

GRANTED ISSUES

NOTE: THE WORDING OF THE ISSUES IS TAKEN VERBATIM FROM THE PARTIES' PETITIONS FOR DISCRETIONARY REVIEW.

ISSUES GRANTED JANUARY 15, 2025

0841-24 ORGAN, COURTNEY JAMES-VARNELL WALLER POSSESSION OF CONTROLLED SUBSTANCE

Does the intrusion of a drug dog's nose through the open window of a car during a free-air sniff violate the Fourth Amendment or require exclusion of any evidence found?

ALPHABETICAL LISTING WITHOUT ISSUES

| <u>PDR NO.</u> | <u>NAME</u> | <u>DATE GRANTED</u> |
|----------------|-------------------------------|---------------------|
| 23-0290 | ALKAYYALI, TAREQ | 08/23/23 |
| 22-0409 | ARMSTRONG, JOSHUA RAY | 09/04/24 |
| 24-0760 | COCKRELL, RAY LEE | 10/23/24 |
| 23-0243 | CRAWFORD, SHAWN EDWARD | 08/23/23 |
| 24-0205 | CUARENTA, ANTHONY LUKE | 05/01/24 |
| 24-0198 | DORA, JAMES JR. | 06/05/24 |
| 24-0581 | ESTEVEZ, EX PARTE AMARILLYZ | 09/18/24 |
| 23-0149 | GABALDON, IVAN | 06/14/23 |
| 24-0514 | GLOVER, MICHAEL DONELL | 09/11/24 |
| 24-0611 | GRIFFIN, EX PARTE GARY | 09/25/24 |
| 24-0480 | GUTIERREZ, RANDY RAY | 08/21/24 |
| 22-0332 | HALLMAN, ROBERT F. | 10/19/22 |
| 24-0160 | HATTER, SANITHA LASHAY | 05/08/24 |
| 23-0423 | JOE, DARYL | 10/25/23 |
| 24-0541 | KITCHENS, WILLIAM TRAVIS | 10/30/24 |
| 24-0617-58 | KLEINMAN, MICHAEL | 10/23/24 |
| 24-0832 | LAMBERT, JASON CURTIS | 11/20/24 |
| 24-0300 | MASON, CRYSTAL | 08/21/24 |
| 24-0282/83 | MILTON, CLIFFORD | 08/21/24 |
| 22-0581/82 | MONTGOMERY, BEECHER | 08/21/24 |
| 22-0222 | NAVARRO, JEREMIAH | 09/07/22 |
| 24-0363/64 | NEWTON, CHRISTOPHER LYNN | 09/04/24 |
| 24-0841 | ORGAN, COURTNEY JAMES-VARNELL | 01/15/25 |
| 24-0075 | OWENS, KEVIN J. | 06/05/24 |
| 24-0186 | PETTIT, JUSTIN | 05/22/24 |
| 24-0377/78 | RODRIGUEZ, ERIK | 08/21/24 |
| 23-0486 | TATES, ELIJAH | 09/16/23 |
| 22-0507 | THOMSON, WADE HARRELL | 04/26/23 |
| 23-0669 | WELLS, AARON RAYSHAN | 01/24/24 |

STATE'S

MENARD

ASSAULT

1. When determining what felony offense was charged, must everything on the face of the charging instrument the grand jury had before it be considered?
2. Must a defendant object pretrial when the charging instrument creates doubt about which of two related offenses is being charged?

23-0290

ALKAYYALI, TAREQ

08/23/23

STATE'S

TARRANT

MURDER

Does a defendant suffer egregious harm from charge error that 1) related to an element the defendant effectively conceded and which was not a realistic possibility for acquittal, and 2) was limited to a manner and means of murder neither party argued over?

23-0423

JOE, DARYL

10/25/23

APPELLANT'S

NAVARRO

CARGO THEFT

1. Did the 10th COA error [sic] in holding the evidence legally sufficient because “[Petitioner] jumped out the vehicle and attempted to connect the brake lines and lights, constituting an activity in which he possessed stolen cargo?”
2. Did the 10th COA misconstrue section 31.18(b)(1) of the Penal Code, when the lower court read and applied “an activity” in isolation; and thus, failed to read the term in the context of the entire statute?
3. What type of “activity” would suffice to satisfy the statute’s requirements?

23-0486

TATES, ELIJAH

09/06/23

STATE'S

BRAZOS

EVADING ARREST

1. The lower court erred when it ignored existing case law so that it could create, in a publish opinion, a new waivable-only right to physical presence under Article 33.03 that conflicts with decisions of the Court of Criminal Appeals, the lower court, and other courts of appeals.
2. The lower court erred when it misappropriated this Court's analysis in Lira to rationalize creating, in a published opinion, a new requirement that a defendant must affirmatively waive this new waivable-only right to physical presence under Article 33.03 which conflicts with the Texas Supreme Court's Emergency Orders and decisions of other courts of appeals.

