

RECEIVED IN  
COURT OF CRIMINAL APPEALS

April 1, 2014

Case No. PD-1158-13

PD-1158-13  
COURT OF CRIMINAL APPEALS  
AUSTIN, TEXAS  
Transmitted 4/1/2014 3:06:52 PM  
Accepted 4/1/2014 3:55:41 PM  
ABEL ACOSTA  
CLERK

ABEL ACOSTA, CLERK

In the

**Court of Criminal Appeals  
of Texas**

---

**EX PARTE RICHARD DEWAYNE JONES, PETITIONER**

---

**APPEALED FROM THE COURT OF APPEALS  
FOR THE FOURTEENTH JUDICIAL DISTRICT  
HOUSTON, TEXAS  
NO. 14-12-00877-CR**

---

**BRIEF OF AMICUS CURIAE  
TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION  
IN SUPPORT OF PETITIONER**

---

**GENA A. BUNN  
State Bar No. 00790323**

**HOLMES & MOORE, P.L.L.C.  
P.O. Drawer 3267  
Longview, Texas 75606  
Phone No. (903)758-2200  
Facsimile No. (903)758-7864  
[gbunn@holmesmoore.com](mailto:gbunn@holmesmoore.com)**

*Counsel for Amicus Curiae  
Texas Criminal Defense  
Lawyers Association*

## **TABLE OF CONTENTS**

	<b><u>PAGE NO.</u></b>
Table of Contents. . . . .	ii
Index of Authorities. . . . .	iii
Interest of Amicus Curiae. . . . .	1
Summary of the Argument. . . . .	2
Argument. . . . .	4-15
 <b>I. Senate Bill 1416 violates the single-subject rule of Article III, Section 35 of the Texas Constitution.</b>	
a) The single Subject Rule . . . . .	5-6
b) Senate Bill 1416. . . . .	6-9
c) Court of Appeals' Holding. . . . .	9-11
d) Post-1986 Amendment Cases . . . . .	11-15
Conclusion. . . . .	16
Prayer. . . . .	17
Certificate of Service. . . . .	18

## **INDEX OF AUTHORITIES**

<b>A. <u>CASES</u></b>	<b><u>PAGE NO.</u></b>
<i>Baggett v. State</i> , 722 S.W.2d 700, 701-02 (Tex. Crim. App. 1987).....	5
<i>Ex parte Jones</i> , 410 S.W.3d 349, 351 (Tex. App. - Houston [14 <sup>th</sup> Dist]2013) .....	7,8,9,10
<i>Garay v. State</i> , 940 S.W.2d 211, 214 (Tex. App. - Houston [1 <sup>st</sup> Dist.] 1997) .....	12,13,14
<i>Robinson v. Hill</i> , 507 S.W.2d 521, 524-25 (Tex. 1974) .....	2,4,5,6,8,10,11,12,13,14,15,16
<i>Skillern v. State</i> , 890 S.W. 2d 849, 861-62 (Tex. App. - Austin 1994). . .	11,12,14
<i>Texas Alcoholic Beverage Com'n v. Silver City Club</i> , 13 S.W.3d 643, 644 (Tex. App. Dallas 2010). . . . .	13,14
<b>B. <u>RULES</u></b>	
Tex. Constitution Art. III, Sec. 35.....	2,3,4,5,8,9,10
Tex. Penal Code 38.04 .....	1,2,7
Tex. Penal Code 38.04(b). . . . .	4
Tex. Penal Code 49. . . . .	9
Tex. R. App. P. 11(c).....	1

## **INTEREST OF AMICUS CURIAE**

The Texas Criminal Defense Lawyers Association (TCDLA) is the largest state association for criminal defense attorneys in the nation. In promoting our mission, TCDLA tenders this Amicus Curiae brief as the Texas statewide organization for criminal defense attorneys who in their practice promote and defend the Constitutions of the United States and the State of Texas. Due to its longstanding commitment to rights of the accused, including the assurance due all citizens that its legislators enact laws in a manner complying with the Texas Constitution, TCDLA is compelled to note the conflict between the single-subject rule of the Texas Constitution and Senate Bill 1416, which amended section 38.04 of the Texas Penal Code to enhance the penalty for evading arrest with a vehicle. The issue presented in this appeal is of great concern to our clients and our membership. Amicus Curiae TCDLA respectfully submits this brief to assist this Court in resolving questions involving the Single Subject Rule of the Texas Constitution.

