

COURT OF CRIMINAL APPEALS OF TEXAS

The State of Texas v. Grady Jack Barber

No. PD-0510-25 · No. PD-0510-25 · Decided April 16, 2026

OPINION

BARBER, GRADY JACK v. the State of Texas

PER CURIAM.

In the Court of Criminal Appeals of Texas _____ No. PD-0510-25
_____ The State of Texas v. Grady Jack Barber, Appellee
_____ On Appellee’s Petition for
Discretionary Review From the Ninth Court of Appeals Liberty County
_____ YEARY, J., filed a

concurring opinion. I join the Court’s opinion. I write further only to suggest that, on remand, the court of appeals might consider, if necessary, whether Appellee even has standing to invoke the protections of Article 38.23(a), our statutory exclusionary rule. See TEX. CODE CRIM. PROC.

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art. 38.23(a) (“No evidence obtained by an officer . . . in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.”). The trial court in this case granted Appellee’s motion to suppress the evidence of the results of his blood test for alcohol content. It concluded that the blood test was illegally obtained because a statutorily unauthorized officer executed the search warrant. On the State’s appeal, the court of appeals reversed, concluding largely on the strength of this Court’s opinion in *State v. Woodard*, 341 S.W.3d 404 (Tex. Crim. App. 2011), that the officer was statutorily authorized to arrest Appellee, and so was also authorized to execute the search warrant. Today, this Court reverses the reversal. In order to do so, it disavows *Woodard*. This has the effect of reinstating the trial court’s pretrial ruling that the officer lacked the authority to carry out the blood-alcohol search warrant. But the Court does not at this time affirm the trial court’s judgment. Instead, it remands the case to the court of appeals for further proceedings. Why? Because on appeal, the State made an alternative argument that the officer acted in objective good faith, because the warrant he executed was signed by a neutral magistrate based upon probable cause. Especially in view of the fact that this Court

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now finds it necessary to “disavow” *Woodard* in order to reverse the court of appeals’ ruling, it seems likely that on remand, the court of appeals will find that the officer did in fact act in objectively reasonable good-faith reliance on the warrant as valid authority to personally obtain

Appellee's blood. See TEX. CODE CRIM. PROC. art. 38.23(b) ("It is an exception to the provisions of Subsection (a) of this Article that the evidence was obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause."). But that is an issue for the remand.¹ I write further only to suggest that, in the event the court of appeals should fail to find Article 38.23(b)'s good-faith exception to be applicable, it might also consider, if only as unassigned error, whether Appellee even has standing to invoke Article 38.23(a)'s exclusionary rule. This Court has said that Article 38.23(a) does not "confer automatic third party standing upon all persons accused of crimes, such 1 It occurs to me that the State might also have argued that the officer was authorized to execute the blood-draw warrant by virtue of an authority to arrest Appellee under Article 14.03(a)(1) of the Code of Criminal Procedure. See TEX. CODE CRIM. PROC. art. 14.03(a)(1) (authorizing peace officers to arrest, without warrant, "persons found in suspicious places . . ."); *Armstrong v. State*, 713 S.W.3d 893, 905 (Tex. Crim. App. 2025) (Yeary, J., concurring) (advocating a reading of Article 14.03(a)(1) to authorize warrantless arrest whenever an officer has found a person in a location that is "suspicious" "because something about the location where the person is found establishes, or enhances, probable cause to believe [that he] . . . has committed" one of the enumerated offenses). But the State, as the appellant here, seems not to have pursued that argument, either at the pretrial hearing in the trial court or on appeal. I will, therefore, say no more about it.

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that they may complain about the receipt of evidence which was obtained by violation of the rights of others, no matter how remote in interest from themselves." *Fuller v. State*, 829 S.W.2d 191, 202 (Tex. Crim. App. 1992). It is not clear to me that the officer's seizure of Appellee's blood pursuant to the warrant, unauthorized though he may have been to execute it under the auspices of Article 14.01(b) or 14.03(d), necessarily impacted Appellee's personal rights. Cf. *Chavez v. State*, 9 S.W.3d 817, 819–20 (Tex. Crim. App. 2000) (an officer's seizure of contraband outside of the geographical boundaries permitted by law did not constitute a violation of the appellant's rights, who therefore lacked standing to invoke the exclusionary rule in Article 38.23(a)). And issues of standing may be raised for the first time on appeal, *State v. Klima*, 934 S.W.2d 109 (Tex. Crim. App. 1996), so there is arguably no procedural default issue to prevent the court of appeals from addressing the issue, on its own, as unassigned error on remand. See *Pena v. State*, 191 S.W.3d 133, 136 (Tex. Crim. App. 2006) (courts of appeals may consider unassigned error on appeal, but any such claim, if it is subject to procedural default, must have been preserved for appeal). With this added observation, I join the Court's opinion. FILED: April 16, 2026

PUBLISH

PER CURIAM.

IN THE COURT OF CRIMINAL APPEALS

OF TEXAS

NO. PD-0510-25

THE STATE OF TEXAS

v. GRADY JACK BARBER, Appellee

ON APPELLEE’S PETITION FOR DISCRETIONARY REVIEW

FROM THE NINTH COURT OF APPEALS

LIBERTY COUNTY

PARKER, J., delivered the opinion of the Court in which YEARY, NEWELL, WALKER, MCCLURE, and FINLEY, JJ., joined. YEARY, J., filed a concurring opinion. FINLEY, J., filed a concurring opinion. SCHENCK, P.J., filed a dissenting opinion in which RICHARDSON, J., joined and KEEL, J., joined as to part IIB.

OPINION

Certain statutes authorizing warrantless arrests require that an offense be committed within the arresting person’s “presence” or “view.” Does a DWI or intoxication-manslaughter offense occur in the officer’s “presence or view” if the

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officer arrives 40 minutes after the defendant has crashed and is no longer operating his vehicle? Does a public intoxication offense occur in the officer’s presence or view if, when the officer arrives, the defendant is no longer at a place in which he poses a danger to himself or others due to his intoxication? The obvious answer to these two questions is “no,” but the court of appeals said “yes.”¹ The court of appeals based its holding on this Court’s prior decision in *State v. Woodard* and construed that decision to hold that an offense need not occur in the officer’s presence or view to satisfy the “presence or view” requirement.² We now conclude that, to the extent Woodard construed the “presence or view” requirement, the decision was obviously wrong, and we now disavow it. Consequently, we reverse the judgment of the court of appeals and remand for further proceedings.

I. BACKGROUND

A. Trial A witness saw Appellee consume two alcoholic beverages at a bar in Liberty County. The witness also saw Appellee drive off and strike another vehicle (on a 1 *State v. Barber*, No. 09-24-00313-CR, 2025 WL 1749999, *5 (Tex. App.—Beaumont June 25, 2025) (not designated for publication). 2 *Id.*; see also *State v. Woodard*, 341 S.W.3d 404, 414 (Tex. Crim. App. 2011).

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Liberty County highway). The driver of the other vehicle died from the crash. After the crash, Appellee was transported by ambulance to a hospital in Harris County. A Dayton (Liberty County) police officer, E.L. Ibarra, arrived at the scene 40 minutes after the crash and interviewed the witness who saw Appellee consume alcohol and drive. Officer Ibarra performed no field sobriety tests due to Appellee being transported to the hospital.³ Officer Ibarra alleged all of these facts (except the hospital’s location) in a probable-cause affidavit for a search warrant to test Appellee’s blood for alcohol. The officer marked a checkbox next to the language, “Observed, indicated impaired driver,” but he struck through the word “observed” and wrote his initials. A Liberty

County judge issued a warrant. The warrant was executed at the hospital (in Harris County), and a sample of Appellee’s blood was drawn and tested. Appellee was indicted for intoxication manslaughter. He filed a motion to suppress the test results. The parties called no witnesses at the suppression hearing. Instead, they submitted documentary evidence, including the probable- cause affidavit, and a written stipulation of facts. 3 The record is silent on whether Appellee was even at the scene when the officer arrived.

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At the time of the warrant, Article 18.067 provided that a warrant for blood testing may be executed in any county adjacent to the county in which the warrant issued and by “any law enforcement officer authorized to make an arrest in the county of execution.”⁴ Appellee argued that the Liberty County police officer was not authorized to make an arrest in Harris County—where the warrant was executed—because Article 14.03(d) permits an out-of-county police officer to make such an arrest only for certain offenses committed “within the officer’s presence or view.”⁵ Consequently, Appellee argued, the execution of the warrant was invalid. We pause to observe that the issue wasn’t whether Appellee was validly arrested; the issue was whether the search warrant was validly executed. But a portion of Article 18.067 tied the validity of a search warrant’s execution to whether the officer had the (hypothetical) authority to arrest the defendant, whether or not such an arrest took place. After hearing arguments, the trial court took the case under advisement. The trial court made written findings, which included: 4 See TEX. CODE CRIM. PROC. art. 18.067 (West 2022). The second part of the statute has since been removed by amendment. See *id.* art. 18.067 (West 2024). 5 See *id.* art. 14.03(d) (“A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer’s presence or view, if the offense is a felony, a violation of Chapter 42 or 49, Penal Code, or a breach of the peace.”).

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7. [P]robable cause was shown for the issuance of the blood search warrant. ***

13. Officer Ibarra arrived on the scene of the motor vehicle crash after it had occurred.

14. [T]he motor vehicle crash did not occur within Officer Ibarra’s physical presence or view.

15. Officer Ibarra did not observe the Defendant prior to or at the time of the motor vehicle crash. The trial court ultimately granted the motion to suppress. B. Appeal On appeal, the State contended that Article 14.03(d) gave the Liberty County police officer the authority to arrest Appellee in Harris County for intoxication manslaughter. The court of appeals agreed.⁶ Relying upon Woodard, the court of appeals held that Article 14.03(d) did not require the police officer to see the offense or even be in the vicinity when the offense was committed: The fact that Ibarra did not see Barber commit the offense does not determine whether Ibarra could

arrest Barber without a warrant for an offense committed “in his presence or in his view,” because Ibarra could consider all the information he knew before the arrest to determine whether there was sufficient information for him to believe 6 Barber, 2025 WL 1749999, at *4-5.

