



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NOs. PD-0096-21, PD-0097-21

THE STATE OF TEXAS

V.

JASPER ROBIN CHEN, Appellee

**ON STATE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTEENTH COURT OF APPEALS
HARRIS COUNTY**

***Per curiam.* KELLER, P.J., filed a dissenting opinion in which KEEL and
McCLURE, JJ., joined.**

OPINION

Appellee was charged with harassment via electronic communications. See TEX. PENAL CODE § 42.07(a)(7). He filed a pre-trial habeas writ application and motion to quash the charging instrument, arguing the electronic harassment statute is facially unconstitutional and also unconstitutional as applied to him under the First Amendment. The trial court ruled

that the statute is facially unconstitutional and granted relief. The State appealed¹, and a majority of the Court of Appeals held the statute to be unconstitutionally overbroad. *State v. Chen*, 615 S.W.3d 376 (Tex. App. – Houston [14th] 2020, pet. filed).

The State has filed a petition for discretionary review arguing that Appellee failed to meet his burden to show the statute is unconstitutionally overbroad and the majority erred in its analysis. We recently handed down opinions in *Ex parte Barton v. State*, No. PD-1123-19, 2022 Tex. Crim. App. LEXIS 235 (Tex. Crim. App. Apr. 6, 2022), and *Ex parte Sanders v. State*, No. PD-0469-19, 2022 Tex. Crim. App. LEXIS 236 (Tex. Crim. App. Apr. 6, 2022), in which we held the statute constitutional on its face. The reasoning in these opinions applies to this case.²

Accordingly, we grant the State's petition for discretionary review, reverse the judgment of the Court of Appeals, and remand this case to the trial court for further proceedings not inconsistent with *Ex parte Barton* and *Ex parte Sanders*.

DELIVERED: August 24, 2022

PUBLISH

¹ In a unitary notice of appeal, the State appealed both from the trial court's order dismissing the information and from its order granting habeas corpus relief.

² We note that Appellee's case is governed by the 2017 version of the electronic harassment statute. Act of May 24, 1973, 63d Leg., R.S., ch. 399, § 1, sec. 42.07, 1973 Tex. Gen. Laws 883, 956-57 (amended 2017).