

GRANTED ISSUES

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

ISSUES GRANTED MAY 9, 2012

<u>PDR NO.</u>	<u>NAME</u>	<u>COUNTY</u>	<u>OFFENSE</u>
12-0344	COOK, DAVID	DENTON	MANSLAUGHTER

STATE'S GROUND:

Whether the Court of Appeals properly found that Appellant's sole issue was preserved for appellate review where his objection at trial (motion for mistrial) was not timely made and was not specific enough to apprise the trial court of the complaint he makes on appeal (the trial court erred in reconvening jury and accepting new punishment verdict) (*see* 6 R.R. at 58; Appendix A at 12).

APPELLANT'S GROUND:

If a trial judge accepts a jury verdict, releases the jurors from their oaths, allows the former jurors to leave the courtroom and tells them they are free to discuss the case, sentences the defendant in accordance with the legal verdict, and then improperly reconvenes the jury for a second deliberation over objection, should the court of appeals reform the judgment to reflect the only proper, legal verdict?

ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
11-1231	ABNEY, RICKY DEWAYNE	02/15/12
11-1102	BALENTINE, BRIAN KEITH	12/07/11
11-1909	BAYS, MICHAEL	04/25/12
12-0087	BELL, VAUGHN RAY	04/25/12
11-0889	BLACKSHEAR, GEORGE EDWARD	02/01/12
10-0767	BLANTON, DONALD GENE	12/08/10
11-1892	BLASDELL, BRANDON SCOTT	03/21/12
12-0039	BONDS, MICHAEL RAY	03/28/12
10-1607	BOWEN, DEBORAH	03/02/11
11-1502	BREWER, SEAN CHRISTOPHER	01/25/12
12-0049	BRYANT, ROBERT	03/07/12
11-1398	BURKE, DAVID TODD	11/16/11
11-1280	BURT, LEMUEL CARL	02/08/12
11-1521	CASANOVA, MATTHEW JOHN	02/08/12
11-1427	CASTILLO, MARIO AMARO	01/25/12
10-1675	CAVAZOS, ABRAHAM	05/04/11
11-1584/85	CELIS, MAURICIO	02/01/12
12-0344	COOK, DAVID	05/09/12
11-1886	COX, KENYON GRADY	04/04/12
11-0645	CRABTREE, MARK	11/02/11
11-1252	CRENSHAW, BRADLEY KELTON	12/14/11
11-0769/70	DANGELO, JOSEPH P.	08/24/11
11-1717	DAUGHERTY, TONYA JEAN	02/08/12
11-1457	DE LOS REYES, JOEL	01/11/12
10-1547	DOAN, DUSTIN	05/04/11
11-1389	DOTSON, JAMES NICHOLAS	11/09/11
11-1511	DUARTE, GILBERT	02/01/12
11-0882	ELIZONDO, BECKY	11/02/11
11-1873	ESPARZA, CARLOS	02/29/12
11-1693	EVERITT, MICHAEL PAUL	04/04/12
12-0119	FIENEN, CASEY RAY	04/18/12
11-1516	GARCIA, AIMA LORENA	12/14/11
11-1846	GARCIA, VICTOR MARTINEZ	02/29/12
11-0934	GARRETT, KIMBERLY SHERVON	09/28/11
11-1522	GELINAS, JAMES HENRY	12/14/11
11-1470	GIPSON, RAIMOND KEVON	01/11/12
11-0863	GONZALES, JIMMY	09/14/11
11-1688	GROSS, JIMMIE	02/15/12
11-1658	GUTIERREZ, MARICELA RODRIGUEZ	01/25/12
11-1791	HAMAL, ANGELA DODD	02/29/12
11-1682	HASSAN, ADBIHAKIM	01/11/12
11-0495	HICKS, NARADA	11/02/11
11-1466	JACOBSON, JONATHAN	12/07/11
12-0209	JOHNSON, JACKIE	04/04/12
12-0282/83	JONES, CHRISTINA CARLETTA	05/02/12
11-1837	KERWICK, STACIE MICHELLE	02/08/12
11-1632	KRAJCOVIC, PAUL	01/25/12
11-1279	KRETZER, ACE ALLEN, JR.	11/16/11
11-0323	LOUIS, COREY DON	04/13/11

7. Is instructing the jury that it may infer intent or knowledge from acts done or words spoken ever harmful, alone or in combination with other erroneous instructions?