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Barber committed the offense.⁷ The court of appeals concluded that Ibarra “had the authority to arrest Barber without a warrant in Harris County for committing an offense in violation of Chapter 49 within Ibarra’s presence or view.”⁸ Sustaining the State’s issue, the court of appeals reversed the trial court’s suppression order and remanded the case for further proceedings.⁹ 7 Id. at *5. The court of appeals also said that Officer Ibarra stated in the probable-cause affidavit that Appellee “indicated signs of impaired driving.” Id. at *1. But as explained earlier, the officer struck through the word “observed,” indicating that he did not in fact observe any impaired driving but was inferring impairment from information he obtained from a witness. And in line with the State’s arguments before it, the court of appeals said, “Ibarra also relied on his personal observations of Barber at the hospital,” id. at *4-5, but nothing in the record explicitly substantiates the assertion that Ibarra observed Appellee at the hospital. 8 Id. at *5. 9 Id. We granted review of the following issue: Is an officer authorized to make an arrest for an alleged offense as “within his presence or view” when he has probable cause to arrest due to his post-incident investigation, even though the alleged offense occurred neither in his actual presence nor in his actual view? The dissent seeks to address other issues, and it claims that we avoid answering the issue in the case, but, in fact, we resolve the only issue upon which discretionary review was granted. The dissent claims that we misconstrue former Art. 18.067 to conjunctively impose the “adjacent county” and “authorized officer” requirements instead of permitting either to be satisfied. But in fact, we do not construe former Art. 18.067 at all. The trial court, the parties (at least on appeal and discretionary review), and the court of appeals have all read the statute to impose these requirements conjunctively, and it seems entirely possible that they hadn’t even conceived of a disjunctive reading. See e.g., State’s brief to the court of appeals at vii-viii (“Thus, in compliance with the plain language of Article 18.067, in the case at hand the warrant for a blood specimen in an intoxication offense was issued from an adjacent county and executed by an officer with the authority to make an arrest in the executing county.”); Barber, 2025 WL

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1749999, at *4 (“We agree that an officer with the Dayton Police Department, who is not authorized to make an arrest in Harris County, needs the assistance of an officer with jurisdiction in Harris County to execute a search warrant to seize a blood specimen.”). Alternatively, the dissent contends that we should hold that Art. 38.23 is unavailable as an enforcement mechanism for violations of Art. 18.067 or that the good faith exception in Art. 38.23 applies. But the court of appeals did not address either of these Art. 38.23 issues and, instead, found no law violation to trigger Article 38.23—due to its construction of the words “presence” and “view” in Art. 14.03(d). Further, the State did not raise any of the dissent’s issues to this Court in a petition or briefing, and

those issues can be addressed by the court of appeals on remand, if they are properly before that court. See *State v. Mercado*, 972 S.W.2d 75, 78 (Tex. Crim. App. 1998) (Error- preservation rules apply to the State when it is the appellant.). The dissent also says that we should address the good-faith issue because our disavowing of Woodard has made its resolution clear, but while the State prosecuting attorney, as amicus, has raised the good faith issue, it seeks only a remand for the court of appeals to address it, and Appellee, in response, advances an argument against the good-faith exception that purports not to turn on the viability of Woodard (arguing that the good faith exception turns on reliance on a warrant and “does not protect reliance on a mistaken reading of the statutes that define an officer’s jurisdiction”). Assuming there is no preservation obstacle to asserting the good faith issue, we nevertheless find it appropriate to adhere to our usual practice of leaving issues not previously addressed by the court of appeals to the court of appeals on remand, especially when the unaddressed issue has not been raised in a petition for discretionary review. See *Osorio-Lopez v. State*, 663 S.W.3d 750, 757 (Tex. Crim. App. 2022) (“[T]his Court reviews only decisions of the courts of appeal unless ‘the proper resolution of the remaining issue is clear.’”) (brackets inserted); *McClintock v. State*, 444 S.W.3d 15, 21 (Tex. Crim. App. 2014) (“The parties make a number of substantial arguments in support of their respective positions in this Court, and our resolution of the issue (if any should even be necessary after a remand) would benefit from a carefully wrought decision from the court of appeals.”); cf. *Contreras v. State*, 312 S.W.3d 566, 574 n.17 (Tex. Crim. App. 2010) (declining to address issues raised in a brief because they were not raised in the petition for discretionary review); *Whatley v. State*, 946 S.W.2d 73, 76 n.6 (Tex. Crim. App. 1997) (finding it inappropriate to address an issue that was neither addressed by the court of appeals nor raised in a petition to this Court). Ultimately, the dissent’s approach seems to be “appeal de novo”—similar to a “trial de novo” that sometimes occurs in an appeal from a low-level trial court or an administrative agency to a higher level trial court (such as an appeal from a justice court to a statutory county court). See *In re A.L.M.-F.*, 593 S.W.3d 271, 277-79 (Tex. 2019) (setting out examples of “trial de novo” situations). “A ‘trial de novo’ is a new and independent action in the reviewing court with ‘all the attributes of an original action’ as if no trial of any kind has occurred in the court below.” *Id.* at 277. It is essentially a “redo” of the trial. Similarly, the dissent wishes to “start over” and “redo” this appeal. But that is not how a discretionary-review court operates, which only sparingly and in unusual circumstances addresses issues that have neither been raised in a petition nor addressed by the court of appeals. See *Osorio-Lopez*, 663 S.W.3d at 757; *Davison v.*

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II. ANALYSIS

A. “Presence or View” Article 14.03(d), a key statute upon which the court of appeals relied, provides that a warrantless arrest can be made for certain offenses committed within an officer’s “presence or view”: A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer’s presence or view, if the offense is a felony, a

violation of Chapter 42 or 49, Penal Code, or a breach of the peace.¹⁰ At least five other provisions contain similar language: ! Article 14.01(a): A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace. ! Article 14.01(b): A peace officer may arrest an offender without a warrant for any offense State, 405 S.W.3d 682, 691-92 (Tex. Crim. App. 2013) (saying that we “ordinarily” do not address issues not addressed by the court of appeals but that there are “exceptions” to that practice); Ex parte Doster, 303 S.W.3d 720, 721 & n.2 (Tex. Crim. App. 2010) (noting that a “threshold” issue—such as pretrial habeas cognizability—can be granted on the Court’s own motion even though it was neither raised by the parties nor addressed by the court of appeals). 10 TEX. CODE CRIM. PROC. art. 14.03(d) (emphasis added).

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committed in his presence or within his view. ! Article 14.03(b): A peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.07, Penal Code, if the offense is committed in the presence of the peace officer. ! Article 14.03(g)(1): A peace officer described by Article 2A.001(1), (2), or (5), who is licensed under Chapter 1701, Occupations Code, and is outside of the officer’s jurisdiction may arrest without a warrant a person who commits any offense within the officer’s presence or view, other than a violation of Subtitle C, Title 7, Transportation Code. ! Article 14.03(g)(2): A peace officer described by Article 2A.001(3), who is licensed under Chapter 1701, Occupations Code, and is outside of the officer’s jurisdiction may arrest without a warrant a person who commits any offense within the officer’s presence or view, except that an officer described in this subdivision who is outside of that officer’s jurisdiction may arrest a person for a violation of Subtitle C, Title 7, Transportation Code, only if the offense is committed in the county or counties in which the municipality employing the peace officer is located.¹¹ Another statute allows an officer to arrest for an offense committed in a magistrate’s presence or view: A peace officer may arrest, without warrant, when a felony or breach 11 Id. arts. 14.01(a), (b); 14.03(b), (g) (emphasis added).

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of the peace has been committed in the presence or within the view of a magistrate, and such magistrate verbally orders the arrest of the offender.¹² Other warrantless arrest provisions do not contain a “presence or view” requirement.¹³ And two provisions explicitly negate a “presence or view” requirement: Any peace officer may arrest, without warrant: ***

(3) persons who the peace officer has probable cause to believe have committed an offense defined by Section 25.07, Penal Code, if the offense is not committed in the presence of the peace officer; ***

(5) persons who the peace officer has probable cause to believe have prevented or interfered with an individual’s ability to place a telephone call in an emergency, as defined by Section 42.062(d), Penal Code, if the offense is not committed in the presence of the

peace officer.¹⁴ One of these provisions that negates a “presence or view” requirement is a counterpart to a provision that makes arrest mandatory if “presence or view” is satisfied—that is, for certain offenses, an officer may arrest if the offense is not committed in presence or view but shall arrest if the offense is committed within 12 Id. art. 14.02 (emphasis added). 13 Id. arts. 14.03(a)(1), (2), (4), (6), (7), 14.04. 14 Id. art. 14.03(a)(3), (5) (emphasis added).

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presence or view.¹⁵ Most “presence or view” provisions, however, permit an arrest but do not require one.¹⁶ B. Plain Meaning So, it is rather important to correctly construe what this “presence or view” language means. The standard for construing a statute is set out in our seminal case of *Boykin v. State*: courts must give effect to the plain meaning of its text, unless the text is ambiguous or the plain meaning leads to absurd results that the Legislature could not have possibly intended.¹⁷ The Legislature is constitutionally entitled to have us faithfully construe the text of a statute.¹⁸ And in conducting a plain-meaning analysis, we presume that “every word in a statute has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible.”¹⁹ 15 Compare id. art. 14.03(a)(3) (arrest permitted if not in presence or view) to id. art. 14.03(b) (arrest required if in presence or view). 16 Id. arts. 14.01(a), (b); 14.03(d), (g). 17 *Milton v. State*, 721 S.W.3d 300, 303 (Tex. Crim. App. 2025); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). 18 See *Milton*, supra at 306 (quoting from *Boykin*, supra (“[T]he Legislature is constitutionally entitled to expect that the Judiciary will faithfully follow the specific text that was adopted.”)) (brackets inserted). 19 Ex parte *Bodden*, 707 S.W.3d 399, 405 (Tex. Crim. App. 2025); see also *Milton*, supra at 303 (“Plain meaning is determined by reading the statute in context, reasonably giving effect to

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Adding to our general presumption that each word has meaning is the fact that a “presence or view” requirement (or some facsimile) exists in some arrest statutes, is absent from other arrest statutes, and is expressly negated in a couple of arrest statutes. Given this distribution, it stands to reason that the Legislature specifically intended the “presence or view” language to add meaning beyond the standard probable-cause requirement (that a crime was committed in the past) that many of the Texas arrest statutes contain.²⁰ And whatever else the “presence or view” language might mean, it plainly appears to exclude an officer who did not perceive the offense through one of his five senses and did not arrive at the scene until after the offense was complete and no longer being committed. This plain reading comports with caselaw decided before *Woodard* that holds, “An offense is each word, phrase, clause, and sentence, and construing the text according to applicable rules of grammar and common usage.” 20 See TEX. CODE CRIM. PROC. arts. 14.03(a)(1) (“found in suspicious places and under circumstances which reasonably show that such persons have been guilty of . . .” certain types of offenses), (a)(2) (“probable cause to believe have committed an assault resulting in bodily injury to another person and . . . probable cause to believe that there is danger of further bodily injury to that person”), (a)(3) (“probable cause to

believe have committed an offense defined by Section 25.07”), (a)(4) (“probable cause to believe have committed an offense involving family violence”), (a)(5) (“probable cause to believe have prevented or interfered with an individual’s ability to place a telephone call in an emergency”), (a)(6) (“probable cause to believe that the person has committed a felony”), (a)(7) (“probable cause to believe has committed a felony offense while civilly committed as a sexually violent predator”), (b) (“probable cause to believe has committed an offense under Section 25.07”); 14.04 (“upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape”).