23-0669

WELLS, AARON RAYSHAN

01/24/24

APPELLANT'S

DALLAS

CAPITAL MURDER

1. Whether the Court of Appeals correctly determined the legality of geofence warrants, an issue of first impression in Texas and an important question of state and federal law that has not been, but should be, settled by the Court of Criminal Appeals.
3. Whether the Court of Appeals correctly determined the reliability of Google data, an issue of first impression in Texas and an important question of state and federal law that has not been, but should be, settled by the Court of Criminal Appeals.

24-0075

OWENS, KEVIN J.

06/05/24

COURT'S OWN MOTION

BEXAR

HARASSMENT

Was Penal Code section 42.07(a)(7) unconstitutional as applied to appellant?

24-0160

HATTER, SANITHA LASHAY

05/08/24

STATE'S

COLLIN

ASSAULT

1. The Fourteenth Court's opinion is based on false statements of the record.
2. The Fourteenth Court erred by affirming the trial court on a theory of law not applicable to the case. The Fourteenth Court affirmed on a legal theory that was not litigated below because the appellee had disclaimed it, thus the State was not put on notice of the need to adduce evidence refuting the theory.

24-0186

PETTIT, JUSTIN

05/22/24

APPELLEE'S

SMITH

POSSESSION OF A

PROHIBITED WEAPON

Mr. Pettit, as a passenger in the vehicle, had standing to contest his unconstitutional seizure. The Twelfth Court of Appeals did not follow this Court's holding in *Kothe v. State*, 152 S.W.3d 54 (Tex. Crim. App. 2004), fundamentally misapplied the "fruit of the poisonous tree" doctrine, and erred by holding that Mr. Pettit lacked standing.

24-0198 DORA, JAMES JR. 06/05/24
APPELLANT'S LUBBOCK AGGRAVATED ROBBERY

1. Did the court of appeals err in holding that the jury need only find the defendant acted recklessly to convict him of aggravated robbery under the "intent to promote or assist" theory of party liability?

24-0205 CUARENTA, ANTHONY LUKE 05/01/24
APPELLEE'S BRAZOS SPEEDING TEN PERCENT OR MORE ABOVE THE POSTED SPEED LIMIT

A court of appeals does not have jurisdiction to consider an appeal by the State of an order of deferred disposition.

24-0282 MILTON, CLIFFORD 08/21/24
24-0283 APPELLANT'S HARRIS TRAFFICKING OF PERSONS

Did the First Court of Appeals err in holding that a child between the ages of fourteen and seventeen does not, as a matter of law, lack the ability to consent to sex for purposes of committing prostitution?

24-0300 MASON, CRYSTAL 08/21/24
STATE'S TARRANT ILLEGAL VOTING

(1) Did the appellate court misapply the legal sufficiency standard of review by:

- crediting Appellant's self-serving testimony which the trial court reasonably could have disregarded; and/or
- resolving an ambiguity in Appellant's testimony in Appellant's favor; and/or
- reweighing evidence in favor of the defense; and/or
- ignoring evidence that supported the verdict; and/or
- applying sufficiency analyses long rejected by this Court; and/or
- failing to view the evidence in the light most favorable to the verdict.

24-0363 NEWTON, CHRISTOPHER LYNN 09/04/24
24-0364 APPELLEE'S NAVARRO DRIVING WHILE INTOXICATED FAILURE TO MEET DUTY ON STRIKING A FIXTURE

The court of appeals erred in overturning the grant of Mr. Newton's motion to suppress by failing to follow existing authority, creating a split among the courts of appeal, and misapplying both precedent and cannons [sic] of statutory construction.

24-0377 RODRIGUEZ, ERIK 08/21/24
24-0378 STATE'S BEXAR POSSESSION OF CHILD PORNOGRAPHY BRIBERY, MISUSE OF OFFICIAL INFORMATION

1. The court of appeals misapplied the *Guzman* standard of review as it applied to the seizure of Rodriguez's cell phone.
2. The court of appeals misapplied the *Guzman* standard of review as it applied to the seizure of Rodriguez's cell phone.
3. Does article 18.0125 apply to all cell phone searches or just the searches of cell phones seized pursuant to an arrest?

24-0451 JACKSON, LARRY DEWITT 12/18/24
APPELLANT'S WASHINGTON CONTINUOUS SEXUAL ABUSE
OF YOUNG CHILD
INDECENCY W/CHILD

Whether the Court of Appeals erred in finding that the Petitioner failed to satisfy the Strickland test for ineffective assistance of counsel.