11-0442
STATE'S

SCALES, COURTNEY JAY
HARRIS

06/15/11
AGGRAVATED ROBBERY

1. The Court of Appeals erred in affording the trial court no discretion in relying upon a jury foreman's testimony to support the showing of another juror's disability, and instead requiring the testimony of the dismissed juror.
2. When confronted with an alleged violation of article 33.011, the Court of Appeals erred in applying a constitutional harm analysis in disregard of binding precedent from this Court.

11-0495
STATE'S & APPELLANT'S

HICKS, NARADA
HARRIS

11/02/11
AGGRAVATED ASSAULT

STATE'S GROUND:

Does the Fourteenth Court of Appeals' determination that the offense of aggravated assault committed by reckless conduct is not a lesser included offense of the offense of aggravated assault committed by intentional or knowing conduct run afoul of the plain language of Article 37.09 and the spirit of *Grey v. State*, 298 S.W.3d 644 (Tex. Crim. App. 2009)?

APPELLANT'S GROUND:

The Court of Appeals' panel majority erred in ordering a new trial, rather than ordering this case remanded with instructions to enter a judgment of acquittal, after petitioner's jury impliedly acquitted him of the charged offense and expressly convicted him of an improperly-submitted offense that was not authorized by the charging instrument.

11-0594
APPELLANT'S

SCHMITT, ROBERT JOSEPH
COLLIN

10/05/11
AGGRAVATED SEXUAL
ASSAULT

1. Did the Fifth District Court of Appeals overlook the trial court's mandatory duty to order the two twenty-year sentences concurrent according to the 1997 amendment of the Texas Penal Code Ann., § 3.03, especially considering the failure of a trial court to comply with the mandatory duty, which has been deemed a clerical error as opposed to an error of judicial reasoning?
2. Is a Nunc Pro Tunc order a proper vehicle to correct a trial court's erroneous entry cumulating sentences, if there is a finding and determination that: 1) the trial court's error was clerical; 2) there is no other adequate remedy at law[?]

11-0645
APPELLANT'S

CRABTREE, MARK
SMITH

11/02/11
FAILURE TO COMPLY
W/REGISTRATION
REQUIREMENTS

1. Did the Court of Appeals err in concluding that, contrary to clear statutory language, Article 62.003(a) of the Texas Code of Criminal Procedure does not require the Department of Public Safety to make a finding as to the substantial similarity between an extra-jurisdictional conviction and one that would require sex offender registration in Texas in order to support a Texas conviction for failing to register as a sex offender.
2. Due to the permissive nature of the Court's holding in *Juarez v. State* regarding the specificity with which an indictment charging the offense of failure to register as a sex offender must be pleaded, a situation has been created which deprives defendants of their due process right to notice of the charge against them as well as their right to effective assistance of counsel and has resulted in the potential for unnecessary litigation and confusion among the bench and bar.

11-0683
APPELLANT'S

GONZALES, JIMMY
TAYLOR

09/14/11
DRIVING WHILE INTOXICATED

When a police officer undertakes a "community caretaking" stop of a motor vehicle but, prior to the stop, changes his mind about the need to investigate the driver's well being, is a subsequent detention and arrest illegal?

11-0705
APPELLANT'S

MILLER, CHRISTINA JEAN
KERR

11/02/11
POSSESSION OF A
CONTROLLED SUBSTANCE

1. The Fourth Court of Appeals erred in holding that a warrantless search was justified under the emergency doctrine when the emergency doctrine was not a theory urged by the State at the suppression hearing and when there was no

evidence presented at the suppression hearing that officers remained in Appellant's home pursuant to the emergency doctrine.

2. Are law enforcement officers justified in remaining in a person's residence without a warrant under the guise of conducting a "warrant check" after the homeowner unequivocally tells officers to leave the residence?

3. When law enforcement officers remain in a person's residence without a warrant under the guise of conducting a warrant check after the homeowner unequivocally tells officers to leave the residence, are they committing the offense of Criminal Trespass which would render any evidence seized after the intrusion inadmissible

11-0769

DANGELO, JOSEPH P.

08/24/11

11-0770

APPELLANT'S

TARRANT

INJURY TO A CHILD

1. The Court of Appeals decision departed so far from accepted and usual course of judicial proceedings, or sanctioned such departure by the lower court, as to call for the exercise of the Court of Criminal Appeals' power of supervision when it granted immunity to the petitioner to require him to answer questions put to him on the allegations in the indictment for which the petitioner refused to acknowledge guilt.

