



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

NO. PD-1283-19

LUKE HAMPTON, Appellant

v.

THE STATE OF TEXAS

**CONCURRING ON REFUSAL OF DISCRETIONARY REVIEW
FROM THE FIFTH COURT OF APPEALS
KAUFMAN COUNTY**

HERVEY, J., filed a concurring opinion in which RICHARDSON and NEWELL, JJ., joined.

CONCURRING OPINION

I agree with the Court in its refusal of Luke Hampton's (Appellant's) petition for discretionary review. Appellant argues that the court of appeals erred because its analysis was not thorough enough. According to him, the court of appeals should've analyzed Article 38.071, § 3(a) of the Texas Code of Criminal Procedure governing procedures for dispensing with face-to-face confrontation. I recognize that Appellant is *pro se*, but the court of appeals had no reason to address Article 38.071, § 3(a) because trial counsel did

not object under Section 38.071, § 3(a), and appellate counsel did not argue that Article 38.071, § 3(a) was violated (likely because the claim was forfeited). Even now, Appellant does not argue in his petition that Article 38.071, § 3(a) was violated. This case from beginning to end has been about the Sixth Amendment Confrontation Clause.

Appellant also argues that *Craig* was undermined by *Crawford* and its progeny and that the court of appeals should have resolved the tension between those cases. He has a point about the tension, but it doesn't matter here because the outcome would be the same. The procedures were more than adequate to ensure the reliability of the testimony under *Craig*, and defense counsel had an adequate opportunity to effectively cross-examine the victim pursuant to *Crawford*. Appellant does not argue otherwise.

Filed: June 8, 2020

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