

## **PDR GRANTED ISSUES**

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

### **ISSUES GRANTED APRIL 23, 2025**

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**24-1076      SALAS-MARTINEZ, ISIAH KAIN**

#### **MURDER**

##### **APPELLANT'S**

1. Is Penal Code section 46.02, which says it is unlawful for a person to carry a gun outside of his house, unconstitutional in light of the Supreme Court's opinion issued in Bruen?
2. If so, does a trial court err by instructing jurors that they cannot find a defendant was justified in using force if they believe the defendant violated this unconstitutional statute?

## **ALPHABETICAL LISTING WITHOUT ISSUES**

<b><u>PDR NO.</u></b>	<b><u>NAME</u></b>	<b><u>DATE GRANTED</u></b>
23-0290	ALKAYYALI, TAREQ	08/23/23
22-0409	ARMSTRONG, JOSHUA RAY	09/04/24
24-0975-80	AUSPRO ENTERPRISES, L.P., EX PARTE	02/12/25
24-0790	BLOXHAM, THOMAS JOSEPH	01/22/25
25-0101	BRIMZY, LATORA	04/16/25
24-1049-50	CERVANTES, RODOLFO BOLADO	04/09/25
24-0760	COCKRELL, RAY LEE	10/23/24
24-0198	DORA, JAMES JR.	06/05/24
24-0581	ESTEVEZ, EX PARTE AMARILLYZ	09/18/24
24-0964	FRASER, MARIAN	02/19/25
23-0149	GABALDON, IVAN	06/14/23
24-0611	GRIFFIN, EX PARTE GARY	09/25/24
22-0332	HALLMAN, ROBERT F.	10/19/22
24-0836	HERNANDEZ, LUZALBERT	01/22/25
24-0451	JACKSON, LARRY DEWITT JR.	12/18/24
23-0423	JOE, DARYL	10/25/23
24-0541	KITCHENS, WILLIAM TRAVIS	10/30/24
24-0617-58	KLEINMAN, MICHAEL	10/23/24
24-0966-74	KLEINMAN, EX PARTE MICHAEL	02/12/25
24-0832	LAMBERT, JASON CURTIS	11/20/24
24-0300	MASON, CRYSTAL	08/21/24
25-0006	MCDONALD, AMANDA	03/12/25
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-VARNELL	01/15/25
24-0075	OWENS, KEVIN J.	06/05/24
24-0850-52	PEREZ, GILBERTO	01/29/25
24-0186	PETTIT, JUSTIN	05/22/24
24-0377/78	RODRIGUEZ, ERIK	08/21/24
24-1076	SALAS-MARTINEZ, ISIAH KAIN	04/23/25
24-0866	SUAREZ, SAUL LEE	01/29/25
24-0230	SMITH, CHAMPAGNE	01/22/25
23-0486	TATES, ELIJAH	09/16/23
24-0877	TAYLOR, DYLAN EUGENE	01/22/25
22-0507	THOMSON, WADE HARRELL	04/26/23
24-1052	TRACY, SHANE BYRON	02/26/25
24-1059	TUCKER, MICHAEL	03/12/25
25-0074	WEAVER, QUALON DESHON	04/09/25

## **NUMERICAL LISTING WITH ISSUES GRANTED**

**22-0222      NAVARRO, JEREMIAH      09/07/22**

### **ASSAULT**

#### **APPELLANT'S**

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**

### **AGGRAVATED SEXUAL ASSAULT SEXUAL ASSAULT INDECENCY W/CHILD**

#### **STATE'S**

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**

### **DRIVING WHILE INTOXICATED**

#### **STATE'S**

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**

### **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 & 0582      MONTGOMERY, BEECHER      08/21/24**

### **EVADING ARREST THEFT**

**APPELLANT'S**

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**

**06/14/23**

**CAPITAL MURDER**

**STATE'S**

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.

**23-0290            ALKAYYALI, TAREQ**

**08/23/23**

**MURDER**

**STATE'S**

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**

**CARGO THEFT**

**APPELLANT'S**

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**

**EVADING ARREST**

**STATE'S**

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.

**24-0075 OWENS, KEVIN J.**

**06/05/24**

**HARASSMENT**

**COURT'S OWN MOTION**

Was Penal Code section 42.07(a)(7) unconstitutional as applied to appellant?

**24-0186 PETTIT, JUSTIN**

**05/22/24**

**POSSESSION OF A PROHIBITED WEAPON**

**APPELLEE'S**

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**

**AGGRAVATED ROBBERY**

**APPELLANT'S**

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?

**24-0230 SMITH, CHAMPAGNE**

**01/22/25**

**AGGRAVATED ASSAULT**

**STATE'S**

1. Whether the lower court misapplied *Romero v. State*, 173 S.W.3d 502 (Tex. Crim. App. 2005), in finding that the trial court's masking policy violated the Confrontation Clause.
2. Whether the lower court improperly presumed harm simply because the State "did not substantively address the issue of harm in its brief."

