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

PDR NO.	<u>NAME</u>	DATE GRANTED
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-VARN	
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

NUMERICAL LISTING WITH ISSUES GRANTED

22-0222 NAVARRO, JEREMIAH APPELLANT'S COMAL

09/07/22 ASSAULT

1. Did the appellate court [err] in holding that the necessity defense does not apply to a defendant who provokes the difficulty?

2. If the defense of necessity can be denied based on the defendant provoking the difficulty, did the appellate court [err] in finding that Appellant's conduct provoked the difficulty in this case?

22-0332 HALLMAN, ROBERT F. TAI

TARRANT

10/19/22 AGGRAVATED SEXUAL ASSAULT; SEXUAL ASSAULT; INDECENCY W/CHILD

1. Did the Second Court of Appeals' Majority Err in Using the *Mosley* Factors to Determine Whether the Trial Court Abused its Discretion in Denying Appellant's Motion for Mistrial?

2. The Dissent Correctly Concludes that Under Either Rule 44.2(b) or the *Mosley* Factors, the Judgments of Conviction Should be Affirmed.

22-0409 ARMSTRONG, JOSHUA RAY

GRAYSON DRIVING WHILE INTOXICATED

09/04/24

Does Tex. Code Crim. Proc. art. 14.03(a)(1) have an exigency requirement for warrantless arrests?

22-0507 THOMSON, WADE HARRELL

APPELLANT'S & STATE'S

GRIMES

04/26/23 POSSESSION OF CHILD PORNOGRAPHY

APPELLANT'S

STATE'S

1. Did the court of appeals misconstrue plain view to permit an inadvertent vantage point rather than a lawful vantage point?

2. Does a person's limited consent encompass an officer inadvertently exceeding the scope of that consent? **STATE'S**

- 1. Does a court of appeals have the authority to abate for an out-of-time motion for new trial and preemptively compel a hearing thereon?
- 2. The court of appeals's review of the trial court's ruling was procedurally and substantively defective.

22-0581 MONTGOMERY, BEECHER

22-0582

APPELLANT'S TARRANT

08/21/24

2. The Second Court of Appeals decided an important question of federal law that conflicts with Court of Criminal Appeals decisions when it held that Appellant's Sixth Amendment right to confront witnesses was not violated by having a virtual hearing on a motion to adjudicate guilt and subsequent sentencing hearing despite his request to be physically present before and during the proceedings.

23-0149 GABALDON, IVAN STATE'S

EL PASO

06/14/23 CAPITAL MURDER

EVADING ARREST, THEFT

Where: (1) the trial court, in dismissing the State's capital murder indictment on the grounds of prosecutorial vindictiveness, also dismissed the "instant cause" with prejudice, effectively precluding the State from reindicting Gabaldon on an untainted murder charge or any lesser-included offense, and (2) Gabaldon never challenged the validity of the underlying murder charge, such that he received all the relief to which he was allegedly entitled, the trial court's dimissal [sic] of all underlying charges with prejudice erroneously imposed an extreme and unwarranted punitive, rather than curative, remedy not authorized by law, such that the "with prejudice" portion of the dismissal order is void, and the trial court's order should be reformed to remove the "with prejudice" language.

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, <u>an issue of first impression in Texas</u> 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, <u>an issue of first impression in Texas</u> 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
APPELLEE'S BRAZOS

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 STATE'S	MASON, CRYSTAL	TARRANT	08/21/24 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 24-0364 APPELLEE'S	NEWTON, CHRISTOPHER L	YNN	09/04/24
		NAVARRO	DRIVING WHILE INTOXICATED FAILURE TO MEET DUTY ON

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

STRIKING A FIXTURE

- 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 APPELLANT'S

WASHINGTON

12/18/24 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

STATE'S BEE

08/21/24

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
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
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 enbanc, 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 01/15/25
STATE'S 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?