

**DEFENSE STRATEGY MEMORANDUM – PRE-INDICTMENT HEARING (STATE V.  
ROYCE RESENDEZ)**

**Case:** State of Texas vs. Royce Resendez

**Cause No.:** 2025PF40159

**Charge:** Assault on a Peace Officer (Tex. Penal Code § 22.01(b-2), 2<sup>nd</sup>-Degree Felony)

**Hearing:** Felony Pre-Indictment Setting – Bexar County Criminal District Court (Jan. 6, 2026)

**Defense Counsel:** John M. Economidy (Attorney for Defendant)

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**I. OVERVIEW AND DEFENSE THEORY**

**Charge Severity:** Mr. Resendez is accused of **assault causing bodily injury to a peace officer**, which Texas law elevates to a second-degree felony when the officer is performing official duties[1]. This carries a potential **2–20 year prison term and up to \$10,000 fine** if convicted[2]. The stakes are high, underscoring the need for a strong pre-indictment defense push.

**Defense Theory – No Actual Assault:** The defense’s position is that **no physical contact or injury ever occurred**, suggesting the possibility of a **false or exaggerated report** by the officer. To convict on this charge, the State must prove Mr. Resendez **intentionally or knowingly caused “bodily injury”** to an officer. Texas broadly defines “bodily injury” as any physical pain or impairment[3], but here **there is no evidence of any injury**: the State has disclosed **no body-camera footage, no booking photos showing injuries, and no medical or injury photographs** of the officer. The **only video evidence** at this time is footage from Mr. Resendez’s **own iPhone**, which (according to defense review) does **not show any clear assault** by Mr. Resendez. Importantly, **no official evidence contradicts the defendant’s video**. This one-sided evidentiary picture strongly supports our contention that **the officer’s assault allegation is unsubstantiated**.

**Context:** It is still early in the case – no indictment has been returned by the grand jury (and likewise no *no-bill* decision yet). Our **goal at this pre-indictment stage** is to convince the

prosecution (and if necessary the Court) that the case is too weak to justify a felony indictment. **Ideally, the charge should be dismissed or reduced** before it ever reaches indictment. Short of outright dismissal today, we aim to preserve favorable evidence, compel disclosure of any proof of injury (if it exists), and lay the groundwork for a **grand jury no-bill or a reduced charge**.

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## II. ORAL ARGUMENT FRAMEWORK (KEY POINTS FOR JUDGE AND PROSECUTOR)

At the pre-indictment docket hearing, counsel will **respectfully but clearly** articulate the following points to both the judge and the prosecutor:

- **Lack of Evidence of Injury:** Emphasize that **no evidence of bodily injury** has been produced. No police **body-cam video**, no **photographs of any injuries**, and no medical reports have been disclosed despite our formal requests. This absence of corroboration raises serious doubt that any officer was actually injured. (If an assault occurred, one would expect some documentation of the officer's injury or distress, yet **there is none**.)
- **Defendant's Video Contradicts Assault Claim:** Highlight that **the only video we have** – recorded on the defendant's iPhone – **shows no physical attack** on the officer. This video evidence, albeit from the defendant, is unchallenged by any State evidence. It strongly supports Mr. Resendez's account that he **never made forceful contact** with the officer. Until the State can produce evidence to the contrary, the **unrefuted video should carry significant weight**.
- **Possible False or Exaggerated Report:** Suggest, without casting personal aspersions, that the facts may indicate a **misunderstanding or false report** by the officer. The officer's incident report or affidavit contains assertions that **don't line up with the video** and lack independent support. We will note any specific discrepancies (e.g. if the officer claimed a punch or kick that is not seen on video). The argument is that **the State should not proceed on an uncorroborated accusation**, especially one that might be **inaccurate**. (We can

respectfully remind the Court that making a false report to a peace officer is itself illegal[4] – subtly underscoring the gravity of an officer possibly misreporting events.)