**24-0282 & 0283 MILTON, CLIFFORD**

**08/21/24**

**TRAFFICKING OF PERSONS**

**APPELLANT'S**

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 MASON, CRYSTAL**

**08/21/24**

**ILLEGAL VOTING**

**STATE'S**

(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 & 0364          NEWTON, CHRISTOPHER LYNN**

**09/04/24**

**DRIVING WHILE INTOXICATED  
FAILURE TO MEET DUTY ON STRIKING A FIXTURE**

**APPELLEE'S**

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 & 0378          RODRIGUEZ, ERIK**

**08/21/24**

**POSSESSION OF CHILD PORNOGRAPHY  
BRIBERY  
MISUSE OF OFFICIAL INFORMATION**

**STATE'S**

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**

**12/18/24**

**CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD; INDECENCY W/CHILD**

**APPELLANT'S**

Whether the Court of Appeals erred in finding that the Petitioner failed to satisfy the Strickland test for ineffective assistance of counsel.

**24-0541          KITCHENS, WILLIAM TRAVIS**

**10/30/24**

**MURDER**

**APPELLANT'S**

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**

**09/18/24**

**DRIVING WHILE INTOXICATED**

**APPELLANT'S**

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**

**09/25/24**

**ASSAULT ON PUBLIC SERVANT**

**APPELLANT'S**

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**

**10/23/24**

**MUNICIPAL ORDINANCE VIOLATIONS**

**STATE'S**

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**

**10/23/24**

**INJURY TO A CHILD**

**COURT'S OWN MOTION**

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.

**24-0790            BLOXHAM, THOMAS JOSEPH**

**01/22/25**

**THEFT**

**STATE'S**

1. Can a court determine that the State's use of immunized testimony violated *Kastigar v. United States*, 406 U.S. 441 (1972), without knowing the substance of that immunized testimony?
2. What is the proper framework to use for presentation and review of a *Kastigar* claim, including invocation, burden of proof, harm analysis, and remedy?

**24-0832            LAMBERT, JASON CURTIS**

**11/20/24**

**SEXUAL ASSAULT**

**APPELLEE'S**

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).

**24-0836            HERNANDEZ, LUZALBERT**

**01/22/25**

**ENGAGING IN ORGANIZED CRIMINAL ACTIVITY**

**APPELLANT'S**

1. Did the court of appeals depart from the usual course of judicial proceedings when it overstepped its jurisdiction and dismissed a Ch. 64 DNA appeal while a Tex.R.App.Proc. 4.6 motion lay pending in the trial court?

2. The court of appeals erred because the area of law surrounding Tex.R.App.Proc. 4.6 is unsettled as there is no guiding precedent from this Court. This case presents the Court with the opportunity to set down that binding authority.

**24-0841            ORGAN, COURTNEY JAMES-VARNELL**

**01/15/25**

**POSSESSION OF CONTROLLED SUBSTANCE**

**STATE'S**

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?

**24-0850 thru 0852        PEREZ, GILBERTO**

**01/29/25**

**AGGRAVATED ASSAULT**

**MURDER**

**POSSESSION OF CONTROLLED SUBSTANCE**

**APPELLEE'S**

1. The lower court's opinion arguing that the plain-view doctrine is equivalent to standing and can be raised for the first time on appeal creates a split amongst the appellate courts that must be resolved by this Court. State v. Elrod, 395 S.W.3d 869 (Tex. App.—Austin 2013).

2. Is the plain-view doctrine equivalent to a standing issue that falls within the waiver exception, allowing the State to raise it for the first time on appeal?

3. Did the appellate court afford the trial court proper deference in overturning its order based on a legal theory the trial court was not given an opportunity to rule on?

4. Did the appellate court erroneously apply the plain-view doctrine?

5. Did the appellate court erroneously apply the independent source doctrine?

6. Did the appellate court err in overruling the trial court's finding that the arrest warrant for possession was not supported by probable cause?

7. Did the appellate court err in finding the trial court owed the magistrate's finding deference where the warrant affidavit was based on illegally obtained information?

**24-0866            SUAREZ, SAUL LEE**

**01/29/25**

**MURDER**

**STATE'S**



A majority of the court of appeals erred in finding that the lead detective was not reasonable in believing that Appellee's mother had apparent authority to consent to the search of her apartment, including Appellee's bedroom.

**24-0877 TAYLOR, DYLAN EUGENE**

**01/22/25**

**POSSESSION OF FIREARM BY A FELON**

**STATE'S**

The Court of Appeals erred in interpreting this Court's prior rulings to require strict, mechanical compliance with inventory policy, putting it at odds with other courts of appeal holding the contrary.

**24-0964 FRASER, MARIAN**

**02/19/25**

**FELONY MURDER**

**APPELLANT'S**

1. The court of appeals misapplied Rule 105 of the Rules of Evidence to incorrectly hold that objections to extraneous offenses are forfeited by not requesting a limiting instruction.
3. The court of appeals misinterpreted Stocker's explanation of Baldwin to erroneously hold that no nexus is required between the crime and digital devices to substantiate a search warrant.
5. Is giving an infant Benadryl an act clearly dangerous to human life? Where there is no evidence of when, where, how, and in what form a child ingested Benadryl, how can the evidence possibly prove who administered it? The court of appeals erroneous sufficiency review is based upon false statements of the record, conflicting findings, a failure to review all the evidence, and consideration of discredited, inadmissible forensic testing.

