

## GRANTED ISSUES

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

### **ISSUES GRANTED FEBRUARY 12, 2025**

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**0966-24 through 0974-24 KLEINMAN, EX PARTE MICHAEL WILLIAMSON  
PROHIBITED USE IN SPECIFIED ZONING DISTRICT**

**0975-24 through 0980-24 AUSPRO ENTERPRISES, L.P., EX PARTE WILLIAMSON  
PROHIBITED USE IN SPECIFIED ZONING DISTRICT**

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?

## ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
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
24-0760	COCKRELL, RAY LEE	10/23/24
23-0243	CRAWFORD, SHAWN EDWARD	08/23/23
24-0198	DORA, JAMES JR.	06/05/24
24-0581	ESTEVEZ, EX PARTE AMARILLYZ	09/18/24
23-0149	GABALDON, IVAN	06/14/23
24-0514	GLOVER, MICHAEL DONELL	09/11/24
24-0611	GRIFFIN, EX PARTE GARY	09/25/24
24-0480	GUTIERREZ, RANDY RAY	08/21/24
22-0332	HALLMAN, ROBERT F.	10/19/22
24-0836	HERNANDEZ, LUZALBERT	01/22/25
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
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
24-0866	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
23-0669	WELLS, AARON RAYSHAN	01/24/24

**NUMERICAL LISTING WITH ISSUES GRANTED**

**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?

**22-0332**                      **HALLMAN, ROBERT F.**                      **10/19/22**  
**STATE'S**                      **TARRANT**                      **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.

**22-0409**                      **ARMSTRONG, JOSHUA RAY**                      **09/04/24**  
**STATE'S**                      **GRAYSON**                      **DRIVING WHILE INTOXICATED**

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**  
**APPELLANT'S & STATE'S**                      **GRIMES**                      **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**                      **MONTGOMERY, BEECHER**                      **08/21/24**  
**22-0582**  
**APPELLANT'S**                      **TARRANT**                      **EVADING ARREST, THEFT**

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**  
**STATE'S**                      **EL PASO**                      **CAPITAL MURDER**

Where: (1) the trial court, in dismissing the State's capital murder indictment on the grounds of prosecutorial vindictiveness, also dismissed the "instant cause" with prejudice, effectively precluding the State from reindicting Gabaldon on an untainted murder charge or any lesser-included offense, and (2) Gabaldon never challenged the validity of the underlying murder charge, such that he received all the relief to which he was allegedly entitled, the trial court's dismissal [sic] of all underlying charges with prejudice erroneously imposed an extreme and unwarranted punitive, rather than curative, remedy not authorized by law, such that the "with prejudice" portion of the dismissal order is void, and the trial court's order should be reformed to remove the "with prejudice" language.

**23-0243**                      **CRAWFORD, SHAWN EDWARD**                      **08/23/23**

**STATE'S**

**MENARD**

**ASSAULT**

1. When determining what felony offense was charged, must everything on the face of the charging instrument the grand jury had before it be considered?
2. Must a defendant object pretrial when the charging instrument creates doubt about which of two related offenses is being charged?

**23-0290**

**ALKAYYALI, TAREQ**

**08/23/23**

**STATE'S**

**TARRANT**

**MURDER**

Does a defendant suffer egregious harm from charge error that 1) related to an element the defendant effectively conceded and which was not a realistic possibility for acquittal, and 2) was limited to a manner and means of murder neither party argued over?

**23-0423**

**JOE, DARYL**

**10/25/23**

**APPELLANT'S**

**NAVARRO**

**CARGO THEFT**

1. Did the 10th COA error [sic] in holding the evidence legally sufficient because “[Petitioner] jumped out the vehicle and attempted to connect the brake lines and lights, constituting an activity in which he possessed stolen cargo?”
2. Did the 10th COA misconstrue section 31.18(b)(1) of the Penal Code, when the lower court read and applied “an activity” in isolation; and thus, failed to read the term in the context of the entire statute?
3. What type of “activity” would suffice to satisfy the statute’s requirements?