Pursuant to Rule 11(c) of the Texas Rules of Appellate Procedure, counsel affirms that no counsel for any party authored this brief in whole or in part, and no such counsel or party made any monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, its members, or its counsel made any monetary contribution to its preparation or submission.

## **SUMMARY OF ARGUMENT**

Provisions of Senate Bill 1416 amending section 38.04 of the Penal Code to enhance the penalty for evading arrest with a vehicle violate the single-subject rule of Article III, Section 35 of the Texas Constitution. The court of appeals erred when it held otherwise.

Precedent counsels that a statute will not be held unconstitutional as a violation of the one-subject rule where its provisions relate, directly or indirectly, to the same general subject, have a mutual connection, and are not foreign to the subject expressed in the title. *Robinson v. Hill*, 507 S.W.2d 521, 524-25 (Tex. 1974).

Petitioner Jones argues, however, that this pre-1986 amendment standard should be eschewed in favor of a standard designed to protect more fully against the evils the single-subject rule was designed to curtail. While Amicus Curiae TCDLA agrees with Jones' proposition, it argues additionally that even when considered under the *Robinson* framework, Senate Bill 1416 violated the single-subject rule.

Indeed, the instant case stands in sharp contrast to the three post-1986 amendment cases relied upon by the State. These cases all involved provisions that related to the subjects set forth in the titles of the bills; whereas, in the instant case, the challenged provision had no relation whatsoever to the original title of the bill. Furthermore, in none of the three cases did the courts of appeals have to resort to post

hoc creation of an “overarching subject” in order to uphold the constitutionality of the legislation. Finally, there is nothing to indicate that any of these cases involved an eleventh-hour amendment purporting to tack on the substance of another stand-alone bill that had died in committee, as happened in the instant case.

Expanding the original purpose of Senate Bill 1416 (to outlaw tire deflation devices) to enhance the penalties for all offenders charged with evading arrest with a vehicle, whether or not it involved the use of tire deflation devices, violated the single-subject provision of Article III, Section 35.

TCDLA urges this Court to void Section 3 of Senate Bill 1416 as unconstitutional, reverse the judgment of the court below, and render judgment of acquittal in Petitioner’s favor.

## **ARGUMENT**

### **I. Senate Bill 1416 violates the single-subject rule of Article III, Section 35 of the Texas Constitution.**

The issue before this Court is whether the court of appeals erred in holding that Section 3 of Senate Bill 1416, which amended section 38.04(b) of the Texas Penal Code, did not violate the single-subject rule of Article III, Section 35 of the Texas Constitution.

As the State contends, precedent counsels that a statute will not be held unconstitutional as a violation of the one-subject rule where its provisions relate, directly or indirectly, to the same general subject, have a mutual connection, and are not foreign to the subject expressed in the title. State's Brief at 8-9, citing *Robinson v. Hill*, 507 S.W.2d 521, 524-25 (Tex. 1974). The State argues that under this analytical framework, Senate Bill 1416 passes constitutional muster.

Jones, on the other hand, argues that this pre-1986 amendment standard should be eschewed in favor of a standard designed to protect more fully against the evils the single-subject rule was designed to curtail. Petitioner's Brief at 20-22. Citing the history of the single-subject rule and the policies that inform it, Jones argues forcefully that the demise of the title-sufficiency rule calls for a single-subject standard that safeguards the purposes of Article III, Section 35. He proposes a standard such as that

employed by the Oklahoma courts, and asserts that Senate Bill 1416 would not pass scrutiny under such standard. *Id.* at 20-21, 29-30.