2. The Court of Appeals has decided an important question of state law that has not been but which should be decided by this Honorable Court in that it has held the petitioner may be questioned on the indictment allegations to which no plea was entered.

11-0803

McQUARRIE, THOMAS

11/16/11

APPELLANT'S

GONZALES

SEXUAL ASSAULT

1. Did the Court of Appeals violate Petitioner's federal constitutional trial rights to confrontation and cross-examination by upholding the trial court's exclusion, pursuant to Rule 606(b) Tex.R.Evid., of juror testimony and affidavits offered for purposes of Petitioner's Motion for New Trial on the ground that a juror conveyed to other jurors harmful information obtained from her internet research during an overnight break in deliberations?

2. Did the Court of Appeals violate Petitioner's state constitutional trial rights to confrontation and cross-examination by upholding the trial court's exclusion, pursuant to Rule 606(b) Tex.R.Evid., of juror testimony and affidavits offered for purposes of Petitioner's Motion for New Trial on the ground that a juror conveyed to other jurors harmful information obtained from her internet research during an overnight break in deliberations?

11-0882

ELIZONDO, BECKY

11/02/11

APPELLANT'S

LUBBOCK

THEFT

Did the lower court err in determining that an agency relationship did not exist between the Loss Prevention Officer and the Lubbock Police Department and the District Attorney's Office?

11-0888

TEMPLE, DAVID MARK

01/11/12

APPELLANT'S

HARRIS

MURDER

The Court of Appeals erred in applying this Court's opinion in Brooks v. State, 323 S.W.3d 893 (Tex. Crim. App. 2010) in light of this Court's decision in Hooper v. State, 214 S.W.3d 9 (Tex. Crim. App. 2007) by improperly drawing inferences of ultimate facts that are unreasonable so as to determine that the evidence was legally sufficient to uphold the jury's verdict.

11-0889

BLACKSHEAR, GEORGE EDWARD

02/01/12

STATE'S

HARRIS

**POSSESSION OF CONTROLLED
SUBSTANCE**

1. Did the defendant's oral and unsworn motion for continuance preserve error regarding the defendant's claim that he was improperly denied a transcript from the guilt-innocence portion of his trial before proceeding to a retrial as to punishment only?

2. Did the Fourteenth Court of Appeals err when it extended this Court's holding in White v. State to require that trial courts furnish a copy of the transcript of the guilt-innocence proceedings to a defendant before a retrial even when the retrial takes place almost immediately after the first trial and is limited to punishment only?

3. Does the Fourteenth Court of Appeals interpretation of White v. State create an irrebuttable presumption of a defendant's need for a prior transcript?

4. Should a court of appeals conduct a harm analysis after an allegedly erroneous denial of a motion for continuance to obtain a transcript of the guilt-innocence proceedings when the only issue on retrial is proper punishment?

11-1169
STATE'S

MONTGOMERY, JERI DAWN
HARRIS

09/21/11
CRIMINALLY NEGLIGENT
HOMICIDE

1. The court of appeals erred in holding that "cell phone usage while operating a vehicle" does not constitute morally blameworthy conduct and does not justify criminal sanctions.
2. The court of appeals erred in presuming that the negligent act in a criminally negligent homicide must itself be an illegal act.
3. The court of appeals erred in holding that the evidence was insufficient to prove criminally negligent homicide where the appellant was traveling less than 39 miles per hour and was 92 feet past the interstate highway entrance ramp at the time that she attempted to cross in front of other vehicles to enter the freeway.
4. The court of appeals erred in holding that the evidence was insufficient to prove criminally negligent homicide where the appellant was admittedly distracted by talking on a cell phone at the time that she attempted to cross in front of other vehicles to enter the interstate highway ramp, which she had already missed by 92 feet.

11-1181
STATE'S

ORTIZ, OCTAVIO
LUBBOCK

02/15/12
POSSESSION OF COCAINE
W/INTENT TO DELIVER

1. Did the court of appeals misapply *Dowthitt*'s reasonable, innocent person standard in determining that Appellant was "in custody" for *Miranda* purposes by focusing on the *subjective* facts and circumstances known to Appellee instead of on the *objective* facts and circumstances of the detention?
2. Did the court of appeals determine the handcuffing a detainee automatically converts a temporary detention into "custody" for *Miranda* purposes without regard for the totality of the circumstances and the reasonable, *innocent* person standard?
3. Can Appellee's statements, which supplied the probable cause to arrest him, be rendered inadmissible because of statements he made *after* probable cause arose and was manifested by him to the deputies, i.e., should the later statements be considered in the analysis of whether he was in custody when the earlier statements were made?