**23-0486**

**TATES, ELIJAH**

**09/06/23**

**STATE'S**

**BRAZOS**

**EVADING ARREST**

1. The lower court erred when it ignored existing case law so that it could create, in a publish opinion, a new waivable-only right to physical presence under Article 33.03 that conflicts with decisions of the Court of Criminal Appeals, the lower court, and other courts of appeals.
2. The lower court erred when it misappropriated this Court's analysis in Lira to rationalize creating, in a published opinion, a new requirement that a defendant must affirmatively waive this new waivable-only right to physical presence under Article 33.03 which conflicts with the Texas Supreme Court's Emergency Orders and decisions of other courts of appeals.

**23-0669**

**WELLS, AARON RAYSHAN**

**01/24/24**

**APPELLANT'S**

**DALLAS**

**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.

**24-0075**

**OWENS, KEVIN J.**

**06/05/24**

**COURT'S OWN MOTION**

**BEXAR**

**HARASSMENT**

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

**24-0186**

**PETTIT, JUSTIN**

**05/22/24**

**APPELLEE'S**

**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.

**24-0198**

**DORA, JAMES JR.**

**06/05/24**

**APPELLANT'S**

**LUBBOCK**

**AGGRAVATED ROBBERY**

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**  
**STATE'S HARRIS AGGRAVATED ASSAULT**

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 MILTON, CLIFFORD 08/21/24**  
**24-0283 APPELLANT'S HARRIS TRAFFICKING OF PERSONS**

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**  
**STATE'S TARRANT ILLEGAL VOTING**

(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 NEWTON, CHRISTOPHER LYNN 09/04/24**  
**24-0364 APPELLEE'S NAVARRO DRIVING WHILE INTOXICATED  
FAILURE TO MEET DUTY ON  
STRIKING A FIXTURE**

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 RODRIGUEZ, ERIK 08/21/24**  
**24-0378 STATE'S BEXAR POSSESSION OF CHILD  
PORNOGRAPHY  
BRIBERY, MISUSE OF OFFICIAL  
INFORMATION**

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**  
**APPELLANT'S WASHINGTON CONTINUOUS SEXUAL ABUSE**

**OF YOUNG CHILD  
INDECENCY W/CHILD**

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

**24-0480 GUTIERREZ, RANDY RAY 08/21/24**  
**STATE'S BEE AGGRAVATED SEXUAL**  
**ASSAULT**  
**INDECENCY W/CHILD**

1. If an indictment's grammar and usage errors produce awkward phrasing, does *Delarosa v. State*, 677 S.W. 3d 668 (Tex. Crim. App. 2023), direct that it has failed to make an allegation?
2. Can an indictment that sets out all the statutory language for an enhancement in the body be said to be "facially complete" for the unenhanced offense—i.e., that it appears to allege the unenhanced offense and only the unenhanced offense?

**COURT'S OWN MOTION**

Is Subsection (f) in Section 22.021 of the Penal Code an element of the offense or a punishment enhancement?

**24-0514 GLOVER, MICHAEL DONELL 09/11/24**  
**STATE'S KAUFMAN AGGRAVATED ROBBERY**

Is the evidence sufficient to support a jury's finding that a two- to three-inch pocketknife is a deadly weapon when it can rationally be determined that it was capable of causing death or serious bodily injury because Appellant used it to slice through the nylon strap of a bag within inches of Parks' hand?

**24-0541 KITCHENS, WILLIAM TRAVIS 10/30/24**  
**APPELLANT'S HARRIS MURDER**

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**  
**APPELLANT'S HARRIS DRIVING WHILE INTOXICATED**

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**  
**APPELLANT'S HAYS ASSAULT ON PUBLIC SERVANT**

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**  
**STATE'S WILLIAMSON MUNICIPAL ORDINANCE**  
**VIOLATIONS**

1. Can appellate jurisdiction be "substantially" invoked by an appeal bond that does not comply with all statutory requirements?



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**  
**STATE'S BRAZOS MURDER**

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**  
**STATE'S HAYS POSSESSION OF FIREARM BY A FELON**

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.

**0966-24 through 0974-24 KLEINMAN, EX PARTE MICHAEL 02/12/25**  
**0975-24 through 0980-24 AUSPRO ENTERPRISES, L.P., EX PARTE 02/12/25**  
**APPELLANTS' WILLIAMSON PROHIBITED USE IN SPECIFIED ZONING DISTRICT**

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.
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