- **No Harm, No Foul (Public Interest):** Argue that continuing with a second-degree felony charge under these circumstances does not serve justice. **If no officer was actually harmed**, pursuing an indictment would **waste court and jury resources** and unfairly brand Mr. Resendez a felon. The **public interest favors** resolving or reducing such a case now, rather than expending time on a trial where evidence is lacking.
- **Good-Faith Cooperation and Request for Dismissal/Reduction:** Make clear that the defense is not merely pointing fingers – we have **actively sought the truth** (by preserving video evidence, promptly requesting discovery, etc.). We stand ready to provide the prosecutor with our video and any other information needed. Given the evidence holes, we will **politely invite the State to reconsider the charge**. Specifically, we will ask the prosecutor to **join us in a motion to dismiss** for lack of evidence, or at least consider reducing the charge to a misdemeanor (e.g. **Class A misdemeanor Assault**, if anything). The tone will be cooperative: we are giving the State an opportunity to do the right thing early, without further litigation.

These oral points will be made succinctly and respectfully at the bench. The aim is to **persuade the prosecutor in earshot of the judge**, signaling that the case is on tenuous ground. By making the record of scant evidence now, we also prepare for any future motions (and let the Court know why we might later request extraordinary relief if the State continues to withhold evidence).

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### III. SUMMARY OF FILED AND PREPARED DEFENSE MOTIONS

We have filed (or are prepared to file) several motions to protect Mr. Resendez’s rights and gather all relevant evidence. Below is a summary of each:

- **Notice of Appearance of Counsel:** Filed to formally notify the Court and State that John M. Economidy is counsel of record. This ensures all communications and disclosures go

through defense counsel. It also triggers our right to participate in all proceedings and to receive discovery. (This document has been filed and acknowledged, so the State is aware of counsel's representation.)

- **Motion to Preserve Evidence:** A motion requesting the Court to order the State and law enforcement to **preserve all potentially relevant evidence** in this case. This includes any **body-camera or dash-camera footage**, dispatch recordings, 911 calls, **jail booking videos**, photographs, **officer's notes**, and any physical or digital evidence (such as the defendant's phone video in original format). The goal is to prevent any spoliation or routine deletion of evidence. For example, if any security camera at the location might have captured the incident, it must be preserved. (This motion is crucial – as one Texas firm notes, they “*deploy investigators immediately to pull security camera footage before it is deleted... [and] file a Motion to Preserve Evidence*” in order to later present it to the DA and seek a no-bill[5].) We want an order ensuring **nothing is lost**, given that bodycam footage is allegedly “not available” and we only have our copy of the iPhone video.
- **Article 39.14 Discovery Request (Michael Morton Act Request):** We have served a **formal 39.14 request** on the State, invoking our statutory right to **timely discovery**. Under Texas Code of Criminal Procedure 39.14, the prosecution must disclose any evidence “material to any matter involved in the action” including offense reports, witness statements, videos, etc., **upon a timely request**. Our request, sent in writing, **demand all evidence** in the State's possession (or that it can obtain) regarding the alleged assault. This of course encompasses any **bodycam video**, any **photos of injuries** to the officer, medical records if the officer sought treatment, **witness statements**, and the officer's personnel file notes if relevant. We specifically requested any evidence of **injuries or lack thereof**. We are prepared to **litigate under Article 39.14** to enforce these rights if needed[6]. (*Note: As part of this, we also filed a Motion to Preserve rough notes, if any, per best practices*[7].)
- **Motion to Compel Disclosure of Injury Evidence:** This motion (filed or ready to file today) asks the Court to **compel the State to produce any and all evidence of the officer's alleged injury** – or formally confirm that none exists. Since the charge hinges on

bodily injury, we are entitled to know if the State has **photos of the officer's injury, medical exam reports, use-of-force reports, or any documentation of injury**. So far, the State has provided nothing. If the State responds that **no such evidence exists**, that admission itself is exculpatory (supporting that there was no injury). We will ask the Court to order the State to **immediately turn over any injury photographs, medical records, or internal reports** about the officer's condition after the incident. If the State has nothing, they should say so on the record. This motion essentially forces the issue of the missing evidence.