11-1214
APPELLANT'S

PAYNE, JASON THAD
WOOD

11/09/11
CAPITAL MURDER

1. The appeals court erred in finding that the evidence was legally sufficient to sustain a conviction where the experienced crime scene investigator called to the scene by the Wood County Sheriff's Office found that the deceased committed suicide, beyond question, based upon the evidence, and was not murdered.
2. The appellate court erred in holding that inadmissible, prejudicial and inflammatory hearsay admitted by the trial court was harmless.

11-1231
APPELLANT'S

ABNEY, RICKY DEWAYNE
KAUFMAN

02/15/12
POSSESSION OF MARIJUANA

The Court of Appeals erred when it held reasonable suspicion was proven to stop appellant's vehicle for the traffic code violation of driving in the left lane without passing and that the lack of signage at the location was only a "defense to prosecution"; -Can driving in the left lane without passing be a traffic violation if there is no sign prohibiting the conduct at or near the time and place of the alleged violation?

11-1252
STATE'S

CRENSHAW, BRADLEY KELTON
TARRANT

12/14/11
DRIVING WHILE INTOXICATED

1. Can submission of a jury charge with an application paragraph that tracks the information's language verbatim erroneously expand on the allegations of the information, constituting charging error?
6. In light of *Barbernell*, can abstract submission of both intoxication definitions constitute harmful error under *Almanza* where the application paragraph tracks the information's use of the subjective intoxication definition?

11-1264
STATE'S

SANCHEZ, ARTEMIO ORLANDO
HARRIS

11/09/11
DRIVING WHILE INTOXICATED

1. The court of appeals erred in holding that a statutory county court judge's authority is limited to acting solely within the county of the court.

2. The court of appeals erred in holding that a statutory county court judge could not issue a blood search warrant for a DWI suspect located in another county.

11-1268
STATE'S

REINKE, BRAD WILLIAM
TRAVIS

10/19/11
ATTEMPTED MURDER

Does the language in Code of Criminal Procedure art. 46B.0095(a), which limits the cumulative period of commitment by the criminal court of an incompetent defendant to "the maximum term provided by law for the offense for which the defendant was to be tried," mean the maximum term provided by law for only the statutory offense and without the increase due to alleged enhancements?

11-1279
APPELLANT'S

KRETZER, ACE ALLEN, JR.
JASPER

11/16/11
INDECENCY W/CHILD

1. The decision of the Court of Appeals in this case conflicts with the decisions of numerous other Courts of Appeal regarding the application of Article 17.151 of the Texas Code of Criminal Procedure in holding that the statute is not mandatory in that the trial judge has discretion to set Appellant's bond in an amount higher than he can afford if releasing Appellant on an affordable bond or a personal bond might affect the safety of the community or a victim.
2. The decision of the Court of Appeals conflicts with the past decision of the Texas Court of Criminal Appeals in Rowe v. State, 853 S.W.2d 581 (Tex. Crim. App. 1993) regarding the mandatory nature of Article 17.151 of the Texas Code of Criminal Procedure.
3. The Court of Appeals has misconstrued and misapplied Article 17.15(5) of the Code of Criminal Procedure in apparently finding that the Legislature intended Article 17.15(5) to apply as an exception to the release of Appellant because of delay under Article 17.151 of the Texas Code of Criminal Procedure.

