

GRANTED ISSUES

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

ISSUES GRANTED JULY 26, 2017

<u>PDR NO.</u>	<u>NAME</u>	<u>COUNTY</u>	<u>OFFENSE</u>
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17-0041	NISBETT, REX ALLEN	WILLIAMSON	MURDER
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1. In the absence of a body, must the State prove the "fatal act of violence" in order to convict someone of murder?
2. The court of appeals reviewed both the evidence and the elements of the offense in sequential, piecemeal fashion rather than cumulatively, and failed to respect the jury's prerogative to draw inferences and weigh testimony.
3. Is the evidence sufficient to prove appellant murdered his wife?

17-0324	MARTINEZ, ROGER ANTHONY	VICTORIA	POSSESSION OF PROHIBITED SUBSTANCE IN CORRECTIONAL FACILITY
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1. The Court of Appeals erroneously decided an important question of state law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals, by finding that the knowledge of supporting officers cannot be used to establish probable cause.
2. The Court of Appeals failed to conduct the required *de novo* review of whether the evidence known to Officer Quinn was sufficient to establish probable cause and that failure constitutes a departure from the accepted and usual course of judicial proceedings that calls for an exercise of the Court of Criminal Appeals' power of supervision.

17-0398	OLIVA, JOSE	HARRIS	DRIVING WHILE INTOXICATED
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In DWI-second-offender cases, is a prior DWI conviction an offense element or a punishment enhancement?

17-0503	DELACRUZ, GEORGE	TRAVIS	MURDER
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1. In a murder case, where there is no body, no direct evidence of a death and no direct evidence to show that Petitioner acted either intentionally or knowingly in causing the alleged victim's death or acted with intent to cause serious bodily injury and committed an act clearly dangerous to human life that caused the alleged victim's death, must the State prove a "fatal act of violence" in order to convict a person of murder?
2. The Court of Appeals erred in finding the evidence sufficient to support the Petitioner's conviction for murder when the State failed to prove beyond a reasonable doubt that the alleged victim was deceased and that her death was caused by a criminal act of Petitioner.
3. Did the Court of Appeals err in finding the evidence sufficient to support Petitioner's conviction?
4. The Court of Appeals rendition of crucial evidence in its opinion was erroneous and the Court of Appeals relied on this erroneous rendition of the evidence in finding the evidence sufficient to support Petitioner's conviction.

ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
15-1409	ASBERRY, DAMON LAVELLE	03/09/16
16-0981	BALKISSOON, KEITH	01/25/17
16-0618	BECK, CLINTON DAVID	09/14/16
16-0365/66	BIEN, MICHAEL JOSEPH	09/14/16
15-0347	BOHANNAN, MICHAEL W.	11/02/16
16-0791	BOLLES, MARK EDWARD	10/05/16
16-1137	BURCH, DAN DALE	01/25/17
16-0576	BURNETT, BURT LEE	09/28/16
16-1012	BUSH, LANNY MARVIN	01/1/17
17-0205-08	CARSON, GARY	06/28/17
17-0228	CORTEZ, JOSE LUIS	05/03/17
17-0503	DELACRUZ, GEORGE	07/26/17
16-0704-06	ELROD, GORDON HEATH	10/19/16
16-0429	ESTES, RUSSELL LAMAR	09/14/16
15-1369	FEBUS, ALBERT JUNIOR	02/03/16
15-1189	FLORES, MAYRA	01/27/16
16-1299	FORD, KIMBERLY	01/25/17
16-0227	GAMINO, CESAR ALEJANDRO	05/25/16
16-1043	GIBSON, JOHNTAY	11/23/16
17-0181	GONZALEZ, JUAN ANTONIO	05/17/17
16-0197	GUTIERREZ, RENE	05/25/16
16-1118	HALLMARK, JAMIE	01/25/17
15-0511	HENRY, ALVIN PETER, JR.	10/07/15
16-1380	HERNANDEZ, GEOVANY	03/29/17
16-1389	HERNANDEZ, LUIS MIGUEL	03/08/17
16-1049	HERNANDEZ, TEODORO MIGUEL	02/01/17
16-1269	HOLDER, CHRISTOPHER JAMES	06/07/17
17-0163	HUDGINS, COBY RAY	05/24/17
16-1445	INGERSON, FRED EARL III	04/26/17
16-1411	JACOBS, JOSHUA	04/12/17
17-0197	JOHNSON, DONDRE	05/03/17
16-0517	LEAX, JEROMY JOHN	09/21/16
16-0880	LEE, RONALD EDGAR, JR.	01/11/17
16-1229	LERMA, ERNESTO	01/25/17
17-0480	MACIAS, HECTOR	06/28/17
16-0931	MARCOPOULOS, ANDREAS	01/25/17
17-0324	MARTINEZ, ROGER ANTHONY	07/26/17
17-0381	MENDEZ, ADRIAN AARON	06/28/17
17-0234/5	NILES, SCOTT	06/07/17
17-0041	NISBETT, REX ALLEN	07/26/17
16-0061	O'BRIEN, KELVIN LYNN	05/04/16
17-0398	OLIVA, JOSE	07/26/17
16-1184	OWINGS, RICHARD CHARLES	02/01/17
15-1671	PENRIGHT, CARLTON CHARLES	04/27/16
16-1180	PRINE, ALVIN WESLEY, JR.	11/09/16
15-1100	PROENZA, ABRAHAM JACOB	01/13/16
16-1300	RAMIREZ-TAMAYO, ELVIS ELVIS	01/25/17
16-1452	REYNOLDS, NATALIE AUSBIE	04/26/17
17-0021	RITCHERSON, KAITLYN LUCRETIA	05/03/17
16-0439	RODRIGUEZ, ROBERT	07/27/16
17-0001	ROSS, REBEKAH THONGINH	04/26/17
16-0323-25	SAFIAN, ANTHONY ROBERT	08/24/16
16-1037	SANCHEZ, REINALDO	01/25/17
15-0597	SHORTT, BERNARD WINFIELD	09/16/15

16-0283	VANDYKE, ROGER DALE	07/27/16
16-0228	VELASQUEZ, VICTORIA MARI	06/29/16
17-0053	VILLEGAS, DANIEL	06/07/17
15-0659	WAGNER, PAUL HENRI	11/11/15
17-0174	ZUNIGA, RICARDO	06/07/17

NUMERICAL LISTING WITH ISSUES GRANTED

15-0347 **BOHANNAN, MICHAEL W.**
COURT'S OWN MOTION **MONTGOMERY**

11/02/16
VIOLATING CIVIL
COMMITMENT ORDER

Can a conviction for violating a civil commitment order be upheld when the underlying commitment order has been reversed on appeal?

15-0511 **HENRY, ALVIN PETER, JR.**
APPELLANT'S **LAMAR**

10/07/15
EVADING ARREST

3. When the State failed to properly link Petitioner to the enhancement paragraphs, did the Sixth District Court of Appeals unreasonably hold that Petitioner and Coleman's testimony (showing that Petitioner has been to prison multiple times) is sufficient to uphold the prior enhancement convictions, and is this ruling in conflict with *Prihada v. State* [sic]?

15-0597 **SHORTT, BERNARD WINFIELD**
APPELLANT'S **DALLAS**

09/16/15
BURGLARY OF A HABITATION

The Court of Appeals erred when it dismissed Appellant's appeal for want of jurisdiction because: (1) Texas Code of Criminal Procedure Article 44.02 allows appeals from a criminal action, and under this Court's holding in *Bautsch v. Galveston*, 11 S.W. 414 (Tex. Ct. App. 1889), a hearing on a motion for shock probation is a criminal action; and (2) the issue appealed was an unconstitutional imposition of restitution, and not the granting of shock probation itself.

