

## **GRANTED ISSUES**

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

### **ISSUES GRANTED MAY 22, 2024**

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**24-0186    PETTIT, JUSTIN**

**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.

## 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
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
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
24-0186	PETTIT, JUSTIN	05/22/24
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.

**22-0184**  
**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.

**22-0507**  
**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**  
**STATE'S**

**SWENSON, AARON CALEB**  
**BOWIE**

**12/21/22**  
**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**  
**COURT'S OWN MOTION**

**TARRANT**

**03/08/23**  
**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**  
**STATE'S**

**HARRIS**

**03/15/23**  
**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**  
**APPELLEE'S**

**EL PASO**

**09/06/23**  
**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.**  
**COURT'S OWN MOTION**

**TARRANT**

**08/23/23**  
**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**  
**STATE'S**

**EL PASO**

**06/14/23**  
**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**  
**STATE'S**

**MENARD**

**08/23/23**  
**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**  
**STATE'S**

**TARRANT**

**08/23/23**  
**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**  
**STATE'S**

**STAFFORD, EX PARTE JOHN MORGAN**  
**COLLIN**

**08/23/23**  
**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**  
**APPELLANT'S**

**JOE, DARYL**

**NAVARRO**

**10/25/23**  
**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**  
**APPELLANT'S & STATE'S**

**MACIEL, BETHANY GRACE**

**BRAZOS**

**10/11/23**  
**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**  
**STATE'S**

**APARICIO, EX PARTE LUIS ALFREDO**  
**MAVERICK**

**08/23/23**  
**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. When cumulation of sentences is ordered, should objection be required to complain on appeal about a deficiency of proof supporting it or lack of specificity in the written order?
2. Was the evidence in this case adequate to connect appellant to a prior sentence?
3. When cumulation of sentences is ordered but there is some deficiency of proof in the record, should the remedy be remand for a new cumulation hearing?

4. When cumulation of sentences is ordered but there is some deficiency of specificity in the written order, should the remedy be remand for clarification?

**23-0628**                      **CRUZ, MARTIN**  
**APPELLANT'S**

**HARRIS**

**12/20/23**  
**AGGRAVATED KIDNAPPING**

1. The 87th Legislature passed Senate Bill 1373 which amended Code of Criminal Procedure, Article 42.15(a-1). The amendment requires courts to conduct ability-to-pay inquiries "on the record." The amendment became effective on September 1, 2021. The bill said the statutory changes apply to fines, fees, and costs "imposed before, on, or after" the bill's effective date. Should the new on-the-record requirement apply retroactively to Mr. Cruz's trial which was conducted twenty days before September 1, 2021?

2. This question assumes the new requirement that ability-to-pay inquiries be conducted on the record is retroactive. The Texas Constitution's retroactive-laws provision prohibits only statutes which disturb vested, substantive rights. Laws altering procedure do not generally fall within the prohibition. "Procedure" refers to changes in the process by which criminal cases are adjudicated as opposed to changes in the substantive law of crimes. Is the new law's retroactivity procedural and therefore constitutional?

3. Mr. Cruz did not object to the absence of an on-the-record ability-to-pay inquiry. Nor did he affirmatively waive his right to such an inquiry. Whether he can complain on appeal about the absence of the inquiry depends on the categorization of his right under *Marin*. If his right is either a waivable right or an absolute requirement, he may complain on appeal. Is his right either a waivable right or an absolute requirement under *Marin*?

**23-0665**                      **JOHNSON, SEDRICK**  
**23-0666**  
**STATE'S**

**DALLAS**

**12/20/23**  
**INJURY TO A CHILD**  
**CAPITAL MURDER**

1. May a reviewing court rely exclusively on the "custodial interrogation environment" rather than assess whether a defendant was subjected to interrogation regarding the invocation of the right to interrogation counsel and, if so, may a defendant prospectively invoke their right to interrogation counsel before being subjected to questioning?