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deemed to have occurred within the presence or view of an officer when any of his senses afford him an awareness of its occurrence.”²¹ In the present case, the officer did not see the accident and was not present when it occurred (arriving 40 minutes later). And while the crime of DWI could be a sufficient offense to justify arrest under Article 14.03(d), and an officer could view such a crime if he merely saw a conscious but intoxicated defendant in the vehicle with the engine running,²² we cannot conclude that Officer Ibarra saw or was present during a DWI. There is in fact no evidence in this record that Appellee was even at the scene when the officer arrived, much less that he was in his vehicle with the engine running. All we know from the record is that the officer talked to a witness who saw Appellee drink, drive, and collide. And we know that Appellee was taken to the hospital, though we do not know how the officer knew that. For the same reason, we cannot conclude that Officer Ibarra saw the crime of public intoxication, which requires that the defendant “appear[] in a public place ²¹ State v. Steelman, 93 S.W.3d 102, 107 (Tex. Crim. App. 2002). ²² See State v. Espinosa, 666 S.W.3d 659, 667-68 (Tex. Crim. App. 2023) (“A person is guilty of DWI if he operates a motor vehicle in a public place while intoxicated. To determine if a person operated a motor vehicle, the totality of the circumstances must demonstrate that the defendant took action to affect the functioning of his vehicle in a manner that would enable the vehicle’s use.”) (citing Denton v. State, 911 S.W.2d 388 (Tex. Crim. App. 1995); citations and internal quotation marks omitted).

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while intoxicated to the degree that the person may endanger the person or another.”²³ Nothing in the record suggests whether the officer ever saw Appellee, and if he did, what the circumstances were. And even if we inferred, as the State wishes us to do,²⁴ that the officer saw Appellee in the hospital, the trial court would be well within its discretion on this record to decide that Appellee no longer posed a danger to himself or others at the hospital. In its briefing, the State contended that Officer Ibarra could take advantage of the “collective knowledge” doctrine to find that the offense was committed in his presence or view. This doctrine allows the knowledge of other law-enforcement officers to be imputed to the officer who makes the arrest, at least as long as there is some degree of cooperation between them.²⁵ We have indicated that the doctrine applies to a statutory warrantless-arrest provision that incorporates the “presence or view” requirement.²⁶ But

there is no evidence in 23 See TEX. PENAL CODE § 49.02(a). 24 See *infra*, discussing a contention made by the State at oral argument. 25 See *State v. Martinez*, 569 S.W.3d 621, 627 (Tex. Crim. App. 2019). 26 See *id.* at 625, 627, 630 (noting trial court’s reliance on Article 14.01(b) [which contained a presence-or-view requirement], holding “Under the facts of this case, the sum of the information known to the cooperating officers—their cumulative information—should be considered in assessing probable cause,” concluding that “the sum total of the knowledge of Officers Guerrero, Ramirez, and Quinn amounted to probable cause” that the defendant committed public intoxication, and concluding that “Appellee’s motion to suppress should have

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this case that any other law-enforcement officer witnessed events that could be construed as the commission of a crime within that officer’s presence or view. To the extent the State might be implying that Officer Ibarra could rely upon non-law-enforcement civilians as part of a “collective knowledge,” we have never extended the “collective knowledge” doctrine that far, and we decline to do so under the facts before us. At least where, as here, the statute in question requires that the offense occur in the officer’s presence or view, the statutory language cannot support the idea that a non-officer’s observance of a crime can be imputed to an officer to satisfy that requirement.²⁷ And we point out that such an extension of the “collective knowledge” doctrine would be quite expansive and would ultimately seem to depart from the theoretical underpinnings of the doctrine—that we can treat cooperating law enforcement as a collective unit when it comes to justifying an individual officer’s acts.²⁸ In oral argument, the State contended that the DWI or intoxication—been denied.”). 27 Cf. TEX. CODE CRIM. PROC. art. 14.01(a) (permitting a warrantless arrest by a “peace officer or any other person” for certain types of offenses committed within his presence or view). 28 See *Martinez*, 569 S.W.3d at 626 (quoting *Illinois v. Andreas*, 463 U.S. 765, 771-72 n.5

(1983) (“[W]here law enforcement authorities are cooperating in an investigation, . . . the knowledge of one is presumed shared by all.”)) (ellipsis in *Martinez*, brackets inserted).

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manslaughter offense continued to occur while the officer observed Appellee’s intoxication at the hospital. But the record does not substantiate the State’s assertion about what the officer observed—neither the stipulation nor the documentary evidence actually says that the officer observed Appellee at the hospital. Even if it did, a defendant’s continued intoxication does not cause the offenses of DWI and intoxication manslaughter to continue after the defendant’s impermissible conduct during intoxication has ceased.²⁹ 29 See TEX. PENAL CODE §§ 49.04(a) (“A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.”) (emphasis added), 49.08 (“A person commits an offense if the person: (1) operates a motor vehicle in a public place . . . and
(2) is intoxicated and by reason of that intoxication causes the death of another by accident or

mistake.”) (ellipsis inserted); *Barnes v. State*, 824 S.W.2d 560, 562 (Tex. Crim. App. 1991), overruled on other grounds by *Proctor v. State*, 967 S.W.2d 840 (Tex. Crim. App. 1998) (quoting from *Toussie v. United States*, 397 U.S. 112, 115 (1970)) (“Generally, when each of the elements of a crime have occurred, the crime is complete. . . . ‘[T]he doctrine of continuing offenses should be applied in only limited circumstances. . . . [S]uch a result should not be reached unless the explicit language of the substantive criminal statute compels such a conclusion or the nature of the crime is such that Congress must assuredly have intended that it be treated as continuing.”) (first ellipsis inserted, second ellipsis in *Barnes*, brackets inserted); cf. *Howlett v. State*, 994 S.W.2d 663, 665, 667 (Tex. Crim. App. 1999) (“[W]e cannot say the Court of Appeal’s holding that ‘the offense continued to occur as long as the unauthorized valve was in place and the owner suffered pecuniary loss’ [from the continued diversion of gas] was clearly erroneous.”) (brackets inserted and bracketed material added for clarity); *Spakes v. State*, 913 S.W.2d 597, 598 n.* (Tex. Crim. App. 1996) (citing *Lawhorn v. State*, 898 S.W.2d 886, 890 (Tex. Crim. App. 1995) (concluding that escape is not a continuing offense but is complete at the time of the defendant’s “initial departure from custody” so that circumstances arising later cannot negate a necessity defense); *Barnes*, supra (“[W]e have never construed that section as an invitation to turn theft into a continuing offense and we decline to do so now. To do so would be to usurp the authority of the legislature in an area controlled exclusively by it. The explicit language of the statute does not compel such a conclusion and the nature of theft is not such that the legislature must have intended it to be treated as continuing.”) (brackets inserted).

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And since the trial court granted the motion to suppress and made fact findings in the defendant’s favor (except for finding probable cause that a crime had been committed in the past), we must view the evidence in the light most favorable to the defendant with regard to whether the officer had any proximity to the defendant that could be construed as being present during an offense.³⁰ Given the state of the evidence and especially in light of the standard of review, one cannot find that Appellee “committed an offense within the officer’s presence or view” under the plain meaning of those words. The State also suggested in oral argument that police officers would often be without the ability to arrest for intoxication offenses if the words “presence” and “view” are interpreted literally. But as we have explained earlier, several statutes that confer the ability to arrest without a warrant do not contain a “presence or view” requirement—but have other requirements—and at least a couple of those could apply to intoxication offenses in some circumstances.³¹ Or an officer could obtain an arrest warrant. And for an out-of-geographic-jurisdiction officer, as in ³⁰ See *Sandoval v. State*, 665 S.W.3d 496, 515 (Tex. Crim. App. 2022) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)) (Appellate court must accord deference to the trial court’s resolution of questions of historical fact and application-of-law-to-fact questions that turn on credibility and demeanor.); *State v. Lujan*, 634 S.W.3d 862, 865 (Tex. Crim. App. 2021) (Evidence must be viewed in the light most favorable to the trial court’s ruling

and findings.). 31 See TEX. CODE CRIM. PROC. arts. 14.03(a), 14.04.

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the present case, the officer could obtain the assistance of a local officer. Thus, to the extent the State might be advancing an “absurd results” argument, we find such an argument to lack merit. C. Woodard In Woodard, the defendant drove his vehicle into a ditch and walked away.³² A tipster notified the police of someone matching the defendant’s description walking away from the scene and where he was last spotted.³³ A police officer found the defendant six to eight blocks from the accident.³⁴ The defendant admitted that he was drunk and should not have been driving.³⁵ The officer smelled alcohol on the defendant’s body and breath, the defendant’s eyes were bloodshot and glazed, and the defendant was unsteady on his feet and staggered when he walked.³⁶ The officer conducted field sobriety tests, which the defendant failed.³⁷ The officer asked the defendant if he would be willing to take a breath test, 32 341 S.W.3d at 407. 33 Id. 34 Id. 35 Id. at 408. 36 Id. 37 Id.

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and he said he would.³⁸ The defendant was then arrested.³⁹ The trial court concluded that the initial interaction between the officer and the defendant was not a consensual encounter and that the defendant was detained without reasonable suspicion.⁴⁰ The trial court also concluded that no officer observed the defendant operating a motor vehicle while intoxicated and that the arresting officer did not have probable cause to arrest the defendant for public intoxication.⁴¹ The court of appeals reversed, concluding that the initial interaction between the officer and the defendant was a consensual encounter, the officer had reasonable suspicion to conduct field sobriety tests, and after those tests the officer had probable cause to arrest.⁴² With respect to Article 14.01(b), this Court summarized the court of appeals’s decision as “reject[ing] Woodard’s argument that his arrest for DWI was unlawful because Officer Warner did not actually 38 Id. 39 Id. 40 Id. at 408-09. 41 Id. at 409. 42 Id. at 409-10.