15-0659 **WAGNER, PAUL HENRI**
APPELLANT'S **DALLAS**

11/11/15
VIOLATING A PROTECTIVE
ORDER

1. What is the correct definition of the phrase "communicating . . . in a . . . harassing manner" as used in the statute for protective orders in family violence cases, and, as applied in this case, did it penalize protected speech in violation of Petitioner's First Amendment rights? [Tex. Pen. Code § 25.07(A)(1)(A)]
2. Whether this is a "content-based" First Amendment case and ought to have been decided by a different standard of review, "strict scrutiny" as enunciated in the case of *Ex parte Lo*.
3. If strict scrutiny is the proper standard of review, whether the correct standard of review can be waived.

15-1100 **PROENZA, ABRAHAM JACOB**
STATE'S **CAMERON**

01/13/16
INJURY TO A CHILD

1. Is there a common-law "fundamental error" exception to preservation that exists outside of the framework of *Marin v. State*, 851 S.W.2d 275 (Tex. Crim. App. 1993)?
2. Is a complaint about a judge's comment on the evidence forfeited if not raised at trial?
3. The trial judge's exchange with a witness neither tainted the defendant's presumption of innocence nor vitiated the jury's impartiality, and it was harmless under any standard.

15-1189 **FLORES, MAYRA**
APPELLANT'S **HARRIS**

01/27/16
MURDER

1. The Court of Appeals erred in ruling that the audio recording of Mayra's custodial interrogation was admissible notwithstanding the fact that the recording device used was not capable of making an accurate recording.
2. The Court of Appeals applied the wrong standard in holding that the recording equipment's failure to record twenty minutes of Mayra's custodial interrogation did not amount to an alteration that rendered the recording unreliable and untrustworthy.
3. The Court of Appeals misapplied this Court's holding in *Weatherred* because the audio tape failed to meet the requirements of section three of art. 38.22 and the trial court knew that before its ruling to allow the audio recording into evidence.

15-1369 **FEBUS, ALBERT JUNIOR**
APPELLANT'S **HARRIS**

02/03/16
FAILURE TO REGISTER
AS SEX OFFENDER

The evidence is insufficient to support the conviction for the felony offense of failure to comply with sex offender registration requirements since the evidence conclusively establishes a reasonable doubt as to whether appellant intentionally or knowingly failed to comply with the Texas Sex Offender Registration Program, as charged in the indictment. The Court of Appeals reliance on *Robinson v. State*, No. PD-0421-14, 2015 WL 4068109 (Tex. Crim. App. July 1, 2015) is in error since the indictment required the State to prove, beyond a reasonable doubt, that appellant intentionally or knowingly failed to provide his anticipated move date and new address.

15-1409 **ASBERRY, DAMON LAVELLE**
APPELLANT'S **McLENNAN**

03/09/16
MURDER

The Court of Appeals erred in holding it could not consider the trial Court record when reviewing the Court's findings in a Chapter 64 proceeding, where the record was not formally introduced into evidence at the hearing.

15-1671 **PENRIGHT, CARLTON CHARLES**
APPELLANT'S **HARRIS**

04/27/16
SEXUAL ASSAULT

The Court of Appeals' decision that the consolidated court cost was constitutional failed to explain how the comprehensive rehabilitation fee is a legitimate criminal justice purpose.

16-0061 **O'BRIEN, KELVIN LYNN**
APPELLANT'S **HARRIS**

05/04/16
ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY

1. Whether the court of appeals erred in holding that unanimity is not required with respect to the enumerated offenses of theft and money laundering in an engaging in organized criminal activity by commission jury charge. (CR at 868-872; 21 RR at 117-120; 29 RR at 45-46).

