

GRANTED ISSUES

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

NO ISSUES GRANTED MAY 15, 2024

ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
23-0290	ALKAYYALI, TAREQ	08/23/23
23-0461	APARICIO, EX PARTE LUIS ALFREDO	08/23/23 & 01/17/23
22-0436	BALTIMORE, IJAH IWASEY	10/26/22
24-0013	BITTICK, CHARLES	03/27/24
23-0577	BRADSHAW, CHARLES	12/20/23
21-0522-25	CHARETTE, ROBBIE GAIL	01/12/22
23-0243	CRAWFORD, SHAWN EDWARD	08/23/23
23-0471	CRUMLEY, JOHN PAUL	10/18/23
23-0628	CRUZ, MARTIN	12/20/23
24-0205	CUARENTA, ANTHONY LUKE	05/01/24
22-0159	CURIPOMA, JESUS ALBERTO GUZMAN	06/22/22
23-0703	ELSIK, STEVEN JAMES	01/10/24
22-0634	FINLEY, TAYTON SETH	03/08/23
23-0148	FLOYD, JAMES EARNEST, JR.	08/23/23
23-0149	GABALDON, IVAN	06/14/23
22-0332	HALLMAN, ROBERT F.	10/19/22
24-0160	HATTER, SANITHA LASHAY	05/08/24
22-0156	HEATH, DWAYNE ROBERT	08/24/22
23-0083	HRADEK, LINDSEY	09/06/23
22-0164	HUGHES, DARREN TRAMELL	06/08/22
23-0423	JOE, DARYL	10/25/23
23-0665/66	JOHNSON, SEDRICK	12/20/23
23-0564	LEWIS, WILLIAM SOLOMON	11/22/23
24-0115	LOPEZ, MARIO ISABEL VENTURA	04/24/24
21-0887	LOWRY, EX PARTE MICHAEL	03/02/22
23-0458	MACIEL, BETHANY GRACE	10/11/23
23-0467	McCUMBER, JEFFREY MERRITT, JR.	09/27/23
22-0222	NAVARRO, JEREMIAH	09/07/22
23-0556	NIXON, BRIAN DALE	11/01/23
22-0192	NULL, ALAN WILLIAM	08/24/22
23-0745-47	OCHOA, EMANUEL	02/07/24
23-0822	PRIEST, LARRY	02/21/24
22-0184	SINCLAIR, CHESTER	09/07/22
23-0310	STAFFORD, EX PARTE JOHN MORGAN	08/23/23
22-0711	STOCKER, JAMIN KIDRON	03/15/23
23-0616	STRICKLAND, LARRY GENE, II	12/13/23
22-0589	SWENSON, AARON CALEB	12/21/22
23-0486	TATES, ELIJAH	09/16/23
22-0507	THOMSON, WADE HARRELL	04/26/23
20-262/63	TURLEY, ANDREW JAMES	06/17/20
23-0756	VILLA, WHITNEY S.	02/07/24
20-0048	VILLARREAL, DAVID ASA	06/17/20
23-0669	WELLS, AARON RAYSHAN	01/24/24
23-0800	ZAPATA, RUDY	01/31/24

NUMERICAL LISTING WITH ISSUES GRANTED

20-0048 **VILLARREAL, DAVID ASA** **06/17/20**
APPELLANT'S **BEXAR** **MURDER**

The court of appeals erred in holding that the trial court properly limited the Appellant's ability to consult with trial counsel during an overnight recess in violation of the Appellant's Sixth Amendment right to counsel.

20-0262 **TURLEY, ANDREW JAMES** **06/17/20**
20-0263
STATE'S **HARRIS** **COMPELLING PROSTITUTION,**
TRAFFICKING OF A CHILD TO
COMPEL PROSTITUTION

1. Did the court of appeals err when it held as a matter of law that selling sexual contact with a four-year-old child could never constitute compelled prostitution?
2. Must a child knowingly engage in an act of prostitution for the person who sold sex with her to be guilty of compelling prostitution?

21-0522 **CHARETTE, ROBBIE GAIL** **01/12/22**
21-0523
21-0524
21-0525
APPELLANT'S **WASHINGTON** **FAILURE TO DISCLOSE TRUE**
SOURCE OF COMMUNICATION
MISLEADING USE OF OFFICE
TITLE; FAILURE TO TIMELY
FILE PERSONAL FINANCIAL
STATEMENT; RECORDKEEPING
POLITICAL CAMPAIGN

1. Did the special prosecutor lack standing or authority to prosecute alleged misdemeanor violations of the Election Code and Government Code without the referral from the TEC required by Texas Government Code § 571.171?
2. Was Appellant deprived of due process when the District Attorney's office leapfrogged the TEC procedure, which was a prerequisite to prosecution?