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witness Woodard driving while intoxicated as required by” Article 14.01(b).⁴³ In fact, quoting one of its earlier decisions, the court of appeals essentially wrote the words “presence or view” out of the statute: [A]lthough the statute states that the offense must be one that is committed within the officer’s presence or view, an officer can make a warrantless arrest based on an offense that was committed at an earlier time and further, the officer does not even have to personally see the offense committed before the warrantless arrest is justified under article 14.01(b).⁴⁴ A dissenting justice contended that the court-of-appeals majority made mistakes in deciding that the encounter began as consensual, and the dissent concluded that the arrest was illegal under Article 14.01(b) because the defendant had not committed a DWI offense in the officer’s presence.⁴⁵ The dissent argued that public intoxication could not be considered as an offense forming a basis for arrest because the State had procedurally defaulted that argument.⁴⁶ Echoing the arguments of the dissent, the defendant petitioned for 43 Id. at 409. 44 State v. Woodard, 314 S.W.3d 86, 98 (Tex.

App.—Fort Worth (quoting *Akins v. State*, 202 S.W.3d 879, 889 (Tex. App.—Fort Worth 2006, pet. ref’d)) (brackets inserted). 45 Woodard, 341 S.W.3d at 410 (citing Woodard, 314 S.W.3d at 100-03 (Dauphinot, J., dissenting)). 46 Id.

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discretionary review.⁴⁷ This Court affirmed.⁴⁸ In doing so, the Court found that the initial interaction between the officer and the defendant was a consensual encounter,⁴⁹ that the officer had developed at least reasonable suspicion for a detention by the time he administered field sobriety tests,⁵⁰ and that the information obtained before and during the field sobriety tests provided probable cause to believe that the defendant “had driven the now-wrecked car while intoxicated.”⁵¹ In a general-law section of the opinion regarding Article 14.01(b), the Court relied solely on our prior decisions in *Beverly* and *Steelman* for the proposition that “all of the information to support probable cause does not have to be within the officer’s personal knowledge” and that the officer can rely upon “reasonably trustworthy information.”⁵² In its analysis section, the Court concluded, after finding probable cause that a DWI offense had been committed, 47 Id. 48 Id. at 412. 49 Id. at 412-13. 50 Id. at 414. 51 Id. 52 Id. at 412 (citing and quoting *Beverly v. State*, 792 S.W.2d 103, 105 (Tex. Crim. App. 1990) and *Steelman*, 93 S.W.3d at 107).

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that “Article 14.01(b) was not violated.”⁵³ The Court further found that the court of appeals did not resolve the case on the issue of public intoxication, having validly found that the arrest was supported by probable cause to conclude that the defendant had committed the offense of DWI.⁵⁴ The Court said nothing in its analysis section about Article 14.01(b)’s “presence or view” requirement.⁵⁵ In a one-paragraph dissent, Presiding Judge Keller said it was “undisputed that the arrest was without a warrant and that a DWI was not committed in the presence or view of any police officer, since appellant was first spotted walking six to eight blocks from the accident.”⁵⁶ She therefore disagreed with the Court’s holding that Article 14.01(b) was not violated.⁵⁷ D. Disavowing Woodard Some of Woodard’s holdings were correct. Woodard correctly found that the interaction between the officer and the defendant began as a consensual encounter. The Court also correctly found that the defendant’s physical demeanor and 53 Id. at 414. 54 Id. 55 See id. at 412-14. 56 Id. at 415 (Keller, P.J., dissenting). 57 Id.

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admissions during that consensual encounter gave the officer reasonable suspicion to require the defendant to perform field sobriety tests. So, to the extent the trial court suppressed evidence about the field sobriety tests, it erred, and the Court was correct to affirm the overturning of that ruling. But the breath testing was another matter. That testing happened after arrest, and unless the defendant’s pre-arrest consent attenuated the taint (an issue that was not addressed), a valid basis for arrest would be needed. The Court was correct to conclude that, after the defendant failed the field-sobriety tests, the officer had probable cause to believe that the defendant had committed a

DWI in the past. But Article 14.01(b) required more: that the offense be committed in the officer’s “presence” or “view.” Looking back at the facts of Woodard, it seems likely that the offense of public intoxication was committed in the officer’s presence or view when the officer saw the defendant walking on the street six to eight blocks from the accident. However, since the State has to preserve error when it is an appealing party,⁵⁸ reliance on public intoxication as a basis for arrest might conceivably have been procedurally defaulted, as the dissent in the Woodard court of appeals suggested. In any event, this Court did not rely upon public intoxication ⁵⁸ Mercado, 972 S.W.2d at 78.

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as an offense supporting arrest but relied solely on DWI. If the Court in Woodard in fact avoided addressing the “presence or view” question, it erred. The defendant raised it at trial, the trial court suppressed on that basis, the court of appeals addressed the issue and found that “presence or view” doesn’t mean what the words say, a dissent in the court of appeals relied on this statutory language, and a dissent in this Court relied on that language as well. The issue was staring the Court in the face. Given that the Court should have addressed the issue, the court of appeals in this case was not unreasonable in thinking that the Court did address the issue, especially when the Court cited earlier cases that had construed “the presence or view” requirement and cited them for the proposition that the information the officer receives need not be within his personal knowledge.⁵⁹ But if the Court did not in fact address the “presence or view” issue—even though it should have—then its decision is not authoritative on that issue. If the Court in Woodard did in fact address the “presence or view” question, then it wrote those words out of the statute. Because courts can reasonably construe Woodard as impliedly doing so, we now disavow Woodard to the extent it ⁵⁹ See Woodard, 341 S.W.3d at 412 (quoting from Beverly and Steelman).

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can be read that way. It is true that “the doctrine of stare decisis indicates a judicial preference for maintaining consistency with past decisions”⁶⁰ and that “the interests of stare decisis are at their height for judicial constructions of legislative enactments upon which the parties rely for guidance in conforming to those enactments.”⁶¹ But even in the area of statutory construction, “[p]recedent may be overruled if the reasons for doing so are weighty enough.”⁶² Factors that support overruling precedent include that the original decision was flawed from the outset and that the decision conflicts with other precedent.⁶³ Both of those factors are true here. In determining whether a decision was “flawed from the outset,” the issue is not whether we agree with it.⁶⁴ Rather, we look to whether the decision is “defensible.”⁶⁵ A decision that is not defensible is flawed.⁶⁶ A statutory- ⁶⁰ In re Green, 713 S.W.3d 843, 853 (Tex. Crim. App. 2025). ⁶¹ Id. at 854. ⁶² Id. ⁶³ Id. ⁶⁴ See id. ⁶⁵ See id. ⁶⁶ Id.

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construction decision is more likely to be defensible if it explicitly utilizes the correct statutory-construction framework, articulated by our seminal Boykin case.⁶⁷ And a decision utilizing that

framework is likely to be defensible if the various analyses under that framework are “at least facially legitimate.”⁶⁸ Woodard failed to even recognize that the defendant had a serious argument that the court of appeals disregarded the plain language of Article 14.01(b). The opinion did not even purport to conduct a Boykin analysis. And to the extent Woodard impliedly construed Article 14.01(b) by writing the words “presence” and “view” out of the statute, that construction was, under the Boykin standard, very obviously wrong. And, to the extent the opinion relied on Beverly and Steelman to support eliminating the “presence or view” requirement, it misconstrued those cases. Beverly did quote a generic “test” for probable cause (“ . . . reasonably trustworthy information . . . sufficient to warrant a prudent man in believing . . .”) that included believing that an offense had been committed in the past,⁶⁹ but immediately ⁶⁷ See *id.* at 854-55 (citing *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991) and discussing the use of the framework in *Lanford v. Fourteenth Court of Appeals*, 847 S.W.2d 581 (Tex. Crim. App. 1993)). ⁶⁸ See *id.* at 856. ⁶⁹ 792 S.W.2d at 104-05.

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afterwards the Court explicitly stated that an arrest under Article 14.01(b) requires the officer to have “probable cause to believe that the arrested person is committing an offense.”⁷⁰ The Court further said that probable cause under Article 14.01(b) “may be based upon the officer’s personal knowledge coupled with personally observed behavior.”⁷¹ And Beverly concluded that Article 14.01(b) was satisfied when “police officers personally observed behavior that although not overtly criminal, was, when coupled with the officers’ prior knowledge, sufficient to establish probable cause that an offense was then occurring.”⁷² Applying the law to the facts, Beverly concluded that, when the officer saw the defendant at the apartment complex, he reasonably believed, based on his prior knowledge of trespass warnings and his subsequent observations, that the defendant “was committing an offense”— trespassing at the apartment complex.⁷³ Thus Beverly held that prior knowledge can be used to support a conclusion that what the officer is seeing is a crime, but the officer still has to believe that he is actually perceiving a crime. Ditto for Steelman. Steelman quoted the general probable-cause test quoted ⁷⁰ *Id.* at 105 (emphasis added). ⁷¹ *Id.* ⁷² *Id.* (emphasis added). ⁷³ *Id.* at 105-06.

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in Beverly,⁷⁴ but immediately after quoting the generic test, the Court stated more specifically that “[a]n offense is deemed to have occurred within the presence or view of an officer when any of his senses afford him an awareness of its occurrence.”⁷⁵ Both Beverly and Steelman used the generic test for probable cause as background for the standard of confidence an officer must have but then modified that test to require that standard of confidence to relate to whether the officer was actually observing an offense. And because Woodard relied solely on Beverly and Steelman for the proposition that we can look to the past to determine “presence or view,” a conclusion that it misconstrued those cases is fatal to any holding it might have made regarding the “presence or view” requirement. Moreover, the “presence or view” language is old, preceding the turn of the

twentieth century.⁷⁶ Early on, in *Russell v. State*, this Court interpreted that language in a predecessor statute to mean that the officer is actually observing the crime: Instead thereof, it would appear, because the court submitted the question of the legality of the arrest to the jury, that in the opinion of the court the fact that the testimony tended to show that the person 74 93 S.W.3d at 107. ⁷⁵ Id. ⁷⁶ See *State v. Coffey*, 41 Tex. 46, 49 (1874).

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who did the shooting was near by, and that at least two of the parties were on the outside of the house at the time of the shooting, near enough to have seen the person, and that these parties were with the posse making the arrest, that the shooting occurred in their presence, and that this was what the statute meant when it authorized a person to arrest a party without warrant when the offense is committed in his presence and within his view, if it is one classed as a felony. In our opinion, the statute does not mean this; but in order to authorize an arrest without warrant in such case the crime must be committed in the actual presence and within the actual view of the person making the arrest.⁷⁷ Steelman’s “any of his senses afford him an awareness of its occurrence” is the *Russell* standard in modern language. To the extent Woodard deviated from *Russell*, Beverly, and Steelman, it is the outlier. E. Conclusion The court of appeals wrote the “presence or view” requirement out of Article 14.03(d), contrary to the plain meaning of the text. The court relied upon Woodard to do so, and to the extent Woodard can be read to address the issue, its analysis was very obviously flawed and wrong and conflicted with over a century’s worth of precedent. Consequently, we disavow Woodard to the extent it suggests that the “presence or view” language does not mean what it literally says. And because the record supports the trial court’s conclusion that the offenses of intoxication manslaughter, DWI, and public intoxication were not committed in ⁷⁷ *Russell v. State*, 37 Tex. Crim. 314, 317 (1897) (emphasis added).