16-0197 **GUTIERREZ, RENE**
STATE'S **NUECES**

05/25/16
AGGRAVATED ASSAULT
HARASSMENT OF PUBLIC
SERVANT

Did the court of appeals properly apply either prong of *Strickland v. Washington* when it affirmed a new trial based on defense counsel's allegedly deficient advice to proceed with an 11-member jury?

16-0227 **GAMINO, CESAR ALEJANDRO**
STATE'S **TARRANT**

05/25/16
AGGRAVATED ASSAULT

1. Did the court of appeals err in finding that Respondent admitted to threatening his victim, and thereby admitted to committing aggravated assault with a deadly weapon, by testifying he held a gun at his side with the barrel pointed at the ground?
2. Did the court of appeals err by relying on law not applicable to this case in order to reach its holding?
3. Did the court of appeals err when it cited a case as support of an application of law that the case actually held to be error?

16-0228 **VELASQUEZ, VICTORIA MARI**
APPELLANT'S **BEXAR**

06/29/16
POSSESSION OF MARIJUANA

1. Did the State of Texas properly preserve error for lack of notice of a pre-trial hearing pursuant to Tex. Code Crim. Proc. Art 28.01 when in truth they objected merely to the evidentiary character of a pre-trial hearing on a Motion to Suppress?
2. Did the court of appeals err in concluding that Tex. Code Crim Proc. Art 28.01 requires the Trial Court to provide additional notice to the State of the potential for a pre-trial hearing on a properly filed and served Motion to Suppress beyond an order to appear ready for trial on a certain date?

16-0283 **VANDYKE, ROGER DALE**
APPELLANT'S **MONTGOMERY**

07/27/16
VIOLATING CIVIL

**COMMITMENT
ORDER**

Did the Court of Appeals err in holding that the savings clause of S.B. 746 violated the Separation of Powers Clause of the Texas Constitution so even though Appellant's appeal was pending when the Texas Legislature amended Chapter 841 Health & Safety Code to decriminalize the conduct for which Appellant was convicted, and since the amendment's would have applied to Appellant since his conviction was not final when the amendments went into effect but for the savings clause being declared unconstitutional Appellant conviction should not have been reversed?

16-0323 SAFIAN, ANTHONY ROBERT 08/24/16
16-0324
16-0325
APPELLANT'S TARRANT AGGRAVATED ASSAULT
POSSESSION OF HEROIN
EVADING ARREST

The court of appeals erred when it affirmed the trial court's denial of the lesser-included jury charge of deadly conduct in the trial for aggravated assault on a public servant.

16-0365 BIEN, MICHAEL JOSEPH 09/14/16
16-0366
STATE'S & APPELLANT'S BROWN ATTEMPTED CAPITAL MURDER
SOLICITATION TO COMMIT
CAPITAL MURDER

STATE

1. Did the Eleventh Court of Appeals err by holding that convictions for criminal solicitation and attempted capital murder violate double jeopardy when significant factors indicate a legislative intent to punish these offenses as separate steps in the continuum of a criminal transaction?
2. Assuming a double jeopardy violation, who should determine what the most serious offense is? If this Court answers that question by deciding that a court of appeals should make that determination, what role should the parole consequences of Article 42.12 § 3g have in that analysis when the sentences, fine and restitution are all identical?

APPELLANT

1. The Court of Appeals erred when it held that parole eligibility may determine the "most serious" offense for purposes of double jeopardy.
2. What is the proper remedy for multiple punishment when the "most serious" offense cannot be determined?

16-0429 ESTES, RUSSELL LAMAR 09/14/16
STATE'S & APPELLANT'S TARRANT SEXUAL ASSAULT
INDECENCY W/CHILD

STATE

Did the Court of Appeals properly conclude that there was no rational basis for the appellant receiving disparate treatment?

APPELLANT

1. Should Appellant's equal protection claim be reviewed under strict scrutiny?
2. Was it error for the Court of Appeals to affirm Appellant's sexual assault convictions as second-degree felonies and remand those charges to the trial court for a new trial on punishment, rather than order the prosecution of Appellant dismissed or remand the charges to the trial court to enter an order dismissing the prosecution?