**24-0966 thru 0974 KLEINMAN, EX PARTE MICHAEL**

**02/12/25**

**24-0975 thru 0980 AUSPRO ENTERPRISES, L.P., EX PARTE**

**02/12/25**

**PROHIBITED USE IN SPECIFIED ZONING DISTRICT**

**APPELLANT'S**

1. Whether The Court of Appeals Erred By Sua Sponte Deciding An Important Issue Of First Impression: A Pretrial Writ Of Habeas Corpus Filed In Connection With A Class C Misdemeanor Offense (On Appeal De Novo To County Court) Does Not Lie Where The Defendant Is Only Somewhat Restrained Of His Liberty By A Cash Bond.
2. Whether The Court Of Appeals Erred By Sua Sponte Addressing The Issue Of Restraint - Which Had Not Been Contested By The State And Which The County Court Had Specifically Found Sufficient When It Adopted The State's Proposed Findings Of Fact - And Holding That Because Appellant Was Only Somewhat Restrained Of Its Liberty By A Cash Bond, The Trial Court Did Not Abuse Its Discretion By Denying Relief On The Merits (Without Addressing The Merits)?
3. What Level Of Restraint Is Necessary Before A Pretrial Writ Of Habeas Corpus Filed In Connection With A Class C Misdemeanor Offense On Appeal De Novo To County Court Lies Where A Defendant Is Only Somewhat Restrained Of Its Liberty By A Cash Bond?

**24-1049 & 1050 CERVANTES, RODOLFO BOLADO**

**04/09/25**

**THEFT & CONSPIRACY TO COMMIT THEFT**

**APPELLANT'S**

The Fifth District Court of Appeals' finding that trial counsel's deficient performance did not prejudice Cervantes is error because the court used the wrong standard of review.

**24-1052 TRACY, SHANE BYRON**

**02/26/25**

**SEXUAL PERFORMANCE BY A CHILD**

**STATE'S**

1. Does "inducing a child to engage in sexual conduct" for purposes of sexual performance by a child require the child's consent or some measurable degree of participation?
2. If the evidence was insufficient to prove the completed offense, did the court of appeals properly state and apply the standard for reformation to attempted sexual performance by a child?

**24-1059 TUCKER, MICHAEL**

**03/12/25**

**AGGRAVATED SEXUAL ASSAULT  
INDECENCY WITH A CHILD BY CONTACT**

**STATE'S**

1. The court of appeals too narrowly construed its authority under Rule 43.2(b) of the Texas Rules of Appellate Procedure to modify judgments where there has been an omission in the judgment.
2. The court of appeals erred to limit the "statute for offense" field in a judgment to only elements of the underlying criminal offense where entry of "Sec. 22.021(f)" was necessary for the lawful execution of a judgment under Art. 42.01 and calculation of an inmate's parole eligibility per Govt. Code Sec. 508.145(a).
3. The court of appeals erred to conclude that the recital that "the victim or intended victim was younger than 6 years of age at the time of the offense" was a sufficient affirmative finding for purposes of Govt. Code Sec. 508.145(a).

**24-1076 SALAS-MARTINEZ, ISIAH KAIN**

**04/23/25**

**MURDER**

**APPELLANT'S**

1. Is Penal Code section 46.02, which says it is unlawful for a person to carry a gun outside of his house, unconstitutional in light of the Supreme Court's opinion issued in Bruen?
2. If so, does a trial court err by instructing jurors that they cannot find a defendant was justified in using force if they believe the defendant violated this unconstitutional statute?

**25-0006 MCDONALD, AMANDA**

**03/12/25**

**FAILURE TO STOP AND RENDER AID  
INTOXICATION MANSLAUGHTER**

**STATE'S**

Whether the court of appeals erred when [it] held that McDonald enjoyed a Sixth Amendment right to counsel ten years after an initial investigation resulted in a grand jury no-bill?

**25-0074 WEAVER, QUALON DESHON**

**04/09/25**

**EVADING ARREST WITH VEHICLE**

**STATE'S**

1. What role, if any, do a defendant's personal experiences play in the determination of whether his perception of imminent harm is reasonable?
2. Are the reasonableness of both a defendant's perception of necessity and his response wholly within the discretion of the jury, or can a court decide either is unreasonable as a matter of law?

3. Must a harm analysis for charge error consider the likelihood that the outcome would have been different had the jury been properly instructed?
4. Was appellant entitled to an instruction on necessity and, if so, a new trial?

**25-0101          BRIMZY, LATORA**

**04/16/25**

**ASSAULT**

**STATE’S**

The Fourteenth Court erred not to apply the natural meaning of the word "only" in the current version of Article 42A.751(i).