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Officer Ibarra’s presence or view, the court of appeals erred to hold otherwise. We reverse the judgment of the court of appeals and remand the case to that court for further proceedings consistent with this opinion. Delivered: April 16, 2026 Publish

PER CURIAM.

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. PD-0510-25

THE STATE OF TEXAS

v. GRADY JACK BARBER, Appellee

ON APPELLEE’S PETITION FOR DISCRETIONARY REVIEW

FROM THE NINTH COURT OF APPEALS

LIBERTY COUNTY

Schenck, P.J., filed a dissenting opinion in which RICHARDSON, J., joined and in which KEEL, J., joined as to Part II(B).

DISSENTING OPINION

Seventy-three-year-old Bobby Guy Allen was killed in a motor vehicle collision between himself and Grady Jack Barber as Barber was exiting the parking

BARBER DISSENT–2

lot at the at Double B Oak Bar in Liberty County. A witness saw Barber consuming alcohol shortly before leaving in his vehicle. The question here is whether evidence establishing Barber's intoxication can be introduced at his trial. The majority opinion avoids answering that question, though it throws a dark cloud over it in advance of a needless remand. Instead, it opines about ancillary questions concerning arrest powers. I disagree with its disposition in every respect and therefore dissent.

I. BACKGROUND AND SUMMARY

A patron in the Double B Oak Bar in Liberty County called the Dayton Police Department to report that someone had been drinking and left in their vehicle. By the time Officer Eric L. Ibarra arrived to investigate the possible DWI resulting in Mr. Allen's death, Barber was being transported to Houston Methodist Baytown Hospital in Harris County, about thirty minutes away. Officer Ibarra quickly investigated and sought out Liberty County Magistrate Judge Thomas Chambers. Judge Chambers duly issued a warrant that is substantively unchallenged as supported by probable cause and gave the warrant to Officer Ibarra

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who then delivered it to the hospital staff in Harris County. 1 The resulting blood draw—obtained at least some four hours and forty minutes after the collision— showed Barber's alcohol level at .079 BAC, meaning that he was likely heavily intoxicated when his car struck and killed Mr. Allen hours before. 2 Following Barber's indictment for intoxication manslaughter, he moved to suppress the results of the blood draw on the theory that Officer Ibarra was essentially wearing the wrong-colored hat when he delivered the warrant to the hospital. That is to say, he contends that Officer Ibarra's authority to deliver Judge Chamber's warrant was prohibited by operation of a since abandoned subparagraph of Article 18.067 of the Texas Code of Criminal Procedure, 3 which, according to the argument, prohibited Officer Ibarra from delivering it unless he could also affect Barber's arrest. TEX. CODE CRIM. PROC. art. 18.067(2) (2024). The trial 1 That Officer Ibarra was taken away from his law-enforcement duties for a significant period while driving back and forth between Liberty County and Harris County reflects a commitment to his task for which he should be commended. 2 The collision was at about 7:20 p.m. on October 31, 2022. The search warrant was issued at 10:11 p.m. in Liberty County. The documentation does not show the precise time Barber's blood was drawn, but the phlebotomist's affidavit and warrant return reflect November 1, 2022. 3 Act of May 15, 2025, 89th Leg., R.S., ch. 192, § 1, art. 18.067, 2025 Tex. Sess. Law Serv. 351, 351 (amending TEX. CODE CRIM. PROC. art. 18.067). This case is about a dead version of the statute. Id. The legislature has since removed the statutory provision. Consequently, the majority's opinion will have no prospective application.

BARBER DISSENT–4

court granted the request, and the State brought an interlocutory appeal under Article 44.01(a)(5) of the Code of Criminal Procedure. *Id.* art. 44.01(a)(5). The Ninth Court of Appeals, in an exercise of common sense, reversed, signaling a prompt return of this case to the trial court for a resolution on the merits. *State v. Barber*, No. 09-24-00313-CR, 2025 WL 1749999, at *5 (Tex. App.—Beaumont June 25, 2025, pet. granted) (mem. op., not designated for publication). Unfortunately, it made the forgivable mistake of citing and relying in part on controlling authority of this Court in so doing. *Id.* at *4-5. That decision, *State v. Woodard*, 341 S.W.3d 404 (Tex. Crim. App. 2011), dealt with warrantless arrests and is implicated here only by reference to that power in a sentence of the blood-draw statute that, as noted, has since been abandoned. See *supra*, note 3. We granted review. The majority now dissects that old decision as if we had granted a twenty- five-year-old rehearing in that case rather than the petition for discretionary review in this one. The majority does not attempt to answer the suppression question upon which interlocutory appellate jurisdiction is based. It instead remands that question for possibly months or years of further proceedings. See *Maj. Op.* at 28. Put directly, there is no colorable basis for any decision that would exclude the proof of Barber’s intoxication at the time of Mr. Allen’s death, even if one

BARBER DISSENT–5

reads Article 18.067 to require both service of the warrant in an “adjacent county” and by a law enforcement official able to make an arrest in this case. I do not read the Article to so require. But regardless of its proper reading, our refusal to address that controlling legal question is unwarranted and disrespectful to the Ninth Court of Appeals, which adhered to both our precedent and, unlike this Court, its commitment to give the answer that the Code of Criminal Procedure, rules, and comity require. See TEX. CODE CRIM. PROC. art. 44.01(f); TEX. R. APP. P. 25.2(g) (proceedings in the trial court are suspended once the record has been filed in the appellate court until the lower court receives a mandate from the court of appeals), 40.2 (courts of appeals must hear and decide criminal appeals “at the earliest possible time”), 43.3 (appellate courts reversing a trial court’s judgment must render the judgment the lower court should have rendered unless remand is necessary or in the interest of justice). Our effort to redirect this case into a platform for opining on Woodard’s decision on arrest powers will be regarded as dicta unrelated to the resolution of this case, assuming this Court or the courts below eventually reach and properly resolve the suppression question that gives rise to it. Worse, because our attack on Woodard’s construction of the arrest-power provisions is myopically targeted at two words—“presence” and “view”—

BARBER DISSENT–6

without regard to their amorphous object—every “offense” laid out in Article 14.01—this decision will serve to foment only confusion and disarray in the lower courts and among the law-enforcement community that is simultaneously told by our sister court that it has a “twenty-four hours a day,” seven-day-a-week duty to make arrests across the State. See TEX. CODE CRIM

PROC. art. 14.01; *Garza v. Harrison*, 574 S.W.3d 389, 402–03 (Tex. 2019) (citing TEX. CODE CRIM. PROC. arts. 6.06, 14.03(g)(2)). They will be left to wonder if their erroneous fidelity to the Supreme Court’s command to act will subject them to suit or loss of immunity by virtue of our decision here. See *Garza*, 574 S.W.3d at 393–406. Similarly, state judges will wonder if our decision here reflects a lack of authority in themselves or the officers to whom they task with serving their warrants. See TEX. CODE CRIM. PROC. art. 18.06(a) (“A peace officer to whom a search warrant is delivered shall execute the warrant without delay . . .”). Either presents a basic constitutional problem the majority’s opinion ignores, though it looms over its (apparent) reading of Article 14.01. As detailed below, I would begin and end this case by answering the question presented under the statute whose application authorized this appeal. That statute provides no basis for exclusion if either of two things are true: (1) the law said to be violated by the State is “unrelated to the purpose of the exclusionary rule” or

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(2) where the evidence was “obtained by a law enforcement officer acting in objective good-faith reliance upon a warrant issued by a neutral magistrate based on probable cause.” *Wilson v. State*, 311 S.W.3d 452, 459 (Tex. Crim. App. 2010) (“[A]rticle 38.23(a) may not be invoked for statutory violations unrelated to the purpose of the exclusionary rule.”); TEX. CODE CRIM. PROC. art. 38.23(b) (good- faith exception for Texas exclusionary rule). In fact, both are true here. Even if one accepts that Officer Ibarra or the Judge Chambers committed some error in delivering or authorizing the delivery of the warrant, respectively— and I do not—there is nothing in the statutory text, however it might be read, to call for exclusion of relevant evidence. *Wilson*, 311 S.W.3d at 459; cf. *Cort v. Ash*, 422 U.S. 66, 82–84 (1975) (legislation including prohibitions on government conduct does not inexorably support a private cause of action absent, among other things, proof of legislative intent). That the legislature has since unceremoniously jettisoned the linkage to arrest powers upon which the majority relies does little to suggest that it was ever intended to have the exclusionary mandate Barber now urges. The fact that the majority is forced to attack and undo our own authority in place at the time of Officer Ibarra’s “execution” of the warrant would seem to conclusively resolve any argument about the good-faith limitation on exclusion under the plain language of our exclusion statute. See TEX. CODE CRIM. PROC. art.

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38.23. That is, of course, unless we are now embracing the notion that law enforcement should regard all our opinions as presumptively incorrect. I like to think we aren’t quite there yet.

II. DISCUSSION

This case, as the majority concedes, is not about a warrantless arrest. Maj. Op. at 4. Officer Ibarra did not arrest Barber; he swiftly moved to present evidence (uncontested here) to Judge Chambers, who promptly issued a search warrant and directed Officer Ibarra to deliver it.⁴ As postured by the majority’s opinion, this case unavoidably poses the question whether Judge

Chambers was within his constitutional authority to entrust Officer Ibarra with serving his warrant. See TEX. CONST. art. V, § 12(a) (“All judges of courts of this State, by virtue of their office, are conservators of the peace throughout the State.”); *In re State ex rel. Wice*, 668 S.W.3d 662, 674 (Tex. Crim. App. 2023). This and other problems, large and small, loom over the majority’s opinion. 4 The majority does not discuss whether the error it perceives here stems from Officer Ibarra’s taking and delivering of the warrant in Harris County or Judge Chambers in tasking him with doing so. Either, but especially the latter, poses constitutional concerns that should be avoided by either answering the Article 38.23 issue that gives rise to appellate jurisdiction or a fair reading of Article 18.067. See TEX. CODE CRIM. PROC. arts. 18.067, 38.23.