16-0439 RODRIGUEZ, ROBERT 07/27/16
STATE'S GUADALUPE AGGRAVATED ASSAULT

Does the submission of an instruction on transferred intent entitle a defendant to an instruction on mistake of fact even if the greater offense does not have any additional culpable mental state and there is no evidence that the defendant harbored a mistaken belief?

16-0517 LEAX, JEROMY JOHN 09/21/16
APPELLANT'S MONTGOMERY ONLINE SOLICITATION OF
A MINOR

Whether there was probable cause to search Appellant's vehicle under the automobile exception to the warrant requirement when he entered a bar where narcotic activity was suspected, left three to five minutes later, and made "furtive glances" when police surrounded him to make a traffic stop?

16-0981 **BALKISSOON, KEITH** **01/25/17**
APPELLANT'S **WILLIAMSON** **DRIVING WHILE**
INTOXICATED

2. Did the court of appeals err in finding exigent circumstances existed?
3. Can law enforcement create their own exigent circumstances?

16-1012 **BUSH, LANNY MARVIN** **01/11/17**
STATE'S **COLEMAN** **CAPITAL MURDER**

1. In reviewing sufficiency of the evidence, did the court of appeals err by:
 - failing to consider any reasonable inferences that could be drawn from the evidence,
 - separating evidence about the crime scene from evidence about the relationship between Appellant and the victim as a whole,
 - speculating on evidence that was not offered by the State, and
 - speculating on a hypothesis that was inconsistent with the defendant's guilt,during its review of the sufficiency of the evidence to support a capital allegation that Appellant committed murder while in the course of kidnapping or attempting to kidnap the victim?
2. In considering the "grey area" of criminal attempt law between acts that are simply mere preparation to commit an offense and acts that tend to effect the commission of an offense, may a reviewing court reject a jury's verdict during a sufficiency of the evidence review simply because the reviewing court would have drawn the "imaginary line" in a different location than the jury?

16-1037 **SANCHEZ, REINALDO** **01/25/17**
STATE'S **HIDALGO** **POSSESSION OF**
CONTROLLED
SUBSTANCE

The Thirteenth Court of Appeals erred in its application of *Arizona v. Gant*, in that it did not apply the totality of the circumstances when determining the validity of the search incident to arrest.

16-1043 **GIBSON, JOHNTAY** **11/23/16**
APPELLANT'S **HARRIS** **CAPITAL MURDER**

When the basis for trial counsel's objection to the admission of the appellant's videotaped custodial statement was apparent at trial, the reviewing court should not avoid addressing that apparent issue by holding the appellant's argument on appeal does not comport with counsel's trial objection merely because the apparent issue is more specifically articulated on appeal.

16-1049 **HERNANDEZ, TEODORO MIGUEL** **02/01/17**
STATE'S **HAYS** **SEXUAL ASSAULT;**
AGGRAVATED ASSAULT

1. Is the evidence sufficient to prove aggravated assault with a deadly weapon when the State proves the offense alleged in the indictment, but there is a variance between the pleading and proof as to the specific deadly weapon?
2. If, in the course of a single criminal episode, Appellant assaults the victim, immediately leaves the room to retrieve a deadly weapon and then continues assaultive conduct, does a Court of Appeals err in finding the evidence insufficient to prove that the deadly weapon was used "during the commission" of the assault?

16-1118 **HALLMARK, JAMIE** **01/25/17**
STATE'S **HOUSTON** **HINDERING APPREHENSION**
OR PROSECUTION

1. Appellant failed to preserve any of the complaints which underlie the court of appeals' opinion.
2. Did the court of appeals misinterpret the record and thus misapply *Moore v. State*, 295 S.W.3d 329, 332 (Tex. Crim. App. 2009), which held that judges may not play any role in plea negotiations?