21-0887 **LOWRY, EXPARTE MICHAEL** **03/02/22**
STATE'S **HARRIS** **POSSESSION OR PROMOTION**
OF LEWD VISUAL MATERIAL
DEPICTING CHILD

1. Did the court of appeals err in finding that Texas Penal Code Section 43.262 is a content-based regulation of protected speech that fails strict scrutiny?
2. Did the court of appeals err in considering Texas Penal Code Section 43.262's constitutionality under the First Amendment overbreadth doctrine?
3. Did the court of appeals err in its overbreadth analysis of Texas Penal Code Section 43.262?

22-0156 **HEATH, DWAYNE ROBERT** **08/24/22**
STATE'S **McCLENNAN** **INJURY TO A CHILD**

1. Has the State's statutory duty to disclose evidence "as soon as practicable" been violated if the prosecutor fails to disclose an item of evidence the D.A.'s Office does not know exists but that has been in police custody for months?
2. If so, does the trial court have authority to impose an exclusionary sanction when there has been no bad faith or demonstrable prejudice to the opposing party and the statute provides for no such sanction?

22-0159 **CURIPOMA, JESUS ALBERTO GUZMAN** **06/22/22**
STATE'S & COURT'S OWN MOTION **TRAVIS** **CRIMINAL TRESPASS**

The Court of Appeals Erred by Basing its Opinion on the Holdings of the *Habeas* Court Without Determining Whether Such Holdings Were Correct.

Court's Own Motion

1. Whether the Kinney County Attorney was authorized to file a State's appeal from the habeas proceedings in Travis County.
2. Whether the Kinney County Attorney was authorized to file a petition for discretionary review.

22-0164
STATE'S

HUGHES, DARREN TRAMELL
HARRIS

06/08/22
TAMPERING WITH
GOVERNMENTAL RECORD

The Fourteenth Court erred by holding that the Sixth Amendment Confrontation Clause applied to probation revocation proceedings. This holding conflicts with published holdings from four Texas courts of appeals and nine federal circuit courts, and with the federal Supreme Court's explicit statement that revocation proceedings are not "criminal prosecutions."

22-0184
STATE'S

SINCLAIR, CHESTER
BEXAR

09/07/22
INDECENCY WITH/CHILD

Did the court of appeals have jurisdiction over Sinclair's appeal?

Court's Own Motion

In a proceeding under Article 11.072 of the Code of Criminal Procedure, does a trial court have jurisdiction to rule on a motion to reconsider after the trial court has entered an appealable order denying or granting, in whole or part, an application under the statute?

22-0192
STATE'S

NULL, ALAN WILLIAM
HARRIS

08/24/22
SEXUAL ASSAULT

3. The Fourteenth Court erred when it held that it would violate due process for the court to take judicial notice that the science behind DNA is valid.

5. The Fourteenth Court erred when it held that a DNA profile run in accredited laboratory is not something upon which an expert may rely in making a determination that DNA profiles match.

22-0222
APPELLANT'S

NAVARRO, JEREMIAH
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
STATE'S

HALLMAN, ROBERT F.
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.

22-0436
STATE'S

BALTIMORE, IJAH IWASEY
McLENNAN

10/26/22
UNLAWFULLY CARRYING
WEAPON

Does sworn, unchallenged testimony on a material issue have probative value?

22-0507
APPELLANT'S & STATE'S

THOMSON, WADE HARRELL
GRIMES

04/26/23
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.

22-0589

SWENSON, AARON CALEB

12/21/22

STATE'S

BOWIE

**ATTEMPTED CAPITAL
MURDER**

For attempt crimes against persons—like capital murder of police—does attempt law require "striking distance proximity" and weapons display and positioning or movement toward the intended victim to constitute "an act amounting to more than mere preparation that tends but fails to effect the commission of the offense"?

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?

22-0711

STOCKER, JAMIN KIDRON

03/15/23

STATE'S

HARRIS

CAPITAL MURDER

1. The court of appeals employed a heightened standard for probable cause, departing from the flexible standard required by law.
2. The court of appeals applied inconsistent standards for probable cause in its analyses of the warrant affidavits for the searches of the appellant's cell phone data and the location information associated with the appellant's cell phone number.

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.

23-0148

FLOYD, JAMES EARNEST, JR.