- **Motion to Compel (General Discovery or Specific Items):** In addition to the injury evidence, we stand ready to file a more general Motion to Compel discovery if the State does not honor the 39.14 request. This would cover **bodycam footage (if it exists), any surveillance videos, and witness statements** not yet turned over. The law requires prosecutors to disclose exculpatory evidence even without a request<sup>[6]</sup>, so any footage or reports inconsistent with the officer's account must be produced. Our motion would ask the Court to order immediate inspection of any such evidence.
- **Proposed Orders:** For each motion above, we have prepared proposed orders for the judge's convenience. For example, an order granting the Motion to Preserve Evidence (directing law enforcement to preserve specified items), and an order granting the Motion to Compel Injury Evidence (requiring production of injury documentation by a date certain). We will hand these up to the Court if the motions are heard, to expedite the process. These orders are straightforward and serve to memorialize the Court's rulings in writing. Having them ready signals our diligence and helps the Court take prompt action if inclined.

*Summary:* All these filings demonstrate that the defense is **proactive and diligent**. We are **not "hiding the ball"** – instead, we are pushing to get all the facts on the table as soon as possible. This not only protects Mr. Resendez's rights but also helps focus the discussion with the State about the case's merit (or lack thereof). The **motions also put pressure on the State:** if they truly have **no evidence of injury or contact**, that will become clear once these are heard. It creates a

record that can later support a **dismissal** (or a favorable argument to the grand jury that the case lacks probable cause).

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#### IV. LEVERAGE FOR A NO-BILL OR CHARGE REDUCTION

To persuade the prosecutor (and ultimately the grand jury) that this case should be **no-billed** (not indicted) or at least reduced, we will marshal every piece of favorable information as *leverage*. Key leverage points include:

- **1. No Documented Injury:** As noted, the State has **zero tangible proof of any injury** to the officer. There are **no photographs of bruises or marks**, no medical evaluations, and not even a mention of the officer seeking medical attention. The absence of such evidence strongly suggests either **no injury occurred or it was so minor that it went unverified**. This undercuts the very **bodily injury element** the State must prove. We will argue that **grand jurors routinely expect to see some evidence of injury** in an assault-on-officer case – and here they would see none. This could easily lead a grand jury to **reject the charge**. We will use this to urge the prosecutor to avoid a likely no-bill (and the accompanying loss for the State) by **dismissing or reducing now**.
- **2. Video Evidence Favoring Defendant:** The **iPhone video** recorded by Mr. Resendez is a crucial piece of evidence. From our analysis, it **does not show any assault**; in fact, it may show Mr. Resendez attempting to **de-escalate or back away**. We will provide this video (if not already) to the prosecutor as part of a **“grand jury packet”** of evidence[8], emphasizing that a grand jury is likely to see this and question the officer’s account. **Any gaps in the video** (if, for example, the phone didn’t capture the entire encounter) will be noted, but we’ll stress that **nothing in the video corroborates the officer’s claims of assault**. On the contrary, if the video audio or visuals contradict the officer’s report, that inconsistency is powerful impeachment evidence. As one defense commentary notes, *video evidence can corroborate the defendant’s claims or highlight inconsistencies in the prosecution’s*

case[9]. Here, our video **highlights inconsistencies** and is currently unchallenged by any State evidence.

- **3. Officer’s Affidavit Inconsistencies and Credibility Issues:** We will scrutinize the officer’s written reports or affidavit for **internal inconsistencies or contradictions with other evidence**. Any discrepancy – no matter how small – will be highlighted as a reason to doubt the officer’s credibility. For instance, if the officer’s report claims “the defendant struck me in the face causing pain,” yet there are **no marks on the face and no video showing such a strike**, that’s a glaring red flag. We will also compare any supplemental reports (or audio from dispatch) to see if the story evolved. **Inconsistencies = reasonable doubt** in our view, and we will argue to the prosecutor that these issues would likely lead a jury (or grand jury) to **disbelieve the officer**. In essence, we are signaling that pursuing this charge could result in an embarrassing no-bill or acquittal. (We may also allude that if the officer indeed falsified aspects of the report, that’s a serious matter – one that the DA’s office should not risk condoning by pushing forward.)
- **4. Lack of Bodycam Footage (and Implication of Missing Evidence):** It will not be lost on the Court or the DA that **there is no body-camera footage**, despite this being a modern expectation for police encounters. If the involved officer was equipped with a bodycam (as many are), the question is **why we have none**. The police department says none exists; however, we have seen instances where officers failed to activate cameras or footage “goes missing.” For example, in a **recent San Antonio case (Edgewood ISD)**, a woman’s arrest led to **all charges being dismissed** when it came to light that **no bodycam footage was available** – even though bystander video showed an officer wearing what appeared to be a body camera[10][11]. That case illustrates how the **absence of bodycam video can undermine the prosecution’s case**, sometimes fatally. We will use this as analogous leverage: if this were a clear-cut assault, why is there no video from the officer or his unit? The lack of footage not only deprives the State of critical evidence, but it also creates a **negative inference** (in grand jurors’ minds) that perhaps the **State is hiding something or the evidence would not support the charge**. We will subtly remind the prosecutor that

we are prepared to make the argument to a jury that the missing video should be held against the State's case (spoliation or simply reasonable doubt).