3. Should *Moore* be reconsidered and appellant be estopped from complaining in this case?

16-1137 **BURCH, DAN DALE** **01/25/17**
STATE'S **MONTGOMERY** **SEXUAL ASSAULT**

1. The Ninth Court of Appeals misapplied the standard set forth in *Riley v. State*, 378 S.W.3d 453 (Tex. Crim. App. 2012), when it ignored the trial court's ability to disbelieve the affidavits provided in support of the appellant's motion for new trial and concluded the appellant established he would have elected for the jury to assess punishment if he had received correct advice regarding his ineligibility for community supervision from the trial court.

2. The Ninth Court of Appeals misapplied the *Strickland v. Washington*, 466 U.S. 668 (1984), standard for evaluating ineffective assistance of counsel claims when the court burdened the State to disprove prejudice and relied on speculation to conclude that the outcome of the trial would have been different if the appellant had received correct advice.

16-1180 **PRINE, ALVIN WESLEY, JR.** **11/09/16**
STATE'S **LIBERTY** **SEXUAL ASSAULT**

1. When the record is silent as to defense counsel's reasons for calling witnesses in support of jury-ordered probation, has the presumption of reasonable strategy been rebutted?

2. If the reasonableness presumption was rebutted, did defense counsel render ineffective assistance in calling witnesses who presented favorable evidence but also opened the door for damaging evidence?

16-1184 **OWINGS, RICHARD CHARLES** **02/01/17**
STATE'S **HARRIS** **AGGRAVATED SEXUAL ASSAULT**

The trial court's failure to require an election by the State should not have resulted in a reversal when the testimony regarding multiple incidents of abuse was admissible, the descriptions of each incident were essentially the same, the jury was charged on only one offense, and appellant's defense was the same across the board.

16-1229 **LERMA, ERNESTO** **01/25/17**
STATE'S **NUECES** **POSSESSION OF CONTROLLED SUBSTANCE**

When the cocaine was seized after Appellant attempted to flee a reasonably timed traffic-stop-detention, does an alleged unlawful pre-arrest frisk and prolonged detention render the cocaine inadmissible?

16-1269 **HOLDER, CHRISTOPHER JAMES** **06/07/17**
APPELLANT'S **COLLIN** **CAPITAL MURDER**

The Court of Appeals erred in holding the State's petition to obtain the Appellant's cell phone records set forth the "specific and articulable facts" required by federal law under 18 U.S.C. section 2703(d).

16-1299 **FORD, KIMBERLY** **01/25/17**
STATE'S **NUECES** **POSSESSION OF CONTROLLED SUBSTANCE**

1. Whether a shopper's concealing merchandise inside her purse in a shopping cart gives rise to probable cause to arrest her for theft?

2. Whether a Suspect's innocent but unverifiable explanation for otherwise highly suspicious conduct negates probable cause? In particular, whether a shopper's claim that she intended to pay for items concealed in her purse while shopping negates probable cause to arrest her for theft?

16-1300 **RAMIREZ-TAMAYO, ELVIS ELVIS** **01/25/17**
STATE'S **POTTER** **POSSESSION OF CONTROLLED SUBSTANCE**

The Court of Appeals failed to apply this Court's decision in *Saunders v. State*, 840 S.W.2d 390 (Tex.Cr.App. 1992) in determining that petitioner was not entitled to a lesser-included charge on manslaughter when the jury could reasonably have interpreted petitioner's *mens rea* as reckless about causing death.

17-0041 **NISBETT, REX ALLEN** **07/26/17**
STATE'S **WILLIAMSON** **MURDER**

1. In the absence of a body, must the State prove the "fatal act of violence" in order to convict someone of murder?
2. The court of appeals reviewed both the evidence and the elements of the offense in sequential, piecemeal fashion rather than cumulatively, and failed to respect the jury's prerogative to draw inferences and weigh testimony.
3. Is the evidence sufficient to prove appellant murdered his wife?