Amicus TCDLA agrees with Jones' proposition that a new standard might be in order. Indeed, if the *Robinson* framework is to be thwarted to the point of allowing the type of post-hoc rationalization engaged in by the court of appeals in this case, then the single-subject rule has been rendered meaningless.

But TCDLA argues additionally that when considered under the *Robinson* analytical framework, as that framework was intended to apply, Senate Bill 1416 violated the single-subject rule.

#### **a) The Single-Subject Rule**

“No bill . . . shall contain more than one subject.” Tex. Const. art. III, §35(a). Further, the bill’s subject must be expressed in the title in a manner that gives reasonable notice of the subject. *Id.* at art. III, §35(b). However, pursuant to a 1986 amendment to the provision, a law may not be held void on the basis of an insufficient title. *Id.* at art. III, §35(c). *See Baggett v. State*, 722 S.W.2d 700, 701-02 (Tex. Crim. App. 1987). Nevertheless, according to the interpretive commentary of Article III, § 35, a law that contains more than one subject matter is void as to the subject not expressed in the title. *Id.* at art. III, §35 interp. commentary (Vernon 2007).

The interpretative commentary to Article III, Section 35 states that its purpose

is threefold:

First, it is designed to prevent log-rolling legislation, i.e., to prevent the writing of several subjects having no connection with each other in one bill for the purpose of combining various interests in support of the whole.

Second, it prevents surprise or fraud upon legislators by means of provisions in bills of which the titles give no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted.

Third, it permits the people to be fairly apprised of the subjects of legislation under consideration, so that they may have an opportunity of being heard if they so desire.

Tex. Const. art. III, §35 interp. commentary (Vernon 2007). *Robinson v. Hill*, 507 S.W.2d 521, 524 (Tex. 1974).

Under Texas Supreme Court precedent, a statute will not be held unconstitutional as a violation of the one-subject rule where its provisions relate, directly or indirectly, to the same general subject, have a mutual connection, and are not foreign to the subject expressed in the title. *Robinson*, 507 S.W.2d at 524-25 (holding that several matters appellants claim are different subjects actually relate to same general subject, *i.e.*, licensing and regulation of bail bondsmen, and that general subject is expressed in title).

### **b) Senate Bill 1416**

Senate Bill 1416 was formally proposed by Senator Juan Hinojosa on March 31,

2011. The bill’s title read, “AN ACT relating to the creation of the offense of possession, manufacture, transportation, repair, or sale of a tire deflation device; providing criminal penalties.” *Ex parte Jones*, 410 S.W.3d 349, 351 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2013). Thus, the original purpose of the bill was to outlaw tire deflation devices by adding them to the list of prohibited weapons. There was no mention of prohibiting the *use* of tire deflation devices. And more to the point, there was no mention of the offense of evading arrest, or offenses with vehicles generally. “Nothing in the introduced version of SB 1416 refers to evading arrest, use of a vehicle, or Penal Code section 38.04.” *Id.* at 352.

Then on May 19, 2011, with only ten days remaining in the legislative session, Representative Allen Fletcher proposed a floor amendment to Senate Bill 1416 to expand the prohibition to include “use” of tire deflation devices, particularly in evading arrest situations. These provisions were clearly pertinent to the original subject of Senate Bill 1416 and did not violate the single-subject rule. But the Fletcher Amendment went further, purporting to modify the punishment for every offender who evades arrest in a motor vehicle, without any reference to the use of a tire deflation device. Thus, in Senate Bill 1416, as enacted, “section 38.04 was amended to include certain uses of a tire deflation device as third- and second-degree felony forms of evading arrest. Additionally, section 3 amended the third-degree

felony form of evading arrest-use of vehicle by removing the requirement that the defendant must have been previously convicted under section 38.04.” *Ex parte Jones*, 410 S.W.3d at 352-53.

