

Reversed and Remanded and Memorandum Opinion filed August 17, 2017.



In The

Fourteenth Court of Appeals

**NO. 14-16-00569-CR
NO. 14-16-00570-CR**

THE STATE OF TEXAS, Appellant

V.

CHRISTOPHER MICHAEL DUPUY, Appellee

**On Appeal from the 405th District Court
Galveston County, Texas
Trial Court Cause Nos. 15CR1660 & 15CR1661.**

M E M O R A N D U M O P I N I O N

The State indicted appellee on two counts of violating the “online impersonation” statute. *See* Tex. Penal Code § 33.07(a). Appellee filed a pretrial application for a writ of habeas corpus, asserting among other things that the statute was unconstitutionally overbroad under the First Amendment of the United States Constitution. The trial court granted habeas relief and dismissed the indictments.

The court ruled that it was granting the writ “as to 33.07 being overbroad.” The State appealed.

A few months later, a panel of this court held in *Stubbs v. State* that Section 33.07(a) was not facially overbroad; this court denied rehearing en banc; and the Court of Criminal Appeals refused to grant a petition for discretionary review. *See* 502 S.W.3d 218, 235 (Tex. App.—Houston [14th Dist.] 2016, pet. ref’d).

The parties agree that *Stubbs* is controlling precedent. *See, e.g., Medina v. State*, 411 S.W.3d 15, 20 n.5 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (“[A]bsent a decision from the Court of Criminal Appeals or this court sitting en banc that is on point and contrary to the prior panel decision or an intervening and material change in the statutory law, we are bound by our prior panel decision.”); *see also LeBlanc v. State*, No. 14-16-00624-CR, 2017 WL 1086575, at *1 (Tex. App.—Houston [14th Dist.] Mar. 21, 2017, pet. ref’d) (mem. op., not designated for publication) (reaffirming *Stubbs*).

Accordingly, we reverse the trial court’s order granting the application for writ of habeas corpus and dismissing the indictments against appellee. *See Stubbs*, 502 S.W.3d at 238. We remand for further proceedings.¹

PER CURIAM

Panel consists of Justices Boyce, Busby, and Wise.
Do Not Publish — Tex. R. App. P. 47.2(b).

¹Appellee contends in his brief that the *Stubbs* panel was wrong and that this court should hear this case en banc. The court has denied appellee’s request, so this case has been decided by a panel. *See* Tex. R. App. P. 41.2(c).