- **5. Witness Testimony Gaps:** We will consider any **third-party witnesses** to the incident. If there were bystanders (officers or civilians) who have not given statements, we'll point out that the State's case relies solely on the **complaining officer's word**. A one-person "my word against yours" case, without corroboration, is a poor candidate for a felony conviction. If we have or can get affidavits from any neutral witnesses supporting Mr. Resendez, that will be prime leverage. Absent that, the **lack of any supporting witness for the State** is itself a weakness. We can remind the prosecutor that a jury asked to trust an unbacked officer's claim – especially if contradicted by video – may well acquit, damaging the officer's and prosecution's credibility.
- **6. Grand Jury Packet & Meeting:** As a proactive measure, we are prepared to present a **Grand Jury Packet** to the prosecutor (and request it be shared with the grand jury) highlighting all the above points. Defense attorneys often use such packets pre-indictment to seek a no-bill[12][8]. Our packet would include: a brief memo summarizing the evidence problems, a copy of the iPhone video, any supporting witness affidavits or statements, and possibly character letters for Mr. Resendez (to show he's not the sort to assault officers). We will leverage this by suggesting to the ADA that **we intend to deliver this information to the grand jury**. Often, prosecutors prefer to no-bill a case themselves rather than have the grand jury do it after seeing a defense packet – it's a matter of professional prudence. So this is soft leverage: *"We have a strong presentation for the grand jury; perhaps we can all avoid that step if you dismiss now."*

In sum, our leverage is essentially the **weakness of the State's case coupled with the strength of our evidence**. We will use these points in negotiations and discussions to advocate for a **no-bill or reduction**. The message: *the case is hanging by a thread – better to resolve it now than to pursue an indictment that may not stand*. And if the State has contrary evidence, we insist on seeing it now (pre-indictment), because in its absence the fairest outcome is to drop or downgrade the charge.

## V. RECOMMENDED ADDITIONAL FILINGS AND INVESTIGATIVE ACTIONS

To bolster the defense position, we have identified further steps that should be taken **immediately** (if not already in progress):

- **Consider an Examining Trial (Article 16.01):** Because the case is unindicted, Mr. Resendez has the right to request an **Examining Trial** – a preliminary hearing where the State must show probable cause to a judge. While examining trials in Bexar County are often avoided by quick indictments, formally requesting one can pressure the State. If granted, it would let us **cross-examine the officer under oath early** and “lock in” his testimony before any grand jury proceeding[6]. Any inconsistencies later can destroy his credibility. Even the act of requesting an examining trial signals to the State that we are confident in our case and ready to challenge theirs. The risk to the State is that if the officer performs poorly or if the judge finds no probable cause, it strengthens our hand for dismissal or no-bill. We will weigh this option (and potentially request the examining trial at this setting if it seems strategic).
- **Subpoenas for Evidence:** We will prepare subpoenas duces tecum for any entities that might hold evidence. For example:
- **911 / Dispatch Records:** Subpoena the police dispatch audio and logs for the incident. These could show **what the officer reported in real-time** (did he claim an assault over the radio or not?). Any discrepancy between his excited utterances on the radio and his written report could be gold for us.
- **Surveillance Videos:** If the incident occurred in view of any surveillance (street cameras, nearby businesses, etc.), we should immediately seek those videos. As noted in a real case scenario, acting within days to obtain such footage can be decisive[5]. If we haven’t already, our investigator should canvass the area for cameras (city traffic cams, private CCTV) and we will subpoena any footage. Even if it doesn’t show the full incident, it might show lead-up or aftermath, which can be telling (for example, showing Mr. Resendez was calm or that no struggle is visible).