BARBER DISSENT–9

But, before we embark on attempting to answer any of these questions, I think we should first be focused on why this case is here and how we should be addressing it. A. The Issue Here is Whether Evidence of Barber’s Drunkenness Should be Excluded. Before I explain my disagreements with the majority over its reading of the various statutes involved here, I pause to pose the question of our stewardship of interlocutory appeals like this. Our appellate jurisdiction arises as an extension of statutorily authorized exception to the usual rule requiring a final judgment in the courts below. That jurisdiction arises in this case by virtue of a trial court order that “grants a motion to suppress evidence” and the “prosecuting attorney[’s] certifi[cation] . . . that the appeal is not taken for the purpose of delay and that the evidence . . . is of substantial importance in the case.” See TEX. CODE CRIM. PROC. art. 44.01(a)(5) (emphasis added). That appeal is considered important enough to allow for the complete disruption of all proceedings in the trial court pending its resolution. See *id.* 44.01(e). The intermediate courts are directed that such appeals must be accelerated and given priority over the rest of their respective dockets. See TEX. R. APP. P. 28.1(a). I have no doubt that our lofty position affords us the power to

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avoid the issues that give rise to these appeals in lieu of addressing ancillary or subsidiary arguments that do not ultimately provide an answer even though the majority finds them more interesting. Still, I believe we should be reluctant to dither or use cases such as this for the purpose of opining on collateral questions. There is a subtle, but critical, distinction for appellate purposes between “issues” and “arguments” that relate to them. In the usual case where the issue is not driving jurisdiction, the difference speaks principally and only to whether it must be raised by the parties or presented in the intermediate appellate court below. An issue, other than subject-matter jurisdiction, must generally be raised by the parties and preserved by presentation to the courts below. 5 See Jeffrey M. Anderson, *The Principle of Party Presentation*, 70 BUFF. L. REV. 1029, 1045–46 (2022). The various and sundry arguments that relate and drive the answer to the issue(s) are another matter. As Justice Scalia once famously observed: “Of course not all legal arguments bearing upon the issue in question will always be identified by counsel, and we are not precluded

from supplementing the contentions of counsel through our own deliberation and research.” *Carducci v. Regan*, 714 F.2d 5 Owing to the critical nature of the criminal law matters within our exclusive jurisdiction, this Court is somewhat unique in being free to raise issues as it deems necessary. See TEX. CONST. art. V, § 4(b); TEX. R. APP. P. 66.1, 67. The authority should be carefully constrained to matters affecting the litigants’ essential rights and the public confidence in the enforcement of its laws.

BARBER DISSENT–11

171, 177 (D.C. Cir. 1983). Likewise, a party’s failure to present an argument in the court of appeals should not constrain his or her ability to present it in connection with the effort to litigate the issue in a higher court. E.g., *Greene v. Farmers Ins. Exch.*, 446 S.W.3d 761, 764 n.4 (Tex. 2014) (distinguishing between “issues” and “arguments” for presentation and preservation purposes). For all these reasons, I do not question our power to reach and address whatever arguments we find necessary or interesting in connection with the issue presented in any appeal to us. But necessary and interesting are two different matters, particularly where the issue is driving our jurisdiction and our choice of arguments result in our not giving an answer to a necessary issue. This is especially problematic in connection with an interlocutory appeal like this one, where we should be choosing our path that answers the issue quickly. 6 We should strive to avoid, rather than prefer, reaching unnecessary and contentious sub-arguments that 6 Judge Finley misunderstands the party presentation rule and its applicability to this Court. In courts subject to its constraints, the rule requires the parties rather than the court to identify the “issue” to be decided. A court’s job in deciding that issue requires it to reach the arguments necessary to properly dispose of the case. I thus cannot blame the decision here on the parties or the lower courts. Only this Court is responsible for avoiding the arguments that would resolve this case on an efficient and defensible basis, rather than neither. Of course, that would be a problem here even if the party presentation rule applied to this Court. But it does not. This Court is not so constrained. See TEX. CONST. art. V, § 5(b) (“[T]he Court of Criminal Appeals may, on its own motion, review a decision of a Court of Appeals in a criminal case as provided by law. Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.”); TEX. R. APP. P. 67 (“[T]he Court of Criminal Appeals may grant review of a court of appeals’ decision in a criminal case at any time before the mandate of the court of appeals issues.”).

BARBER DISSENT–12

will delay merits resolution. Viewed through that lens, judicial restraint is a virtue I find lacking in the majority’s opinion here. i. Suppression is not proper as a matter of law under our precedents. As noted, the issue supporting this appeal is whether the evidence obtained through the hospital’s blood draw should be suppressed. I do not find it difficult and would answer it directly. The statute requires suppression where evidence is obtained “in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of

America” TEX. CODE CRIM. PROC. art. 38.23. To fit within that rule, however, the violation must be one that is both within the intended reach of Article 38.23(a) and outside of its good-faith exception. I believe both preclude suppression as a matter of law and without need of a remand. 7 7 The majority argues we should not address the good-faith issue because the SPA asks us only to remand the case. But neither the parties nor SPA have the responsibility to decide whether the good-faith exception should apply or whether, for example, Article 18.067 operates to supplant or erase the judge’s constitutional statewide authority to have his warrants delivered by a willing law-enforcement officer. Those responsibilities are reserved for this Court. The majority seems to agree when it silently declares its reading of Article 18.067 fits within the scope of rules calling for exclusion under Wilson.

BARBER DISSENT–13

ii. Nothing in the old Article 18.067 signals an intention to preclude the results of a blood draw. Well before Woodard, we held that “the plain language of article 38.23(a) would suggest that evidence obtained in violation of any law must be suppressed” but that “article 38.23(a) may not be invoked for statutory violations unrelated to the purpose of the exclusionary rule.” *Wilson v. State*, 311 S.W.3d 452, 459 (Tex. Crim. App. 2010) (emphasis in original); see *Roy v. State*, 608 S.W.2d 645, 651 (Tex. Crim. App. [Panel Op.] 1980); *Pannell v. State*, 666 S.W.2d 96, 97–98 (Tex. Crim. App. [Panel Op.] 1980). We further explained the purpose underlying the exclusionary rule is “to protect a suspect’s privacy, property, and liberty rights against overzealous law enforcement.” *Wilson*, 341 S.W.3d at 458–59. This Court approvingly discussed the issue as recently as two or three months ago. See *State v. Coleman*, Nos. PD-0093-25 & PD-0094-25, 2026 WL 237733, at *7 (Tex. Crim. App. Jan. 29, 2026). In *Coleman*, we said a defendant has Article 38.23 standing only if he has “suffered an infringement of a legal right.” *Id.* (citing *Bluntson v. State*, No. AP-77,067, 2025 WL 1322702, at *36 (Tex. Crim. App. May 17, 2025)). It’s not clear to me what legal “right” of Barber’s was infringed or how it could support exclusion at trial. Barber’s blood was drawn pursuant to a valid warrant. So, even if we reject my construction of the blood-draw statute below, we are still not talking about an

BARBER DISSENT–14

unreasonable search that violated Barber’s privacy rights—something Article 38.23(a) goes to—just the administrative procedure by which the valid warrant was “executed.” I do not believe this procedural statute has the purpose of preventing the illegal procurement of evidence that allegedly happened in this case within the meaning of Article 38.23. On the contrary, the legislature said the statute is meant to facilitate the procedural execution of warrants in large cities and municipalities encompassing two or more counties. None of this should be surprising. Legislatures and Congress frequently enact administrative requirements—often with directives that might operate to the benefit of litigants. But these precatory directives do not translate to a private right to enforce or pursue relief, absent some affirmative indication of that intention. See *Blessing v. Freestone*, 520 U.S. 329, 341 (1997). A party seeking relief in court, whether by civil remedy or, as here,

prohibiting the State's use of otherwise admissible proof at his criminal trial "must assert the violation of a . . . right," not merely a violation of law. *Golden State Transit Corp. v. Los Angeles*, 493 U. S. 103, 106 (1989) (emphasis added). When the Legislature enacts a law governing the relations between governmental actors or judges and private actors, as it did in the old Article 18.067, which confers different burdens for delivering warrants in adjacent counties, we

BARBER DISSENT–15

should not presume any intention to avoid a resolution of the resulting criminal trial on its merits on account of error. iii. Suppression cannot be supported on this record under the good-faith exception incorporated into Article 38.23. While I believe the good-faith question is embedded as a necessary precondition of any exclusion decision under the plain language of Article 38.23, I accept that it would ordinarily amount to a mixed question of law and fact. But that is not true here because the good-faith exception conclusively applies. The United States Supreme Court has explained the "benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion" because "[i]n most such cases, there is no police illegality and thus nothing to deter." See *United States v. Leon*, 468 U.S. 897, 920–21 (1984). The same reasoning applies to the Texas good-faith exception embodied in Article 38.23(b). *State v. Brabson*, 966 S.W.2d 493, 497 (Tex. Crim. App. 1998) (citing *Leon* and Article 38.23 and stating "[t]he 'core' rationale of an exclusionary rule is to deter the police from illegally seizing evidence by making that evidence inadmissible at the defendant's criminal trial"); TEX. CODE CRIM. PROC. art. 38.23(b) ("It is an exception . . . that the evidence was obtained by a law enforcement officer acting in

BARBER DISSENT–16

objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause."). That is precisely what happened here. There is nothing to deter. Officer Ibarra performed admirably, obtaining a search warrant and executing it in good faith at the direction of Judge Chambers, and because of what is essentially a procedural error, if it is error at all, see *infra*, the blood evidence could be suppressed despite being critical to this case. 8 The "error" as seen by the majority arises only by virtue of its rejection of controlling authority in place at the time the warrant was issued and executed. Neither Officer Ibarra nor Judge Chambers could (or should) have foreseen our rejection of *Woodard*. Rather than acknowledging the unavoidable conclusion that the good-faith exception applies, the majority remands the case back to the court of appeals. I likely would agree with the majority if resolution of the issue was complex and ambiguous, but here the answer is easy, and remanding the case to the court of appeals to do what we could do right now (and which it almost certainly will do) will result only in (1) further delay in disposing of the case and (2) chaos being thrown into our application of the statute governing arrest power. 8 This is especially true here where Officer Ibarra never personally observed Barber.

