

# GRANTED ISSUES

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

## ISSUES GRANTED NOVEMBER 22, 2023

---

**0564-23    LEWIS, WILLIAM SOLOMON                      HARRIS                      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."

## 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
22-0436	BALTIMORE, IJAH IWASEY	10/26/22
22-0280	BECERRA, JOE LUIS	07/27/22
21-0522-25	CHARETTE, ROBBIE GAIL	01/12/22
23-0018	CONTINENTAL HERITAGE INS. CO., AGENT PAT KINNARD D/B/A PAT KINNARD BAIL BONDS	02/22/23
23-0243	CRAWFORD, SHAWN EDWARD	08/23/23
23-0471	CRUMLEY, JOHN PAUL	10/18/23
22-0159	CURIPOMA, JESUS ALBERTO GUZMAN	06/22/22
22-0037	DANIEL, BERNARD	02/15/23
22-0634	FINLEY, TAYTON SETH	03/08/23
22-0562	FLORES, ROBERTO MEDINA	04/26/23
23-0148	FLOYD, JAMES EARNEST, JR.	08/23/23
23-0149	GABALDON, IVAN	06/14/23
20-1182	GREEN, TRENTON KYLE	02/24/21
22-0332	HALLMAN, ROBERT F.	10/19/22
22-0677	HART, LARRY JEAN	03/29/23
19-1101	HERVEY, WILLIE MAURICE, JR.	03/11/20
23-0083	HRADEK, LINDSEY	09/06/23
22-0164	HUGHES, DARREN TRAMELL	06/08/22
23-0423	JOE, DARYL	10/25/23
23-0055-56	JOHNSON, ZIMBABWE RAYMOND	04/12/23
22-0700	LALL, MARLON JUNA	04/05/23
20-1213	LENNOX, BOBBY CARL	02/24/21
23-0564	LEWIS, WILLIAM SOLOMON	11/22/23
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
19-0984	McGUIRE, SEAN MICHAEL	12/11/19
22-0222	NAVARRO, JEREMIAH	09/07/22
19-0963	NICHOLSON, HARRY DONALD, JR.	12/18/19
23-0556	NIXON, BRIAN DALE	11/01/23
22-0165	PHAM, TUAN THANH	06/29/22
20-0918	REED, BRIAN CHRISTOPHER	03/16/22
22-0184	SINCLAIR, CHESTER	09/07/22
22-0720	SPIVEY, TRAVIS LAYTON	05/17/23
23-0310	STAFFORD, EX PARTE JOHN MORGAN	08/23/23
22-0711	STOCKER, JAMIN KIDRON	03/15/23
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
23-0123	VALERO, EX PARTE JUAN	05/17/23
20-0048	VILLARREAL, DAVID ASA	06/17/20
23-0099	WILLIAMS, JEMADARI CHINUA	05/31/23





1. Must a defendant be acquitted if the trial court grants a motion for new trial alleging only that “the verdict is contrary to the law and evidence” and the State does not appeal?
2. Was it so certain that a first jury’s “not true” findings survive the granting of a new trial and collaterally estop the State from pursuing the findings on retrial that counsel was ineffective for not so arguing?

**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**                      **HUGHES, DARREN TRAMELL**                      **06/08/22**  
**STATE'S**                      **HARRIS**                      **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."

**22-0165**                      **PHAM, TUAN THANH**                      **06/29/22**  
**COURT’S OWN MOTION**                      **HARRIS**                      **UNLAWFUL PRACTICE OF**  
**DENTISTRY**

1. Whether Appellee voluntarily waived his right to counsel.
2. Whether Appellee clearly and unequivocally asserted his right to self-representation.
3. Whether the trial court violated Art. 1.051, subsections (f-2) and (g), of the Texas Code of Criminal Procedure.

**22-0184**                      **SINCLAIR, CHESTER**                      **09/07/22**  
**STATE’S**                      **BEXAR**                      **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?

**22-0222**                      **NAVARRO, JEREMIAH**                      **09/07/22**  
**APPELLANT’S**                      **COMAL**                      **ASSAULT**

1. Did the appellate court [err] in holding that the necessity defense does not apply to a defendant who provokes the difficulty?
2. If the defense of necessity can be denied based on the defendant provoking the difficulty, did the appellate court [err] in finding that Appellant’s conduct provoked the difficulty in this case?