11-1280
APPELLANT'S

BURT, LEMUEL CARL
DALLAS

02/08/12
MISAPPLICATION OF
FIDUCIARY PROPERTY

1. The Court of Appeals' Determination That The Trial Court's Error Is Subject To Waiver Violates Appellant's Right To Procedural Due Process Under The Fourteenth Amendment To The United States Constitution. *Lankford v. Idaho*, 500 U.S. 110, 126 (1991); *In re Oliver*, 333 U.S. 257, 273 (1948); *Baldwin v. Hale*, 68 U.S. 223, 233 (1864).
2. The Court of Appeals' Affirmed The Trial Court's Written Restitution Order Which Contradicts The Oral Sentencing Pronouncement. The Court of Appeals' Determination That The Trial Court's Error Is Subject To Waiver Conflicts With This Court's Decisions in *Bailey v. State*, 160 S.W.3d 11 (Tex. Crim. App. 2004), *Taylor v. State*, 131 S.W.3d 497 (Tex. Crim. App. 2004) and *Ex parte Madding*, 70 S.W.3d 131, 135 (Tex. Crim. App. 2002).
3. The Court of Appeals' Determination That Appellant Waived Objection To The Trial Court's Written Restitution Order Despite The Absence Of An Oral Restitution Pronouncement Conflicts With The Decisions Of Every Other Court Of Appeals Which Has Considered The Issue. e.g., *Alexander v. State*, 301 S.W.3d 361 (Tex. App. -- Fort Worth 2009, no pet.); *Sauceda v. State*, 309 S.W.3d 767 (Tex. App. -- Amarillo, pet. ref'd).
4. The Restitution Order Is An Illegal Sentence Because It Orders Payment to Non Victims Who Are Not Named In The Indictment. The Court Of Appeals Affirmed The Illegal Sentence In Violation Of This Court's Decisions In *Ex parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006), *Ex parte Lewis*, 892 S.W.2d 4, 6 (Tex. Crim. App. 1994), and *Gordon v. State*, 707 S.W.2d 626, 629 (Tex. Crim. App. 1986).

11-1338
APPELLANT'S

MARTINEZ, MIGUEL
CAMERON

12/07/11
AGGRAVATED SEXUAL
ASSAULT

(1)The Thirteenth Court of Appeals erred when it affirmed that Attorney Rick Canales was effective in properly advising Mr. Martinez of the immigration consequences of pleading no contest [sic] to aggravated sexual assault.

(a) The Thirteenth Court of Appeals' decision conflicts with the Fourth Court of Appeals decision in Ex Parte Romero, No. 04-11-00175-CR (Tex. App.—San Antonio 2011). Texas Rule of Appellate Procedure 66.3(c).

(b) The decision of the Thirteenth Court of Appeals requires review because the Court of Appeals has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of the Court of Criminal Appeals' power of supervision. Texas Rule of Appellate Procedure 66.3(f).

11-1389

DOTSON, JAMES NICHOLAS

11/09/11

APPELLANT'S**COLLIN****INJURY TO A CHILD**

1. The Court of Appeals erred in holding that the jury is presumed to follow the jury charge even when the trial court has repeatedly orally contradicted the charge.
2. The Court of Appeals erred in holding that defense counsel's attempts to correctly state the law, even though denounced by the trial court, constitute "remedial action" sufficient to make the trial court's repeated misstatements harmless.
3. The Court of Appeals erred in holding that repeated misstatements of the law by the prosecutor and judge, reinforced by a misleading Powerpoint presentation, would not have misled the jury regarding the law.

11-1398**BURKE, DAVID TODD****11/16/11****APPELLANT'S****JEFFERSON****OFFICIAL OPPRESSION**

The Court of Appeals erred in holding that the trial court did not err in denying Appellant's challenge for cause to prospective juror Yoast after his responses left no room for doubt that he could not be a fair and impartial juror given his past experience with law enforcement.

11-1400**OUTLAND, RANDELL ERON****01/11/12****APPELLANT'S****MONTGOMERY****AGGRAVATED SEXUAL
ASSAULT**

The Court of Appeals erred in affirming Appellants automatic life sentence:
The Court of Appeals committed Reversible error by Affirming Appellants automatic Life sentence under Texas Penal Code 12.42(c)(2) because the elements of Utah's "Sexual Exploitation of a Minor" Statute are not substantially similar to the elements of Texas' Child Pornography Statute.

11-1427**CASTILLO, MARIO AMARO****01/25/12****APPELLANT'S****DENTON****ASSAULT**

The Court of Appeals decision incorrectly dismissed Petitioner's appeal for want of jurisdiction.

11-1457**DE LOS REYES, JOEL****01/11/12****STATE'S****EL PASO****THEFT**

Did the Court of Appeals err in holding that *Padilla v. Kentucky*, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), applied retroactively to the collateral review of state convictions that were final when the *Padilla* opinion was issued?