BARBER DISSENT–17

B. The Majority's Decision Misconstrues the Statute Giving Rise to the Suppression Claim. While

the majority does not ultimately answer whether the blood evidence should be suppressed, its preference to address arrest powers and our Woodard decision’s parsing of the words “presence” and “view” take it on a path that, by necessity starts with the text of Article 18.067, particularly its second, since- abandoned, subparagraph that contains the words implicating the arrest power of a law-enforcement officer. That old Article reads: Notwithstanding any other law, a warrant issued under Article 18.02(a)(10) to collect a blood specimen from a person suspected of committing an intoxication offense . . . , may be executed:

(1) in any county adjacent to the county in which the warrant was issued; and

(2) by any law enforcement officer authorized to make an arrest in the county of execution. TEX. CODE CRIM. PROC. art. 18.067 (2024) (emphasis added); see Act of May 15, 2025, 89th Leg., R.S., ch. 192, § 1, art. 18.067, 2025 Tex. Sess. Law Serv. 351, 351 (removing (2) from Article 18.067). The majority reads the statute either to limit the power of the issuing judge to authorize or the officer to serve the warrant in an adjacent county, or both. I disagree. The majority appears to ignore that the first section is an authorization,

BARBER DISSENT–18

“notwithstanding any other law,”⁹ and that subparagraphs (1) and (2) are joined with “and,” meaning either operates to authorize delivery of the warrant. The majority, however, treats them as separate, necessary preconditions to the existence of authority to serve a warrant. This is wrong in my view.¹⁰ E.g., *Pulsifer v. United States*, 601 U.S. 124, 127–28 (2024).¹¹ ⁹ This reference to “any other law” indicates that this section was intended to clarify or confirm authority, such as that given to Judge Chambers directly in the Constitution, for example, to have his warrants served—statewide if necessary. See *infra*. ¹⁰ Judge Finley maintains that legislative history of the 89th Legislature in 2025, prospectively and forever rejecting the result Judge Finley urges here, somehow confirms his conclusion that the 87th Legislature must have meant for blood-draw evidence to be excluded under Article 18.067 on account of who delivered it. But the legislative history came after and presumably in response to the district court’s decision in this case and in connection with the passage of a bill that eliminated the theory of exclusion the district court and Judge Finley embraces. Acknowledging the reading and foreclosing it is not the endorsement Judge Finley urges and, at best, is irrelevant to what the of 87th legislature intended in 2024. E.g., *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 117 (1980) (“‘[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.’”); *Public Emp. Retirement Sys. v. Betts*, 492 U.S. 158 (1989) (“We have observed on more than one occasion that the interpretation given by one Congress (or a committee . . . thereof) to an earlier statute is of little assistance in discerning the meaning of that statute.”). ¹¹ The majority allows its reading of Article 18.067 to trump the judge’s apparent constitutional authority “throughout the state” and, instead, to preclude his empowering a willing law enforcement officer to deliver his warrant “throughout the state.” Rather than preserving that authority in the first four words of

Article 18.067 (“notwithstanding any other law”), the majority goes on to read its (further) authorization as a prohibition. Having treated the authorization as a prohibition, and the act of delivery as the “execution,” the statute would now function as: Notwithstanding any other law, a warrant issued under Article 18.02(a)(10) to collect a blood specimen from a person suspected of committing an intoxication offense . . . may not be executed unless it is delivered:

BARBER DISSENT–19

The two subparagraphs of Article 18.067 relate to different things and thus operate as different sources of authority. *Id.* The majority’s reading essentially eliminates subparagraph (1) from the statute as any law enforcement officer with the authority to make “an arrest in the county of execution” would already have the authority to do so in an adjacent county. The first paragraph relates to geography, not identity of the person tasked with delivering the warrant. It would thus appear to authorize (at a minimum) the judge to appoint a law enforcement officer, himself, or anyone else to make delivery—provided the burden is limited to delivery in an adjacent county. The second paragraph authorizes the judge to task law enforcement with delivery without geographic constraint and in keeping with its statewide scope of constitutional authority and the State’s interest in seeing its criminal laws enforced. While the majority’s reading of “and” as a linkage of two preconditions on the authority to deliver the warrant is also grammatically plausible, e.g., *id.* at 124, it should be rejected because it renders the first condition inoperative or practically impossible. *Id.* If subparagraphs (a) and (b) confer authority to serve the warrant (1) in any county adjacent to the county in which the warrant was issued; and (2) by any law enforcement officer authorized to make an arrest in the county of execution.

BARBER DISSENT–20

collectively and conditionally rather than sequentially, how could a blood-draw warrant be served in the same county it is issued? Likewise, how, under the majority’s reading, might a blood draw might be ordered if the inebriated driver operator makes it across the adjacent county? Suppose for example a driver under the apparent influence is involved in a fatal accident in south-eastern Hunt County and is taken across neighboring (and diminutive) Rockwall County to a critical care facility in Dallas County. What then? Under the majority’s reading subparagraph (1) must be satisfied separately from subparagraph (2). The warrant can be issued only from a county adjacent to the county of execution, meaning Rockwall, Ellis, Tarrant, and Collin, but not Hunt. And, if we could somehow authorize a judge in a county disassociated with the event to issue the warrant he would also have to be sufficiently “adjacent,” ruling out Dallas as well. This would then also preclude any law enforcement officer within that same county from serving the warrant to the hospital staff because they were not “present” and did not “observe” the offense. I do not mean to suggest that the majority’s reading is absurd, only that we should favor a reading that makes sense, leaves both subparagraphs as operative, and avoids the constitutional and practical concerns to which I will now turn.

BARBER DISSENT–21

Yet another simple and avoidable reading here would focus on the question of “execution” of the warrant. While that term is not defined in the statute, the warrant’s object—the taking of blood—is obvious. The judge’s authority to sign a warrant is just as obvious. The only question is whether “executed” means “delivery” or actually taking the specimen. Before we answer that question, we should accept that the legislature was aware that the officer had the authority to hand the warrant to anyone else, say a nurse, for purpose of its “execution.” The Code of Criminal Procedure says so explicitly in the same chapter as to “search warrants” generally, and we should assume the legislature was aware of that provision when it enacted Article 18.067. TEX. CODE OF CRIM. PROC. art. 18.08 (“In the execution of a search warrant, the officer may call to his aid any number of citizens in this county, who shall be bound to aid in the execution of the same.”); *Harris County v. S.K. & Bros., Inc.*, No. 14-17-00984-CV, 2019 WL 5704244, at *4 (Tex. App.—Houston [14th Dist.] Nov. 5, 2019, pet. denied) (mem. op., not designated for publication) (legislature presumed to be aware of its own enactments). In my view, there is no need to revisit Woodard in this case, because the relevant statute did not constrain service of the warrant on account of Officer Ibarra’s authority to make an arrest. All that it required was that it be served in a

BARBER DISSENT–22

neighboring county. Moreover, because the record does not show Officer Ibarra did anything beyond delivering the warrant, his power to arrest is irrelevant. 12 C. The Majority’s Construction Presents Serious, Big-Picture Problems We Should Not Ignore. Quite apart from its avoidance of the controlling question and its textual challenges, the majority’s opinion leads us into a veritable minefield of broader and smaller concerns. i. We are obliged to avoid constitutional issues where alternate constructions that do not violate the Texas Constitution are possible. There are serious structural implications of the majority’s efforts to use this case as the vehicle for revisiting Woodard. See TEX. CODE CRIM. PROC. art. 14.01(b); Woodard, 341 S.W.3d at 414. According to Article V, Section 12 of the Texas Constitution, “All judges of courts of this State, by virtue of their office, are conservators of the peace throughout the State.” TEX. CONST. art. V, § 12 (emphasis added). Whether and to what extent this provision would forbid legislation constraining judicial authority is a question we are obliged to be mindful of (and preferably avoid) as we undertake statutory construction that might infringe upon it. See TEX. GOV’T CODE § 311.021(1) (listing as first principle of statutory construction that the statute may authorize an officer to draw blood where he could also make an arrest in a county other than one adjacent to the county of issuance).

BARBER DISSENT–23

interpretation that compliance with Texas and federal constitutions is presumed when a statute is enacted); *State v. Edmond*, 933 S.W.2d 120, 124 (Tex. Crim. App. 1996) (citing *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)) (“[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise

and by the other of which such questions are avoided, [the court's] duty is to adopt the latter."'). As detailed above, there are many plausible alternative paths to this case and our reading of Articles 18.067 and 38.23 that avoid this problem. ii. Assuming we abandon Woodard, what then? The majority rejects Woodard's liberal application of the arrest power's limitation to offenses taking place within an officer's "presence" or "view." Whatever its deficiencies, Woodard has conferred a relatively broad and workable reach for more than fifteen years. Meanwhile, police officers have been told not only that they possess the power but also are directed by force of duty to act and arrest statewide, whether on duty or off and whether within their geographic jurisdiction or not, whenever they perceive that an offense has been committed in their presence or view. See Garza, 574 S.W.3d at 402–04 (quoting *Blackwell v. Harris Cnty.*, 909 S.W.2d 135, 139 (Tex. App.—Houston [14th Dist.] 1995, writ

BARBER DISSENT–24

denied)) (citing TEX. CODE CRIM. PROC. arts. 6.06, 14.03(g)(2)) (duty to stop crime applies "twenty-four hours a day" and throughout the state). To effectuate that obligation police are instructed to summon "any number of the citizens of his county to his aid." TEX. CODE CRIM. PROC. art. 6.06. In its enthusiasm for attacking Woodard, the majority does not ask, much less answer, whether Judge Chambers's constitutional authority does not possibly extend to a like extent to persons, including and especially law enforcement officers within his county, to serve papers "throughout the state." TEX. CONST. art. V, § 12. iii. What happened to our old friend legislative acquiescence? The Legislature has revisited and amended Chapter 14 and Chapter 18 several times since our decision in Woodard. A majority of this Court has recently held that the canon of legislative acquiescence is alive and well. See *In re Green*, 713 S.W.3d 843, 852 (Tex. Crim. App. 2025). Where did it go? Why are we not assuming that the legislature was aware of Woodard and, by inaction, embraced it? Whether we now like Woodard or not, the legislature drafted this linkage between Article 18.067 and Article 14.01 with presumed knowledge and acceptance of this Court's holding in Woodard. Rejecting it now serves only to ambush the parties, Officer Ibarra, Judge Chambers, and the court of appeals, and prompts

BARBER DISSENT–25

constitutional concerns that we are obliged to avoid where alternate, reasonable constructions are possible. D. I Also Decline to Join Our Smaller-Picture Battle with Woodard. In my view, the majority's disposition here violates what should be our version of the Hippocratic Oath: to first do no harm; and certainly not do harm for the purpose of delaying and impeding the merits of one case that will never be repeated. The majority embarks on a different path, using this case to relitigate Woodard and reject its holding, leaving nothing but potential confusion over how and when an "offense" is "viewed" or "observed," and its myopic focus on the words "viewed" and "observed" is a mistake because, although they seem plain enough when plucked from the statute, they appear to be ambiguous when read in context.¹³ As noted, law enforcement officers, prosecutors, defense attorneys, and lower court judges will all be busy wondering what the new

rule is. The majority appears to retreat to some notion of sensory experience that would include some unspecified number of the five senses that may allow this 13 The majority's analysis is like a Scrabble game—one word at a time—but “[w]ords are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used” *N.L.R.B. v. Federbush Co.*, 121 F.2d 954, 957 (2d Cir. 1941).