**22-0280**                      **BECERRA, JOE LUIS**                      **07/27/22**  
**APPELLANT'S**                      **BRAZOS**                      **UNLAWFUL POSSESSION OF**  
**FIREARM BY FELON**

1. Art. 36.22 of the Code of Criminal Procedure provides no person shall be permitted to be with a jury while it is deliberating. The petit juror affidavit admitted in Becerra’s Motion for New Trial hearing established the alternate juror was present and participated in deliberations and voted on the verdict. What status, if any, does Art. 33.011(b) confer on alternate juror service permitting the presence and/or participation of the alternate during petit jury deliberations and did the alternate’s act in voting violate Art. 36.22?
2. Rule 606(b) of the Texas Rules of Evidence prohibits evidence of “incidents that occurred during the jury’s deliberations.” The uncontroverted petit juror affidavit admitted at Becerra’s Motion for New Trial hearing attested the alternate juror voted on the verdict, and after removal and instruction no further vote was taken. Is the evidence that

no further vote was taken an incident during deliberations under Rule 606(b) and, if excludable, must Rule 606(b) yield to the need to prove a violation of Art. V, Sec. 13 of the Texas Constitution and Art. 33.01 of the Texas Code of Criminal Procedure?

3. This Court has long held a rebuttable presumption of harm exists if a facial violation of Art. 36.22 of the Texas Code of Criminal Procedure is shown. The Court of Appeals acknowledged Becerra's admitted evidence that the alternate juror voted on the verdict was admissible as outside evidence under Rule 606(b)(2)(A) of the Texas Rules of Evidence. Did the failure of that Court to apply the presumption based on this evidence so far deviate from accepted law so as to call for the exercise of this Court's jurisdiction?

**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.

**22-0562**  
**APPELLANT'S**

**FLORES, ROBERTO MEDINA**  
**GALVESTON**

**04/26/23**  
**SEXUAL ASSAULT**

1. The Court of Appeals erred by declaring that the evidence developed in the hearing on Petitioner's motion for new trial was void because the trial court had no authority to hold the hearing beyond the trial court's 75-day plenary period, even though the trial court relied on the plain language in the 1st Emergency Order.

**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**  
**COURT'S OWN MOTION**

**FINLEY, TAYTON SETH**  
**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?



**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.

**23-0099**  
**STATE'S**

**WILLIAMS, JEMADARI CHINUA**  
**KERR**

**05/31/23**  
**AGGRAVATED PROMOTION**  
**OF PROSTITUTION**

2. The Court of Appeals Erred to Find That the State Was Required to Provide Appellant with Specific Notice as to Which Manner and Means the State Would Seek to Prove.

**23-0123**  
**APPELLANT'S**

**VALERO, EX PARTE JUAN**  
**EL PASO**

**05/17/23**  
**AGGRAVATED ASSAULT**  
**AGGRAVATED ROBBERY**

1. By holding that before a pretrial facial challenge to the constitutionality of a statute is cognizable, a favorable resolution of the challenge must result in immediate release on all charges in the indictment, the Eighth Court of Appeals has decided an important question of state law that has not been, but should be, settled by this Court. Ex parte Couch, PD-0422-22, pending before the Court of Criminal Appeals. PDR accepted on September 22, 2022. This same issue is also before this Court in a pending Petition for Discretionary Review following a decision with similar reasoning by the Tenth Court of Appeals. See Ex parte Hammons, 646 S.W.3d 929 (Tex. App.—Waco, pet. filed), No. PD-0322-22 (Tex. Crim. App. July 21, 2022).

2. Additionally, by requiring favorable resolution of a pretrial-habeas facial constitutional challenge to result in immediate release on all charges, the opinion below conflicts with this Court's decisions in Ex parte Meyer, 73 S.W.3d 264 (Tex. Crim. App. 2002); Ex parte Crisp 66 S.W.2d 944 (Tex. Crim. App. 1983); Ex parte Watkins, 73 S.W.3d 264 (Tex. Crim. App. 2002); Ex parte Ellis, 309 S.W.3d 71 (Tex. Crim. App. 1994); and Ex parte Perry, 483 S.W.3d 884, 902 (Tex. Crim. App. 2016).

3. The Court of Appeals has decided an important question of Federal Constitutional Law that has not been settled in the State of Texas, whether there is a cognizable due process violation, under the Due Process Clause of the 14th Amendment to the Federal Constitution, because of the lack of reasonable time restriction from the time of the order committing the incompetent to the State Hospital to the time in which the incompetent is actually at the hospital.

4. The Court of Appeals has decided an important question of State Law that has not been settled in the State of Texas—whether Art. 46B.0095 of the Texas Code of Criminal Procedure is violative of the 14th Amendment Due Process because of the lack of reasonable time restriction from the time of the order committing the incompetent to the State Hospital to the actual time the incompetent is at the hospital.

**23-0148**  
**COURT'S OWN MOTION**

**FLOYD, JAMES EARNEST, JR.**  
**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**  
**STATE'S**

**GABALDON, IVAN**  
**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**  
**STATE'S**

**CRAWFORD, SHAWN EDWARD**  
**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**  
**STATE'S**

**ALKAYYALI, TAREQ**  
**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.

**23-0467**  
**STATE'S**

**McCUMBER, JEFFREY MERRITT, JR.**  
**POLK**

**09/27/23**  
**CONTINUOUS SEXUAL**  
**ABUSE OF CHILD**