Significantly, when debating Senate Bill 1416, legislators discussed at length the importance of prohibiting tire deflation devices. They expounded upon the dangers posed by the devices, particularly in their use by drug runners in South Texas. But legislators did not express any concerns about evading arrest with vehicles in general. They did not observe any need to enhance the penalty for that offense. They did not even mention that the proposed legislation would have such effect. Furthermore, Representative Fletcher failed to mention during these debates that he had earlier proposed these same amendments to section 38.04 in a stand-alone bill, a bill that failed to make it out of committee. Tex. H.B. 864, “AN ACT relating to punishment for the offense of evading arrest or detention,” 82<sup>nd</sup> Leg. R.S. (2011).

Thus, the enactment of Senate Bill 1416 implicated both the first and second purposes of the single-subject rule: to prevent log-rolling legislation and to prevent carelessly or unintentionally adopted legislation. *See Tex. Const. art. III, §35 interp.* commentary (Vernon 2007). *Robinson*, 507 S.W.2d at 524.

The subject of Senate Bill 1416 was the prohibition of tire deflation devices, as reflected in its title: “AN ACT relating to the creation of the offense of possession,

manufacture, transportation, repair, or sale of a tire deflation device; providing criminal penalties.” Expanding the original purpose of Senate Bill 1416 reflected in this title to enhance the penalties for all offenders charged with evading arrest with a vehicle, whether or not it involved the use of tire deflation devices, violated the single-subject provision of Article III, Section 35.

**c) Court of Appeals’ Holding**

Nevertheless, the court below held that the bill did not violate the single-subject rule, concluding that the “overarching subject” of the bill was “criminal offenses related to vehicles.” *Ex parte Jones*, 410 S.W.3d at 353. The court ignored the subject expressed in the bill’s title and instead strained to concoct a “general theme” of the bill after the fact in order to find it constitutional. Remarkably, under the guise of the lower court’s “general theme,” the Legislature would have been free to tinker with Chapter 49 of the Penal Code as well as the entire Transportation Code, though there was no mention of these subjects in the bill’s title. Furthermore, the original expressed subject of Senate Bill 1416 – the prohibition of tire deflation devices – included aspects that do not necessarily fall within the ambit of the court of appeals’ contrivance. Specifically, one does not have to use a vehicle to possess, manufacture, transport, repair, or sell tire deflation devices, acts all prohibited by the bill. Even the use of a tire deflation device does not require one to use a vehicle.

The court below discounted Jones' arguments regarding the conspicuous absence of floor debate regarding the need for penalty enhancements for evading arrest with vehicle offenses and Representative Fletcher's failure to point out that the provisions had been included in a previous stand-alone bill that had not survived committee. According to the court, these facts were "irrelevant in our single-subject rule analysis because the common subject of SB 1416's provisions is offenses related to vehicles." *Ex parte Jones*, 410 S.W.3d at 353 n.3. Thus, in pursuit of its single-minded objective to identify a "subject" sufficient to save Senate Bill 1416 from obsolescence, the court ignored the recognized purposes of the single-subject rule: to prevent log-rolling legislation and to prevent carelessly or unintentionally adopted legislation. *See Tex. Const. art. III, §35 interp. commentary (Vernon 2007); Robinson*, 507 S.W.2d at 524.

Notably, the lower court's opinion on original submission had relied in part upon the proposition that the enrolled bill had a broader title than the original bill filed by Senator Hinojosa before the Fletcher Amendment, and that this broader title included evading arrest as a subject of the bill. But that was not the case. Rather, the same caption – "AN ACT relating to the creation of the offense of possession, manufacture, transportation, repair, or sale of a tire deflation device; providing criminal penalties" – accompanied the amended bill as brought to the floor and voted

on by the Legislature. And again, it said nothing about evading arrest. A broader caption was only attached to the bill after its passage by the Legislature; this addition was performed administratively by the Legislative Council, not by the Legislature. This broader caption did not exist at the time of legislative action on the bill. When these facts were called to the court's attention on rehearing, the court withdrew its original opinion and issued a new opinion abandoning all reliance on this broadened-caption argument, essentially conceding that it got it wrong.