24-0480 GUTIERREZ, RANDY RAY 08/21/24
STATE'S BEE AGGRAVATED SEXUAL
ASSAULT
INDECENCY W/CHILD

1. If an indictment's grammar and usage errors produce awkward phrasing, does *Delarosa v. State*, 677 S.W. 3d 668 (Tex. Crim. App. 2023), direct that it has failed to make an allegation?
2. Can an indictment that sets out all the statutory language for an enhancement in the body be said to be "facially complete" for the unenhanced offense—i.e., that it appears to allege the unenhanced offense and only the unenhanced offense?

COURT'S OWN MOTION

Is Subsection (f) in Section 22.021 of the Penal Code an element of the offense or a punishment enhancement?

24-0514 GLOVER, MICHAEL DONELL 09/11/24
STATE'S KAUFMAN AGGRAVATED ROBBERY

Is the evidence sufficient to support a jury's finding that a two- to three-inch pocketknife is a deadly weapon when it can rationally be determined that it was capable of causing death or serious bodily injury because Appellant used it to slice through the nylon strap of a bag within inches of Parks' hand?

24-0541 KITCHENS, WILLIAM TRAVIS 10/30/24
APPELLANT'S HARRIS MURDER

The Court of Appeals erred in determining that the State's final argument that Appellant shot the Complainant because he was afraid of the Complainant because he was Hispanic was a legitimate response to Appellant's argument that Appellant's was afraid of the Complainant because he was a large, apparently, angry man, who was riding a large loud motorcycle, who threatened Appellant stating, "I am going to fuck you up right now" (RR Vol. 9, P.71, L. 9-10) when there is no evidence in the record that Appellant or any witness other than the medical examiner identified the Complainant as Hispanic.

24-0581 ESTEVEZ, EX PARTE AMARILLYZ 09/18/24
APPELLANT'S HARRIS DRIVING WHILE INTOXICATED

Where jeopardy has indisputably attached, is the trial court's purported vacatur, more than 30 days after the judgment, adequate to remove the defendant's former jeopardy, so that she can be retried?

24-0611 GRIFFIN, EX PARTE GARY 09/25/24
APPELLANT'S HAYS ASSAULT ON PUBLIC SERVANT

Is it enough under *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006) for an applicant to show that a "breakdown in the system" prevented him from timely filing a notice of appeal in order to be afforded his right of appeal under the Due Process Clause?

**24-0617 thru 0658 KLEINMAN, MICHAEL
STATE'S**

**WILLIAMSON
10/23/24
MUNICIPAL ORDINANCE
VIOLATIONS**

1. Can appellate jurisdiction be “substantially” invoked by an appeal bond that does not comply with all statutory requirements?
2. Did the court of appeals err when it interpreted “may” to mean “shall” in Code of Criminal Appeals article 44.15, depriving appellate courts discretion by requiring them to allow amendment or substitution of defective appeal bonds?

**24-0760 COCKRELL, RAY LEE
COURT'S OWN MOTION**

**BOWIE
10/23/24
INJURY TO A CHILD**

1. Can the duty of an owner of dangerous dogs to restrain or securely enclose them, TEX. HEALTH & SAFETY CODE § 822.042(a), be imported to serve as a statutory duty for purposes of injury to a child by omission?
2. If the importation of the dangerous-dog duty in TEX. HEALTH & SAFETY CODE § 822.042(a) is improper for injury to a child by omission, the case should be remanded so the lower court can address the Appellant's act of letting his dogs roam freely as a basis for liability.

**24-0832 LAMBERT, JASON CURTIS
APPELLEE'S**

**JACKSON
11/20/24
SEXUAL ASSAULT**

1. Did the appeals court lose jurisdiction when Stephen Tyler, an assistant district attorney of Jackson County, rather than Pamela E. Guenther, the elected district attorney of Jackson County, filed the notice of appeal? (13 Court of Appeals' case events dated 1-29-2024).
2. Did the appeals court regain its jurisdiction when the elected district attorney filed its corrected notice of appeal, January 29, 2024, 41 days after the trial court's order of December 19, 2023 granting Petitioner a new trial? (C.R., pgs. 270-271).
3. Did the appeals court err, April 19, 2024, when it, by an order en banc, denied Petitioner's motion to dismiss State's appeal for want of jurisdiction? (13 Court of Appeals' case events dated 4-19-2024).

**24-0841 ORGAN, COURTNEY JAMES-VARNELL
STATE'S**

**WALLER
01/15/25
POSSESSION OF CONTROLLED
SUBSTANCE**

Does the intrusion of a drug dog's nose through the open window of a car during a free-air sniff violate the Fourth Amendment or require exclusion of any evidence found?