11-1466**JACOBSON, JONATHAN****12/07/11****APPELLANT'S****LUBBOCK****AGGRAVATED SEXUAL
ASSAULT**

Since defendants suffer the "cruel trilemma" created by *DeGarmo v. State*, 691 S.W.2d 657 (Tex. Crim. App. 1985), regardless of the type of error raised, should the precautions of *Leday v. State*, 983 S.W.2d 713 (Tex. Crim. App. 1998), be extended to a broader class of guilty-phase errors?

11-1470**GIPSON, RAIMOND KEVON****01/11/12****STATE'S****JEFFERSON****ASSAULT ON FAMILY MEMBER**

Does a defendant's plea of true to the State's allegations in a motion to revoke community supervision that the defendant failed to pay the court-assessed fine, costs, and fees relieve the State and the trial court of the requirement to establish that no payment was made despite the ability to do so, the failure to pay was willful, and no bona fide effort to pay was made before supervision can be revoked?

11-1502**BREWER, SEAN CHRISTOPHER****01/25/12****STATE'S****TRAVIS****DRIVING WHILE INTOXICATED**

1. Is a complaint preserved when a timely, nondescript objection is ignored by the trial court, the defendant later asks only for a mistrial even though any harm was curable, and a request for an instruction to disregard is first made after another witness begins testifying and a video is played?

2. Is a trial court's direct response to counsel's evidentiary argument during the State's case-in-chief "naturally and necessarily" a comment on the defendant's failure to testify?

11-1511 **DUARTE, GILBERT** **02/01/12**
APPELLANT'S **BEXAR** **POSSESSION OF CONTROLLED**
SUBSTANCE

The analysis performed by the Fourth Court was erroneous in its application of the law to the facts to such a degree that the Fourth Court essentially provided no appellate review. The opinion glossed over the problems with the magistrate's finding of probable cause, notwithstanding that the supporting affidavit was minimal at best, failing to put in the most basic information, without which a magistrate cannot possibly make a valid and credible determination of probable cause for a search warrant.

11-1516 **GARCIA, AIMA LORENA** **12/14/11**
STATE'S **MIDLAND** **ENDANGERING A CHILD**

1. Has a child sustained bodily injury from being too cold as contemplated by the Texas Penal Code § 1.07(a)(8)? TEXAS PENAL CODE ANN. § 1.07(a)(8) (Jones McClure 2011)
2. By failing to properly clothe a child one to two years of age in a manner necessary for the cold weather and surroundings has the appellant engaged in conduct which placed the child in imminent danger of death, bodily injury, and physical and mental impairment as contemplated by the Texas Penal Code § 22.041(c)? TEXAS PENAL CODE ANN. § 22.041(c) (Jones McClure 2011)

11-1521 **CASANOVA, MATTHEW JOHN** **02/08/12**
STATE'S **ORANGE** **POSSESSION OF CONTROLLED**
SUBSTANCE

1. The court of appeals erred by failing to defer to the jury's determinations of weight and credibility regarding the non-accomplice witness testimony, thereby finding that Appellant was egregiously harmed.
2. The Court of Appeals erred in holding that the trial court's failure to read the charge, which was submitted in writing to the jury, resulted in egregious harm to Appellant, as there was no evidence to suggest the jury failed to read the charge.

11-1522 **GELINAS, JAMES HENRY** **12/14/11**
STATE'S **EL PASO** **DRIVING WHILE INTOXICATED**

This Court should re-examine the reasoning of its egregious-harm analysis in the plurality opinion in *Hutch v. State*.

11-1531 **RILEY, BILLY DEE, JR.** **01/11/12**
STATE'S **BOWIE** **MURDER**

The Sixth Court of Appeals failed to afford proper deference to the trial court's denial of Appellant's motion for new trial.

11-1584 **CELIS, MAURICIO** **02/01/12**
11-1585
APPELLANT'S **NUECES** **FALSELY HOLDING ONESELF**
OUT AS A LAWYER

1. The Court of Appeals erred by holding that a culpable mental state was not required under § 38.122.
2. The Court of Appeals erred by holding that Appellant was not entitled to a charge on mistake of fact.
3. The Court of Appeals erred by holding that inclusion of a definition of the term "foreign legal consultant" in the jury charge was not error.

11-1632 **KRAJCOVIC, PAUL** **01/25/12**
STATE'S **DENTON** **MURDER**

1. Whether the Court of Appeals' panel majority improperly applied the law on defensive instructions where there was no evidence that supported a rational inference that the requested defensive instruction on the "Castle Doctrine" applied to the case.