- **Officer’s Bodycam/BWC logs:** Even if the officer’s bodycam footage is claimed “nonexistent,” we may subpoena records from the department about that officer’s bodycam usage that day. Some departments have logs when a bodycam is activated or docked. If a log shows it was activated or footage was uploaded, and it’s now “missing,” that is critical information. Alternatively, if the officer was not equipped with a cam (or claims it malfunctioned), a subpoena for maintenance records or the department’s bodycam policy might be useful – to argue the officer violated policy by not recording.
- **Medical Records of Officer:** If the officer went to any clinic or had any medical exam (sometimes officers fill out internal injury reports even for minor pain), we will subpoena those records (with appropriate release or court order, since it might be confidential otherwise). If those records show **no injury or no treatment**, it bolsters us. If the officer never sought any medical evaluation for an alleged assault injury, that’s telling. If he did and it shows something minor, that’s also useful to contextualize.
- **Jail Booking Video/Photos of Defendant:** Often, if a struggle happened, the defendant might have injuries too (e.g. if force was used to subdue). We will seek any **booking photos of Mr. Resendez and jail intake videos**. These could show whether **Mr. Resendez had any visible injuries** or was complaining of harm, which might support *his* narrative (for instance, if he was roughed up, it suggests he was the one hurt, not the officer). At minimum, seeing Mr. Resendez in booking could show his demeanor (calm, distraught, etc.), which might indirectly reflect on what happened.
- **Police Unit GPS/AVL data:** If relevant, data from the patrol car’s GPS or Automatic Vehicle Locator might show timing of events, when the officer called en route to jail, etc. Probably minor, but we consider all angles.
- **Interviews or Affidavits from Witnesses:** Our investigator should locate and interview any **third-party witnesses**. This could include people who were at the scene (bystanders, other officers). If any witness confirms that Mr. Resendez did not strike the officer (or that the officer overreacted), we will obtain a **sworn affidavit** from them. Such affidavits can be included in our grand jury packet. Even short of an affidavit, a defense investigator’s **summary of a witness interview** can be used to brief the prosecutor (or impeach the

officer later). For instance, if another officer quietly admits “I didn’t actually see Resendez hit anyone,” that’s huge – and we would subpoena that officer for the examining trial or trial.

- **Defendant’s Statement or Affidavit:** Generally, we are cautious about offering the defendant’s own sworn account (to avoid locking in testimony). However, in a pre-indictment context, a carefully prepared **affidavit from Mr. Resendez** might help sway the grand jury. If Mr. Resendez is articulate and credible in explaining that he never touched the officer and was unjustly accused, an affidavit to that effect (with details, “I was backing away, my hands were up, suddenly I was taken down...”) could humanize him. We might prepare a **short affidavit for Mr. Resendez to sign** recounting his version of events and attesting to the truth (noting he has reviewed his own video). This can be risky (as it could be used against him later if there’s a slight inconsistency), so we will weigh it carefully. Alternatively, we may include a **narrative letter** in the grand jury packet summarizing his side in third person, rather than a sworn statement, to avoid evidentiary issues.
- **Character Letters / Background Info:** As supplemental material, we can gather a few character reference letters for Mr. Resendez (employers, family, community members attesting to his peaceful character and respect for law enforcement). While not directly about the incident, this can influence a prosecutor or grand jury when deciding borderline cases. If Mr. Resendez has **no criminal history**, we will emphasize that clean record. Any evidence of his good standing (e.g., if he’s employed, a student, family man, etc.) can be included to show that charging him as a felon for this dubious incident would be unjust. Prosecutors have discretion pre-indictment to drop cases “in the interest of justice,” and a strong portrayal of Mr. Resendez as a good citizen can support such a result.
- **Legal Research and Drafts for Future Motions:** We will continue preparing for all contingencies. This includes drafting a **Motion to Dismiss for Lack of Probable Cause** (to be used if indictment still looms and evidence remains insufficient), and a **Motion in Limine** (if indicted, to preclude any mention of alleged assault unless the State can first show evidence of injury). We are also researching case law on similar situations – for

instance, cases where assault on officer charges were thrown out due to lack of injury or video evidence. If any such precedents exist (or instances of grand juries no-billing officers' assault cases due to credibility issues), we will arm ourselves with those to further persuade the DA. In short, we'll be ready to litigate aggressively if needed, but our hope is that these **preparatory actions** won't be needed if we can convince the State now.