BARBER DISSENT–26

statute to survive an attack under the Americans with Disabilities Act by allowing the State to employ the hearing or visually impaired to serve as law enforcement officers. Maj. Op. at 11 (“An offense is deemed to have occurred within the presence or view of an officer when any of his senses afford him an awareness of its occurrence.”). One wonders how an officer “experiences” driving while intoxicated, elder abuse, or any crime involving inaction, such as injury to a child by omission. Does “viewed” or “observed” mean a peace officer must observe the elements of a crime? How many must an officer experience through his senses? 14 What if the officer sees an actor engaging in conduct (all or perhaps only some of which would be elements sufficient to amount to an offense) like robbing a bank and then entering a vehicle to leave the scene. Can the driver be arrested on view for committing an offense in the presence or view of the officer without the officer 14 Section 1.07 of the Penal Code defines the elements of offenses in Texas: (A) the forbidden conduct; (B) the required culpability; (C) any required result; and (D) the negation of any exception to the offense. TEX. PENAL CODE § 1.07(a)(22).

BARBER DISSENT–27

“experiencing” that the driver is mentally linked to the robbery (i.e., he’s not an Uber driver)? After all, one element of most crimes is that the defendant had the requisite mens rea. See TEX. PENAL CODE § 1.07(a)(22)(B) (requiring that a defendant must have the required culpability as an element of the offense). Also, the majority spends considerable time trying to figure out what “presence” and “view” mean, but it never addresses “offense” in Article 14.01. Woodard tried to construe Article 14.01 in a way that would apply to all criminal offenses, but today the majority seems to construe the statute—as shown by my examples and questions above—with only this case’s offense on its mind. Ultimately, this case serves as another illustration of this Court’s preference for small point debate that ends up causing more problems than it solves. i. Ad Hominem Officer Ibarra, Judge Chambers, the prosecutor, and the court of appeals all did what they were supposed to do. They followed this Court’s binding precedent. They should be commended, not condemned or burdened with a remand and further delay. Sometimes it is incumbent on us to change the law, but the effect of doing so here works an injustice on the State by post hoc pitch shifting; a change no one could have anticipated until the majority handed down its opinion today and that

BARBER DISSENT–28

could result in the blood evidence being suppressed. I also firmly believe any aspersions cast on

the court of appeals for making an “obviously” wrong decision are unwarranted and unnecessary. See Maj. Op. at 2.

III. FINAL THOUGHTS

The bottom line is the resolution of this case is stalled by a ruling excluding the results of the blood draw, despite the validity of the warrant issued by a neutral and detached magistrate, on account of its being delivered in Harris County at a hospital by a Liberty County police officer who undertook the effort to bring the information to the magistrate and, in turn, drive to and deliver the warrant in a neighboring county. And an important issue that needs to be addressed—but has not been by the majority—is application of Article 38.23 Mr. Allen is dead. He shouldn’t be. There is probable cause to believe Barber’s driving while intoxicated was the cause. There is no colorable basis for any decision that would exclude the proof of his drinking in connection with the event. I’d end things there.

CONCLUSION

I would affirm the judgment of the court of appeals. Filed: April 16, 2026 Publish

PER CURIAM.

IN THE COURT OF CRIMINAL APPEALS

OF TEXAS

NO. PD-0510-25

THE STATE OF TEXAS

v. GRADY JACK BARBER, Appellee

ON APPELLEE’S PETITION FOR DISCRETIONARY REVIEW

FROM THE NINTH COURT OF APPEALS

LIBERTY COUNTY

Finley, J., filed a concurring opinion.

CONCURRING OPINION

I join the Court’s opinion. I write separately to debunk the dissenting opinion’s assertion that the Court “does not attempt to answer the suppression question upon which interlocutory appellate jurisdiction is based”—whatever that means. Post at 4 (Schenck, P.J., dissenting).

BARBER CONCURRENCE — 2

This is, yet again, a party presentation issue. Just a few months ago, the Supreme Court of the United States reaffirmed the principle of party presentation: “In our adversarial system of adjudication, we follow the principle of party presentation.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375

(2020). The parties “‘frame the issues for decision,’” while the court serves as “‘neutral arbiter of matters the parties present.’” *Ibid.* (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). To put it plainly, courts “call balls and strikes”; they don’t get a turn at bat. *Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721 (2020). *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (cleaned up). The question before the court of appeals was whether the trial court abused

its discretion when it granted Appellee’s motion to suppress blood evidence that was seized pursuant to an unlawfully executed search warrant. The court of appeals concluded that “under [Code of Criminal Procedure] article 14.03(d), [Officer] Ibarra, who was outside his jurisdiction, had the authority to arrest [Appellee] without a warrant in Harris County for committing an offense in violation of Chapter 49 within [Officer] Ibarra’s presence or view.” *State v. Barber*, No. 09-24-00313-CR, 2025 WL 1749999, at *5 (Tex. App.—Beaumont June 25, 2025). Accordingly, Officer Ibarra “also had authority to execute the blood warrant and collect Barber’s blood specimen because he was suspected of committing an intoxication offense under section 49.08 of the Penal Code.” *Id.* This Court granted only Appellee’s second ground for review, which presents the following question: “Is an officer

BARBER CONCURRENCE — 3

authorized to make an arrest for an alleged offense as ‘within his presence or view’ when he has probable cause to arrest due to his post-incident investigation, even though the alleged offense occurred neither in his actual presence nor in his actual view?” At the time of the offense, Code of Criminal Procedure Article 18.067 provided that a warrant issued under Code of Criminal Procedure Article 18.02(a)(10) to collect a blood specimen from a person suspected of committing an intoxication offense may be executed (1) in any county adjacent to the county in which the warrant was issued; and (2) by a law enforcement officer authorized to make an arrest in an adjacent county. Tex. Code Crim. Proc. art. 18.067 (West 2022). For the warrant to be valid, the State had to show both that the warrant was executed in a county adjacent to where it was issued and that the warrant was executed by a law enforcement officer authorized to make an arrest in an adjacent county. 1 1 The dissenting opinion misreads Article 18.067. *Post* at 17 (Schenck, P.J., dissenting). In the dissenting opinion’s view, the “and” is not actually an “and” but rather an “or.” *Id.* at 19 (“While the majority’s reading of ‘and’ as a linkage of two preconditions on the authority to deliver the warrant is also grammatically plausible, it should be rejected because it renders the first condition inoperative or practically impossible.”). This interpretation is problematic for a myriad of reasons, but one is readily apparent: Nobody (not even the State, who would dramatically benefit from the dissenting opinion’s flawed interpretation of Article 18.067) adopts this position. The dissenting opinion’s flawed interpretation of Article 18.067 is confirmed by the Bill Analysis to S.B. 1886, which amended Article 18.067 in 2025. The Bill Analysis provides: “Under current

BARBER CONCURRENCE — 4

In this case, Appellee argues that the second condition was not met: Officer Ibarra was not authorized to make an arrest in Harris County (where the warrant was executed), the county adjacent to Liberty County (where the warrant was issued). To determine whether Officer Ibarra was authorized to make an arrest in the adjacent county in which the warrant was executed, this Court should examine Code of Criminal Procedure Article 14.03. Article 14.03(d) provides: A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an

offense within the officer’s presence or view, if the offense is a felony, a violation of Chapter 42 or 49, Penal Code, or a breach of the peace. Tex. Code Crim. Proc. art. 14.03(d) (emphasis added). And that is all that we have to decide. Did the offense in this case occur within Officer Ibarra’s “presence or view”? If so, this Court would affirm the judgment of the court of appeals. If not, this Court would reverse. law, a search warrant for a blood specimen may be executed in any county adjacent to the county in which the warrant was issued by a law enforcement officer who is authorized to make an arrest in the county of execution.” Senate Comm. on Crim. Juris., Bill Analysis, Tex. S.B. 1886, 89th Leg., R.S. (2025). The Bill Analysis confirms that “S.B. 1886 seeks to remedy [issues with existing law] by authorizing a search warrant for purposes of collecting a blood specimen to be executed by any peace officer in any county adjacent to the county in which the warrant was issued.” Id. And that makes sense: The Legislature knew that the “and” in Article 18.067 meant “and”—and not “or”—when it amended Article 18.067 by removing one of the two requirements for valid execution for blood warrants. See id.

BARBER CONCURRENCE — 5

The Court does not need to address Appellee’s Article 38.23 standing. Post at 13 (Schenck, P.J., dissenting). The Court also does not need to address the proper construction of Article 18.067. Id. at 17. Nor does the Court need to address the application of the good faith doctrine. 2 Id. at 12 & n.7. Why? Because the parties have not asked us to. 3 And the Supreme Court of the United States has cautioned lower courts—like this one—from violating the principles of party presentation. In sum, the limited question before the Court is whether the offense in this case—intoxication manslaughter—occurred within Officer Ibarra’s “presence or view.” The Court correctly answers that question “no” and rightly reverses the judgment of the court of appeals. With these thoughts, I join the Court’s opinion. Filed: April 16, 2026 Publish 2 The dissenting opinion opines that “neither the parties nor the SPA have the responsibility to decide whether the good-faith exception should apply . . . Those responsibilities are reserved for this Court.” Post at 12 n.7 (Schenck, P.J., dissenting). This Court only resolves outstanding issues “in the name of judicial economy” when the disposition of those issues “is clear.” *McClintock v. State*, 444 S.W.3d 15, 20 (Tex. Crim. App. 2014) (quoting *Gilley v. State*, 418 S.W.3d 114, 119 (Tex. Crim. App. 2014)). Remanding the question of the proper application of the good faith exception to the court of appeals for it to decide the issue in the first instance is appropriate in this case. See id. (remanding good faith exception question because “our resolution of the issue . . . would benefit from a carefully wrought decision from the court of appeals.”). 3 Another reason to not address these issues is the simple fact that the court of appeals did not do so below. As we have said countless times, we typically review only “decisions” of the courts of appeals. See, e.g., *Stringer v. State*, 241 S.W.3d 52, 59 (Tex. Crim. App. 2007). The court of appeals did not decide any of the ancillary issues the dissenting opinion opines on. There is no reason for this Court to do so.

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