17-0053 **VILLEGAS, DANIEL** **06/07/17**
STATE'S **EL PASO** **CAPITAL MURDER**

1. The Eighth Court erred in holding that the trial court did not abuse its discretion in requiring, and placing the burden upon, the State to establish that jail-recorded telephone conversations Villegas seeks to exclude pretrial are: (1) relevant to an elemental or evidentiary fact of consequence to be litigated at trial, (2) not unfairly prejudicial under rule 403, and (3) not inadmissible hearsay, where such determinations necessarily require the ever-changing context of a trial and the party claiming the protection of exclusionary rules of evidence bears the burden of proving his case in a pretrial motion.
2. The Eighth Court misapplied the standard for reviewing relevance determinations where in its analysis for determining whether the trial court abused its discretion in excluding relevant evidence looked to whether, based on the trial court's personal evaluation of competing or available inferences, it is reasonable to reject the State's proffered inferences, when the proper standard looks to whether an appellate court can state with confidence that by no reasonable perception of common experience could it be determined that the proffered inference is one that is reasonably available from the evidence.

17-0163 **HUDGINS, COBY RAY** **05/24/17**
STATE'S **GREGG** **MURDER**

Is it error to declare trial counsel ineffective for failing to investigate and present evidence when, at the motion for new trial hearing, Appellant presented no evidence demonstrating that the investigation and additional evidence would have been beneficial?

17-0174 **ZUNIGA, RICARDO** **06/07/17**
STATE'S **EL PASO** **CAPITAL MURDER**
ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY

In holding the evidence legally insufficient to support the defendant's convictions for engaging in organized criminal activity, specifically, that the State failed to prove that the defendant committed the predicate murders as a member of a criminal street gang, the Court of Appeals improperly required proof of the motive of the gang itself. Even after recognizing that the evidence showed that the defendant and his fellow gang members acted in concert in killing the victims, the Court of Appeals nevertheless improperly held that absent proof of why the gang attacked and killed the victims, the evidence was insufficient to allow the jury to rationally conclude that the killings were a gang activity and that the defendant participated in the killings as a member of the gang.

17-0181 **GONZALEZ, JUAN ANTONIO** **05/17/17**
STATE'S **EL PASO** **MURDER**

1. The Eighth Court erred in holding that evidence that Gonzalez had consumed ecstasy on the day of the murder was irrelevant to his state of mind and self-defense claim because the State failed to introduce evidence of the drug's half-life or the length of its effects, and that, despite any bearing it had on the central issue of self-defense or the relatively innocuous nature of the intoxication evidence, when compared to the severity of the charged offense (capital murder), its probative value was substantially outweighed by the danger of unfair prejudice.
2. The Eighth Court erred in holding that any erroneous admission of Gonzalez' possession and consumption of ecstasy the day of the murder constituted harmful error where the complained-of evidence was developed quickly through a single witness, the State did not allude to the evidence during closing arguments, and Gonzalez' defensive evidence

was internally inconsistent and controverted by the State's evidence. In disregarding the weight of these factors, the Eighth Court erred in its application of the appropriate harm standard.

17-0197
STATE'S

JOHNSON, DONDRE
TARRANT

05/03/17
THEFT

1. In determining whether the evidence is legally sufficient to support the jury's verdicts, the court of appeals failed to measure the evidence, as the court interpreted the evidence, against a hypothetically correct jury charge that included, as the dissent pointed out, a full parties charge and a correct description of the financial instrument stolen, as required under *Garza Vega v. State*, 267 S.W.3d 912, 915-26 (Tex. Crim. App. 2008).

2. In determining whether the evidence is legally sufficient to support the jury's verdicts, the court of appeals erred in failing to view the evidence in the light most favorable to the jury's verdicts, thereby substituting its resolution of fact issues for that of the jury's. See *Adames v. State*, 353 S.W.3d 854, 861 (Tex. Crim. App. 2011); see also *Jackson v. Virginia*, 433 U.S. 307, 319 n.12 (1979).