2. May a reviewing court supplant the objective test reviewing the totality of the circumstances surrounding a defendant's statement to determine whether it unambiguously invoked the right to interrogation counsel with a subjective test based on the testimony of a witness?

**23-0669**                      **WELLS, AARON RAYSHAN**  
**APPELLANT'S**

**DALLAS**

**01/24/24**  
**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.

**23-0703**                      **ELSIK, STEVEN JAMES**  
**STATE'S**

**McMULLEN**

**01/10/24**  
**SMUGGLING OF PERSONS**  
**EVADING ARREST**

1. Whether the fact that a witness is a foreign national no longer in this country and without legal authority to enter this country is itself sufficient to show unavailability of the witness for purposes of the hearsay exceptions in Texas Rule of Evidence 804?

2. Whether statements by a prosecutor, as an officer of the court, may be considered reliable for purposes of a preliminary question concerning the admissibility of evidence?

**23-0745**                      **OCHOA, EMANUEL**  
**23-0746**

**02/07/24**



**23-0747**

**COURT'S OWN MOTION**

**COOKE**

**AGGRAVATED SEXUAL  
ASSAULT  
INJURY TO A CHILD**

**AGGRAVATED KIDNAPPING**

1. Whether the Ranger made a positive promise to Appellant under *Garcia v. State*, 919 S.W.2d 370 (Tex. Crim. App. 1994), when he said that "there's no reason on this deal why you shouldn't be adjudicated as a juvenile. And what that means is they're going to get you help. You're not going off to prison or anything horrible like that."
2. Whether the "positive promise" standard of *Garcia* applies to juveniles?
3. Whether the totality of the circumstances in this case rendered Appellant's statement involuntary?

**23-0756**

**VILLA, WHITNEY S.**

**02/07/24**

**STATE'S**

**DALLAS**

**ASSAULT**

1. Did the court of appeals err by determining that Texas Government Code § 30.00027 deprived the intermediate appellate court of jurisdiction to hear the State's appeal from an adverse decision made by a county-level court reviewing a judgment from a municipal court of record?
  - a. Does Chapter 30 of the Texas Government Code expressly divest the intermediate appellate courts and this Court of jurisdiction to hear appeals by the State in cases originating in a municipal court of record?
  - b. Does binding precedent from this Court provide that Article 44.01 of the Code of Criminal Procedure governs the State's ability to appeal cases originating in municipal courts of record?
  - c. Does the court of appeals's interpretation of Chapter 30 of the Texas Government Code render § 30.00026 meaningless?
  - d. Does the court of appeals's interpretation of Texas Government Code § 30.00027 add limits to an appellee's right to appeal which do not appear in the statutory text?

**23-0800**

**ZAPATA, RUDY**

**01/31/24**

**APPELLANT'S**

**BEXAR**

**ASSAULT**

Does the trial court have the discretion to make an affirmative finding of family violence during sentencing prior to adjudication?

**23-0822**

**PRIEST, LARRY**

**02/21/24**

**APPELLANT'S**

**DEWITT**

**EVADING ARREST  
DEADLY CONDUCT**

When two officers both testify about one joint pursuit of an individual after that individual evaded them in a motor vehicle, is there no double jeopardy violation when the individual is charged and convicted of evading from both officers simply because the individual gives a different account of the chase to a third party?

**24-0013**

**BITTICK, CHARLES**

**03/27/24**

**APPELLANT'S**

**TARRANT**

**AGGRAVATED ASSAULT  
ENGAGING IN ORGANIZED  
CRIMINAL ACTIVITY**

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?

**24-0115**

**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?

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

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

<b>24-0160</b>	<b>HATTER, SANITHA LASHAY</b>	<b>05/08/24</b>
<b>STATE'S</b>	<b>COLLIN</b>	<b>ASSAULT</b>

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.

<b>24-0186</b>	<b>PETTIT, JUSTIN</b>	<b>05/22/24</b>
<b>APPELLEE'S</b>	<b>SMITH</b>	<b>POSSESSION OF A PROHIBITED WEAPON</b>

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.