authority to preside when he ordered the change of venue to Harris County. The district court in Harris County had no authority to void it. We conditionally grant the State's petition for writ of mandamus. The writ of mandamus will issue only in the event that the courts below fail to comply with this opinion.”

5. **Ex Parte Vieira, Appellant** [Prohibition on double counting days under CCA precedent]
Court of Appeals of Texas, Houston (1st Dist.). November 15, 2022 --- S.W.3d ---- 2022 WL 16935784

NO. 01-21-00464-CR

Opinion issued November 15, 2022

I respectfully dissent from the denial of en banc reconsideration. I agree with Vieira's claim that two years had passed before the State returned his indictment, and therefore

*the indictment was not returned within the two-year statute of limitations. I would grant en banc reconsideration so that this Court may dispel any confusion about counting...
...I respectfully dissent from the denial of en banc reconsideration....*

...NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE
PERMANENT LAW REPORTS....

...Gordon Goodman Justice...

Reversed and Dismissed by Ex Parte Vieira

Court of Criminal Appeals of Texas, PD-0690-22, Delivered: September 27, 2023

"Justice Goodman dissented from the denial of en banc reconsideration."