17-0205
17-0206
17-0207
17-0208
STATE'S

CARSON, GARY

06/28/17

BOWIE

ASSAULT
BAIL JUMPING

1. Is a waiver of the right to appeal following a plea of guilty without a recommended sentence invalid because the defendant could not know that an error would occur at the punishment phase?

2. Is the State's waiver of its right to a jury trial adequate consideration to uphold a defendant's waiver in the face of potential future errors and uncertain punishment?

3. Does the classification of an error affect the validity of an appellant's waiver of his right to appeal?

4. May the trial court's unobjected-to consideration of facts not in evidence be raised for the first time on appeal?

17-0228
STATE'S

CORTEZ, JOSE LUIS
POTTER

05/03/17
POSSESSION OF
CONTROLLED
SUBSTANCE

Does the improved shoulder of a highway begin at the inside edge of the "fog line," the outside edge, or somewhere in between?

17-0234
17-0235
COURT'S OWN MOTION

NILES, SCOTT

06/07/17

HARRIS

TERRORISTIC THREAT

Whether the Court of Appeals erred in reforming Appellant's judgment to reflect conviction for a Class B misdemeanor.

17-0324
STATE'S

MARTINEZ, ROGER ANTHONY
VICTORIA

07/26/17
POSSESSION OF PROHIBITED
SUBSTANCE IN A
CORRECTIONAL FACILITY

1. The Court of Appeals erroneously decided an important question of state law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals, by finding that the knowledge of supporting officers cannot be used to establish probable cause.

2. The Court of Appeals failed to conduct the required *de novo* review of whether the evidence known to Officer Quinn was sufficient to establish probable cause and that failure constitutes a departure from the accepted and usual course of judicial proceedings that calls for an exercise of the Court of Criminal Appeals' power of supervision.

17-0381
STATE'S

MENDEZ, ADRIAN AARON
HARRIS

06/28/17
AGGRAVATED ASSAULT

The court of appeals erred by holding that there was charge error, even though the appellant never objected to or requested that the jury charge include a defensive issue of self-defense instruction to the defensive issue of the lesser-included offense.

17-0398
STATE'S

OLIVA, JOSE

HARRIS

07/26/17
DRIVING WHILE INTOXICATED

In DWI-second-offender cases, is a prior DWI conviction an offense element or a punishment enhancement?

17-0480
STATE'S

MACIAS, HECTOR

EL PASO

06/28/17
ASSAULT

The Eighth Court's holding that rule 25.2(g)'s jurisdictional bar does not apply to deprive a trial court of jurisdiction pending issuance of the mandate on a State's interlocutory appeal – the basis of the Eighth Court's ultimate conclusion that Macias's pre-mandate trial was improperly terminated and his retrial jeopardy barred – was erroneous and impermissibly abridged the State's right to appeal under article 44.01.

17-0503
APPELLANT'S

DELACRUZ, GEORGE

TRAVIS

07/26/17
MURDER

1. In a murder case, where there is no body, no direct evidence of a death and no direct evidence to show that Petitioner acted either intentionally or knowingly in causing the alleged victim's death or acted with intent to cause serious bodily injury and committed an act clearly dangerous to human life that caused the alleged victim's death, must the State prove a "fatal act of violence" in order to convict a person of murder?
2. The Court of Appeals erred in finding the evidence sufficient to support the Petitioner's conviction for murder when the State failed to prove beyond a reasonable doubt that the alleged victim was deceased and that her death was caused by a criminal act of Petitioner.
3. Did the Court of Appeals err in finding the evidence sufficient to support Petitioner's conviction?
4. The Court of Appeals rendition of crucial evidence in its opinion was erroneous and the Court of Appeals relied on this erroneous rendition of the evidence in finding the evidence sufficient to support Petitioner's conviction.