#### **d) Post-1986 Amendment Cases**

Jones makes a compelling argument that a new single-subject standard is needed, particularly in light of the lower court's application of the *Robinson* standard. If the current standard can permit a court to reject a bill's subject as expressed in its title and substitute its own "overarching subject" to satisfy the Constitution, then the single-subject rule has been rendered a nullity.

But an examination of the post-1986 amendment cases cited by the State reveals that the lower court's application of *Robinson* was flawed. Significantly, in each of the three cases, the reviewing court relied specifically upon the bill's title to identify the subject of the legislation; thus, it was not necessary for the reviewing court to erect an artifice after the fact to justify the legislation's more obscure provisions.

In *Skillern v. State*, the appellant challenged amendments to the Texas Insurance

Code which created a new criminal offense: misapplication of insurance related property. 890 S.W.2d 849, 861-62 (Tex. App. – Austin 1994). Acknowledging that the legislature was free to create a new offense within the Insurance Code and provide penalties for the commission of that offense, Skillern argued nonetheless that including a venue provision in the same bill rendered the bill violative of the single-subject rule. But the Austin court of appeals disagreed, holding that the individual parts of Senate Bill 1685 were germane to one another and had a mutual connection and were not foreign to the subject expressed in the title of the bill: “AN ACT relating to the misapplication of property by persons engaged in the business of insurance and the venue for criminal prosecution of persons engaged in the business; providing criminal penalties.” 890 S.W.2d at 861, citing *Robinson*, 507 S.W.2d at 524-25. The court rejected the argument that provisions creating new crimes and provisions setting forth venue for those crimes are separate subjects that must not be contained in a single bill. *Id.*

Appellants in *Garay v. State*, had been convicted of an offense under the Private Investigators and Private Security Agencies Act forbidding a person employed as a security officer from carrying a firearm “if the (Board) has not issued him a security officer commission under this section.” 940 S.W.2d 211, 214 (Tex. App. – Houston [1<sup>st</sup>. Dist.] 1997). The Act exempted from the requirement of a security officer

commission a person who is employed in a full-time capacity as a peace officer. Appellants were certified peace officers licensed under the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), but they worked as peace officers either on a volunteer or limited-hour basis and thus fell within the purview of the security officer commission requirement. They challenged the Act's constitutionality arguing, *inter alia*, that the Act violated the single-subject rule. Appellants argued that because the TCLEOSE Statute governs peace officers, and the quoted provisions of the Act affect some peace officers, the Act dealt with multiple subjects.

But as the court of appeals observed, “the test of ‘unity of subject’ is not whether a provision affects persons or groups regulated elsewhere, but whether the provisions relate directly or indirectly to the same general subject matter as the act in which it is included.” *Garay*, 940 S.W.2d at 216. The court concluded that the challenged provisions related directly to the general subject matter of the statute as expressed in the senate bill caption: “AN ACT amending the Private Detectives, Private Investigators, Private Patrolmen, Private Guards, and Managers Act . . . ; and declaring emergency.” *Id.*, citing *Robinson*, 507 S.W.2d at 524-25. That is, whether persons are to be included or excluded from regulation is directly related to the regulatory subject matter of the statute, which was clearly intended to regulate the

private security industry. *Id.*

And most recently in *Texas Alcoholic Beverage Com'n v. Silver City Club*, appellants challenged a 2003 amendment to the Alcoholic Beverage Code prohibiting the Commission from issuing or renewing a private club registration permit for a club in a dry area that operates a sexually oriented business. 315 S.W.3d 643, 644 (Tex. App. – Dallas 2010). The appellants claimed that House Bill 7 covered such a broad range of subjects, and only one article concerned alcoholic beverage regulation or sexually oriented businesses, that it must run afoul of the single-subject rule. *Id.* at 646. The Dallas court of appeals concluded that, while House Bill 7 contained “thirty-three substantive articles affecting approximately forty chapters of twelve or more codes,” all the bill’s diverse provisions related, at least indirectly, under the common subject of government reform as required by House Bill 7’s title: “AN ACT relating to the reorganization of, efficiency in, and other reform measures applying to governmental entities and certain regulatory practices; providing a penalty.” *Id.* at 646-47. Thus, the fact that House Bill 7 covered many different codes and areas of law did not violate the constitutional requirement that the bill contain no more than one subject because the provisions related, at least indirectly, to the same general subject, had a mutual connection, and were not foreign to the subject expressed in the title. *Id.* at 645-46, citing *Robinson*, 507 S.W.2d at 524-25.