All these investigative and filing steps are geared toward one thing: **fortifying the defense position that this case is unprovable as charged**. They either gather more support for Mr. Resendez's innocence or force the State to confront the weaknesses in their case. Many of them (like obtaining video evidence and witness statements) are part of a robust pre-indictment defense strategy that **often can stop a case from going forward**[13]. We are effectively **building a firewall of evidence** to protect Mr. Resendez before an indictment can even happen.

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## VI. PROPOSED ORAL REQUESTS TO THE COURT

During the hearing, after making our arguments and noting our motions, we may need to ask the Court for specific action. Here is the **polite, concise language** we plan to use for two likely requests – a reset of the case setting, and handling of our motion to compel:

- **Request for Reset of Hearing:** *“Your Honor, in light of the outstanding discovery issues and the motions we have on file, the defense respectfully requests a reset of this pre-indictment hearing to a later date. We are still awaiting critical evidence from the State – for example, any proof of the officer’s injury – which has not yet been provided. A short continuance will allow the State time to comply with our discovery request under Article 39.14 and for both parties to further discuss a possible resolution. We propose resetting this matter to docket in about 30 days, by which time we anticipate either the issues will be resolved or the case’s direction (indictment or dismissal) will be clearer.”*
- *If asked for justification: “This is a serious charge, Judge, and we believe rushing forward without the evidence would be detrimental to both sides. A brief reset serves the interests of justice by ensuring we have all the facts before the case proceeds to indictment. Mr. Resendez is out on bond*

*(if applicable) and waives any speedy indictment right for this period. We've conferred with the State (if true) and there's no objection to a reset."*

This request is framed to show we are not seeking delay for its own sake, but for **good cause (pending discovery and negotiations)**. The tone remains cooperative, suggesting this is a mutual interest.

- **Request for Court to Take Motion to Compel Under Advisement (if not ruled immediately):** *"Your Honor, we have a Motion to Compel on file regarding the disclosure of any injury evidence. We understand the Court may not wish to address the merits of that motion at this informal pre-indictment setting. If the Court is not inclined to rule today, we respectfully ask that the motion be taken under advisement. Specifically, we ask that the Court instruct the State to respond to our motion in writing within [a short timeframe] or, at a minimum, confirm on the record whether any such injury evidence exists."*

*If the State indicates today that no injury photos or medical reports exist, that statement on the record would resolve much of the motion's purpose. If the State is unsure, then by the next setting we would expect an answer. Taking the motion under advisement ensures it remains pending so we can revisit it at the next hearing if necessary. In the meantime, Your Honor, an entry in the order or docket sheet that the issue was raised may encourage compliance. We just want to make sure this critical question – whether the officer was injured and what evidence of that exists – is answered before an indictment is sought."*

In essence, we're asking the judge to *keep the fire lit under the State* regarding our motion, without forcing a full hearing on it right now if that's inconvenient. This shows respect for the Court's schedule while still advancing our discovery needs.

- **Alternative (if Court is willing to rule):** If the judge seems ready to rule on motions now, we will of course present them formally. In that case, we'd say, *"We move to compel the State to produce any evidence of the alleged injury to the officer. Given that the State has not produced any such evidence to date, we believe an order is necessary. This goes directly to probable cause for the charge. We have a proposed order ready for the Court's consideration."* Then be prepared to hand up the order. If the Court grants it, great. If the Court is hesitant, that's when we fall

back to, *“In the alternative, Judge, we ask that you carry this motion forward (take it under advisement) and perhaps allow us to re-urge it at the next setting if the State still hasn’t provided the material.”*

- **Preservation of Rights on Record:** As a final note before concluding the hearing, counsel will say something to ensure the record is clear: *“Judge, for the record, the defense has made a timely Article 39.14 request and all Brady material should be disclosed. We just want the record to reflect that obligation, considering the nature of this charge.”* This gently reminds both court and prosecution of the State’s ongoing duty to disclose exculpatory evidence[6] (which, in our case, includes the **absence** of injury evidence, arguably). It’s a polite nudge that we expect compliance.

