

GRANTED ISSUES

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

ISSUES GRANTED NOVEMBER 20, 2024

0832-24 LAMBERT, JASON CURTIS

JACKSON

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).

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
24-0286	AVALOS, ALFREDO II	06/05/24
24-0013	BITTICK, CHARLES	03/27/24
23-0577	BRADSHAW, CHARLES	12/20/23
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
23-0703	ELSIK, STEVEN JAMES	01/10/24
24-0581	ESTEVEZ, EX PARTE AMARILLYZ	09/18/24
22-0634	FINLEY, TAYTON SETH	03/08/23
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
23-0083	HRADEK, LINDSEY	09/06/23
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
24-0115	LOPEZ, MARIO ISABEL VENTURA	04/24/24
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
23-0745-47	OCHOA, EMANUEL	02/07/24
24-0075	OWENS, KEVIN J.	06/05/24
24-0186	PETTIT, JUSTIN	05/22/24
23-0822	PRIEST, LARRY	02/21/24
24-0377/78	RODRIGUEZ, ERIK	08/21/24
24-0427	STEELE, ANDREW	08/21/24
24-0302	TANNER, BRADRICK GERLMAINE	06/05/24
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** **09/07/22**
APPELLANT'S **COMAL** **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.** **10/19/22**
STATE'S **TARRANT** **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** **09/04/24**
STATE'S **GRAYSON** **DRIVING WHILE INTOXICATED**

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

22-0507 **THOMSON, WADE HARRELL** **04/26/23**
APPELLANT'S & STATE'S **GRIMES** **POSSESSION OF CHILD**
PORNOGRAPHY

APPELLANT'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** **08/21/24**
22-0582
APPELLANT'S **TARRANT** **EVADING ARREST, THEFT**

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.

22-0634 **FINLEY, TAYTON SETH** **03/08/23**
COURT'S OWN MOTION **TARRANT** **ASSAULT**

1. If a witness testifies at a criminal trial while wearing a surgical mask that covers the witness's nose and mouth, is a defendant's Sixth Amendment right to face-to-face confrontation denied?
2. Is there a general exception during a global pandemic to the Sixth Amendment Confrontation Clause and in-person confrontation?
3. If there is a global pandemic exception, at what point does a global pandemic begin, and at what point does a global pandemic end?
4. If particularized findings are necessary, were the findings in this case sufficient to dispense with face-to-face confrontation because doing so was necessary to further an important public policy, and the reliability of the testimony was otherwise assured?

23-0083 HRADEK, LINDSEY 09/06/23
APPELLEE'S EL PASO INJURY TO A CHILD

When four judges have considered whether to properly grant a motion for new trial and two of them have decided that such a motion was properly granted, then that decision cannot be outside the zone of reasonable disagreement. The two-justice majority of the Court of Appeals never explicitly found that the trial court's decision was either arbitrary or unreasonable, and their Opinion failed to give proper deference to the trial court's ruling. When reviewing the Court of Appeals' decision, it is clear the State was unable to show that trial counsel's decision to order his subordinate attorney to play the entirety of one of, if not, the most damning piece of evidence in the entire trial and admit it into evidence did not undermine confidence in the outcome.

23-0149 GABALDON, IVAN 06/14/23
STATE'S EL PASO CAPITAL MURDER

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 dismissal [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.

23-0243 CRAWFORD, SHAWN EDWARD 08/23/23
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.

23-0577 BRADSHAW, CHARLES 12/20/23
APPELLANT MCLENNAN AGGRAVATED SEXUAL ASSAULT

Did the Appeals court incorrectly interpret *Martin v. State* when it held that the requirement of "continuous association" in a street gang is satisfied by the underlying crime and no additional or prior crime is required for the charge of Engaging in Organized Criminal Activity?

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?

24-0115 LOPEZ, MARIO ISABEL VENTURA 04/24/24
APPELLANT'S HARRIS CONTINUOUS SEXUAL ABUSE OF A CHILD

2. Can the Court of Appeals recalculate court costs on their own without remanding the case to the trial court for an ability-to-pay inquiry?

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?

24-0286 AVALOS, ALFREDO II aka 06/05/24
APPELLANT'S AVALOS, ALFREDO CAMERON MISUSE OF OFFICIAL INFORMATION

24-0480
STATE'S

GUTIERREZ, RANDY RAY

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
STATE'S

GLOVER, MICHAEL DONELL

KAUFMAN

09/11/24
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
APPELLANT'S

KITCHENS, WILLIAM TRAVIS

HARRIS

10/30/24
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
APPELLANT'S

ESTEVEZ, EX PARTE AMARILLYZ

HARRIS

09/18/24
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
APPELLANT'S

GRIFFIN, EX PARTE GARY

HAYS

09/25/24
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
STATE'S

KLEINMAN, MICHAEL

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
COURT'S OWN MOTION

COCKRELL, RAY LEE

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
APPELLEE'S

LAMBERT, JASON CURTIS

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).
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