Indeed, the instant case stands in sharp contrast to *Skillern, Garay, and TABC*. The cases all involved provisions that related to the subjects set forth in the titles of the bills. The reviewing courts in each of these cases relied specifically on that fact to conclude that the legislation passed muster under *Robinson*'s single-subject rule framework. Whereas, in the instant case, the challenged provision had no relation whatsoever to the original title of the bill. Relatedly, in none of the three cases did the reviewing courts have to resort to the post hoc creation of an “overarching subject” in order to uphold the constitutionality of the challenged legislation. Rather, the courts simply looked to the legislation’s title to glean its purpose, which is decreed by the *Robinson* framework itself: a statute will not be held unconstitutional as a violation of the one-subject rule where its provisions relate, directly or indirectly, to the same general subject, have a mutual connection, and are not foreign *to the subject expressed in the title*. *Robinson*, 507 S.W.2d at 524-25. Finally, there is nothing to indicate that any of these cases involved an eleventh-hour amendment purporting to tack on the substance of another stand-alone bill that had died in committee, as happened in the instant case.

## **CONCLUSION**

If the single-subject requirement of the Texas Constitution is to have any meaning, it must be interpreted to prohibit the log-rolling legislation that occurred with the passage of Senate Bill 1416. The *Robinson* construct is useless, as Jones argues, if it has been polluted to the point that a reviewing court is free to ignore a bill's subject as expressed in its title, as well as the purposes underlying the rule, and construct its own "overarching subject" to satisfy the single-subject rule. However, the very cases on which the State relies do not support the lower court's application of *Robinson*, but rather compel a conclusion that section 3 of Senate Bill 1416 violated the single-subject rule and must be declared void.

## **PRAYER**

For all the foregoing reasons, TCDLA urges this Court to sustain Petitioner's ground for review, void Section 3 of Senate Bill 1416 as unconstitutional, reverse the judgment of the court below, and render judgment of acquittal in Petitioner's favor.

Respectfully submitted

/s/ Gena Bunn  
GENA A. BUNN  
State Bar No. 00790323

HOLMES & MOORE, P.L.L.C.  
P.O. Drawer 3267  
Longview, Texas 75606  
Phone No. (903)758-2200  
Facsimile No. (903)758-7864  
[gbunn@holmesmoore.com](mailto:gbunn@holmesmoore.com)

*Counsel for Amicus Curiae*  
**Texas Criminal Defense  
Lawyers Association**

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all parties of the above-numbered appeal.

**Counsel for Petitioner**

Mark Aronowitz  
P.O. Box 1201  
Texas City, Texas 77592-1201  
[markaronowitz@hotmail.com](mailto:markaronowitz@hotmail.com)  
Julia C. Hatcher  
1622 Campbell Lane  
Galveston, Texas 77551  
[jhat788699@aol.com](mailto:jhat788699@aol.com)

**Counsel for the State**

Rebecca Klaren  
600 59<sup>th</sup> Street, Suite 1001  
Galveston, Texas 77552  
[rebecca.klaren@co.galveston.tx.us](mailto:rebecca.klaren@co.galveston.tx.us)

/s/ Gena Bunn

Gena Bunn

## **CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to Rule 9.4(i)(3) of the Texas Rules of Appellate Procedure, that the foregoing document contains 3,555 words, and thus complies with the word-count limitation of Rule 9.4(i)(2).

/s/ Gena Bunn

Gena Bunn