The above language will be delivered professionally, maintaining our credibility. We want the judge to see us as **reasonable and diligent**. By asking for a reset or for the court to hold the motion open, we’re indicating: *we are not trying to ambush anyone; we simply want the evidence issue resolved before proceeding*. Judges appreciate when counsel work issues out cooperatively, so making these requests in a non-confrontational manner is key. We show deference to the Court’s discretion (“under advisement if not inclined to rule now”) while still advocating firmly for what the defense needs.

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## VII. CONCLUSION AND NEXT STEPS

In summary, our pre-indictment defense strategy for Mr. Resendez is to **vigorously challenge the State’s evidence (or lack thereof) at the earliest stage** in order to **prevent a baseless felony indictment**. We have laid a comprehensive plan: from oral advocacy highlighting the case’s weaknesses, to motions securing our discovery rights, to leveraging every factual discrepancy in negotiations. The overarching aim is to convince the prosecution and the Court that this charge cannot be justified as is:

- If we succeed, the **optimal outcome** is the State **dismissing the charge or reducing it** (for example, to a misdemeanor assault, if appropriate) before indictment. Dismissal (“no-file”

or “reject”) would allow Mr. Resendez to avoid the stigma and burden of a felony prosecution altogether.

- Failing an immediate dismissal, our efforts aim to at least secure a **grand jury no-bill**. By preserving evidence, compelling discovery, and possibly presenting a defense packet, we maximize the chances that the grand jury will **decline to indict** due to reasonable doubt about the assault. A no-bill would similarly end the case in Mr. Resendez’s favor.
- If neither dismissal nor no-bill occur by the next setting, we will be positioned to **attack the indictment** (should one be returned) with a well-built record: we’ll have on record that **we warned early of evidentiary gaps**, and we’ll have the necessary evidence to file for relief (such as a motion to dismiss or later a motion for directed verdict). We will also be ready to **try the case** with a strong defense theme of **“no contact, no injury, no assault”**, supported by the video and lack of State proof.

By approaching the pre-indictment phase with this level of preparation and advocacy, we not only serve our client’s immediate interest (avoiding a felony indictment) but also send a message that we are a **formidable defense** ready to litigate every aspect of the case. This alone can encourage the State to seek a more amicable resolution.

Finally, our professional and factual presentation at the hearing will maintain our credibility with the Court. We will have demonstrated that the defense is **not wasting anyone’s time** – rather, we are proactively working towards a just outcome. If a reset is granted, we use that time to continue fact-finding and negotiations. If the Court takes our motion under advisement, we follow up diligently with the State in the interim. Every step remains coordinated toward the primary goal: **preventing this unfounded assault charge from moving forward.**

We are confident that this strategy – grounded in evidence (or the lack thereof) and respectful advocacy – gives Mr. Resendez the best chance at a favorable result **today at the pre-indictment hearing and in the crucial weeks to follow**. All cues now go to the prosecutor: given what’s on (and not on) the table, the **right decision is to walk away from this charge**. We will make that path as clear and inviting as possible for them, while zealously protecting our client’s rights.

## Sources:

- Texas Penal Code § 22.01(b-2) (assault on peace officer/judge elevated to 2<sup>nd</sup>-degree felony)[1]
- Alex Houthuijzen, *Assault on a Peace Officer Charges in Texas* – penalties range 2–20 years for second-degree[2]
- Goldstein & Orr, *Texas Assault Law* – discussing new §22.01(b-2) added in 2017 for peace officer assaults[1]
- KSAT Investigates (Ibarra, 2025) – Example where charges were dropped when **no bodycam footage** existed; officer wore camera but no footage provided[10][11]
- Setra Law Firm, *Pre-Indictment Defense Strategies* – Importance of **immediate evidence preservation** and presenting evidence to DA to seek a no-bill[5]; using **Examining Trials (Art. 16.01)** to lock in officer testimony early[6]
- Alexander Houthuijzen, *Steps After Being Charged – Gathering Evidence* – Emphasizing collecting video and scrutinizing police reports for inaccuracies to challenge prosecution[9][14].

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[1] Attorney for Assault with Bodily Injury in San Antonio, Bexar County, TX

<https://www.goldsteinhilley.com/violent-offenses/assault-bodily-injury/>

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