08/23/23

COURT'S OWN MOTION

TARRANT

AGGRAVATED ROBBERY

Did the court of appeals err in holding that the charge did not have to include a special jury unanimity instruction requiring that the jury be unanimous as to whether appellant was guilty of aggravated robbery by threat or aggravated robbery by bodily injury?

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?

23-0310 **STAFFORD, EX PARTE JOHN MORGAN** **08/23/23**
STATE'S **COLLIN** **TRUE SOURCE OF**
COMMUNICATION

1. The court of appeals disregarded the plain language of Election Code § 255.004(b) (the "True Source of Communication" statute) and misconstrued it to unlawfully require identification of the source of a campaign communication. On its face, the statute does not require identification of the source; it only prohibits misidentification of it.
2. The court of appeals erred at every step in analyzing whether Election Code § 255.004(b) was narrowly drafted, resulting in the court of appeals erroneously holding the statute unconstitutional.

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?

23-0458 **MACIEL, BETHANY GRACE** **10/11/23**
APPELLANT'S & STATE'S **BRAZOS** **DRIVING WHILE**
INTOXICATED

APPELLANT'S

Did the court of appeals improperly substitute its own judgment for a jury's that was never given the opportunity with proper instruction?

STATE'S

The court of appeals's harm analysis did not consider the unlikelihood that the jury would have reached the necessity issue given the implausibility of the testimony supporting it when viewed against the record as a whole.

23-0461 **APARICIO, EX PARTE LUIS ALFREDO** **08/23/23**
STATE'S **MAVERICK** **CRIMINAL TRESPASS**

The Court of Appeals Erred in Holding That Appellant Raised a Cognizable Claim in a Pre-Trial Habeas Corpus Proceeding.

COURT'S OWN MOTION

01/17/23

Whether the Court of Appeals erred in reversing the trial court's finding that Appellant failed to establish a prima facie case of selective prosecution on the basis of sex discrimination.

23-0467
STATE'S

McCUMBER, JEFFREY MERRITT, JR.
POLK

09/27/23
CONTINUOUS SEXUAL
ABUSE OF CHILD

1. Does the Confrontation Clause require a trial court to detail the legal and factual underpinnings for its finding that a necessity under Haggard v. State, 612 S.W.3d 318 (Tex. Crim. App. 2020), warrants dispensing with in-person confrontation for a witness?
2. If so, did the defendant forfeit more detailed findings by not objecting, or should the case be abated for these?
3. Is fear of retaliation from the defendant's associates and responsibility for caring for a family member the kind of state-interest necessities that permit videoconference testimony in place of in-person confrontation?

23-0471
STATE'S

CRUMLEY, JOHN PAUL
COLLIN

10/18/23
ONLINE SOLICITATION
OF A MINOR

1. Evidence of mental disease or defect that at best bolsters a matter collateral to a defendant's mental state defense is inadmissible under Ruffin v. State, 270 S.W.3d 586 (Tex. Crim. App. 2008).
2. If such evidence is admissible, the court of appeals erred by assessing harm for constitutional error under TEX. R. APP. P. 44.2(a) because appellant presented a detailed defense.

23-0486
STATE'S

TATES, ELIJAH
BRAZOS

09/06/23
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.

23-0556
STATE'S

NIXON, BRIAN DALE
MEDINA

11/01/23
CAPITAL MURDER

1. Is holding a jury trial in the county's designated auxiliary courtroom located in the same public building as the county jail and Sheriff's Department inherently prejudicial to the presumption of innocence?
2. Was the use of the auxiliary courtroom justified when the trial judge's findings support the determination that he sought to: (1) prevent exposing jurors to Appellant in shackles and jail attire, (2) alleviate security concerns, and (3) provide adequate trial facilities?

23-0564
STATE'S

LEWIS, WILLIAM SOLOMON
HARRIS

11/22/23
RETALIATION

1. The Fourteenth Court misapplied the standard of review when it held that a rational jury could not infer that the appellant wished to murder his own mother based upon her past testimony in a protective order case.
2. The Fourteenth Court further misapplied the standard of review for legal sufficiency when it held that a person does not have a "status" as a "witness" when that person is expected to give testimony in a then-pending proceeding. This contradicts long-standing legal usage of the term "witness."

23-0577
APPELLANT

BRADSHAW, CHARLES
MCLENNAN

12/20/23
AGGRAVATED SEXUAL
ASSAULT

1. Regarding the assessment of the state consolidated court cost, which date controls – the offense date or the date of conviction?