2. Whether the Court of Appeals' panel majority erred by holding the lack of the requested instruction was harmful where there was no evidence whatsoever of "retreat," or even the possibility thereof, and where a self-defense claim would have failed regardless of whether Appellant was legally required to retreat or not.

11-1658 **GUTIERREZ, MARCELA RODRIGUEZ** **01/25/12**
STATE'S **SMITH** **POSSESSION OF CONTROLLED**
SUBSTANCE

The court of appeals erred in holding that appellant could challenge a condition of her community supervision for the first time on appeal contrary to this Court's decision in *Speth v. State*, 6 S.W.3d 530, 534-35 (Tex. Crim. App. 1999), and its progeny.

11-1678 **SULLIVAN, JAMES ALLEN** **03/07/12**
11-1679
APPELLANT'S **BROWN** **SEXUAL ASSAULT; SEXUAL ASSAULT**

Did the court of appeals correctly modify the judgment of the trial court by removing only the portion of special findings that improperly cumulated sentences?

11-1682 **HASSAN, ADBIHAKIM** **01/11/12**
STATE'S & COURT'S **HARRIS** **FAILING TO STOP**

Is using two out of three peremptory strikes against two of five members of a group in a strike zone of twelve a "suspiciously large" repetition of strikes or an "unexpectedly high" rate of challenges sufficient to establish a presumption of purposeful discrimination?

COURT'S OWN MOTION

Did the Court of Appeals err to find that Appellant met his burden of proving purposeful discrimination in the prosecutor's use of his peremptory strikes?

11-1688 **GROSS, JIMMIE** **02/15/12**
STATE'S **HARRIS** **MURDER**

1. Did the court of appeals err in its sufficiency-of-the-evidence review by utilizing a divide-and-conquer approach rather than viewing all the evidence collectively and allowing for the jury's ability to draw reasonable inferences therefrom?

2. Is the evidence of appellant's intent sufficient to support his conviction under the law of parties?

11-1693 **EVERITT, MICHAEL PAUL** **04/04/12**
APPELLANT'S **HARRIS** **DRIVING WHILE INTOXICATED**

1. Whether the court of appeals erred in finding that Appellant did not preserve error in his objection to testimony of Police Officer Francis Paul LaSalle concerning his purported use of hydrocodone.

2. The trial court abused its discretion ruling in admitting Officer Francis Paul LaSalle's expert testimony concerning Appellant's purported use of hydrocodone.

11-1717 **DAUGHERTY, TONYA JEAN** **02/08/12**
STATE'S **COLLIN** **THEFT OF SERVICE**

This Court held in *Cada v. State* that "immaterial variance" law as set out in *Gollihar* does not apply to the specific statutory elements alleged in the indictment. But what happens when the allegation at issue is not a statutory element and not part of the definitions of the offense but originates from another statute entirely? Does *Gollihar*'s two-part test for materiality apply?

11-1791 **HAMAL, ANGELA DODD** **02/29/12**
STATE'S & APPELLANT'S **WISE** **POSSESSION OF**
CONTROLLED SUBSTANCE

STATE'S GROUNDS:

1. Do statements made by the suspect after being informed of her continued detention affect the reasonable suspicion justifying that detention?

1. The court of appeals appears to have misconstrued T.R.A.P. 33.1 by expanding this waiver rule to a party like Petitioner Esparza who seeks to uphold and defend the trial court's judgment or ruling rather than present a complaint for appellate review.
2. By reversing the trial court's suppression ruling on a legal theory not raised or presented to the trial court, the court of appeals has decided an important question of state law which squarely conflicts with applicable decisions of the Texas Court of Criminal Appeals.
3. The court of appeals' holding that a trial court's suppression order can be vacated on a legal theory not presented to the trial court disregards the manner in which other courts of appeals have decided the issue.
4. By holding that a party must use the words "reliability" or "accuracy" and specifically refer to Evidence Rule 702 as a prerequisite to asserting a challenge to the reliability or accuracy of scientific evidence in order to preserve error, the court of appeals appears to have misconstrued the meaning of Texas Rule of Criminal Evidence Rule 103.

11-1886 **COX, KENYON GRADY** **04/04/12**
STATE'S **TARRANT** **AGGRAVATED SEXUAL ASSAULT**
INDECENCY W/ CHILD

1. The lower court, relying on this court's opinion in *Andrews*, ignored *Strickland's* deferential standard and held that defense counsel's representation fell below the standard of prevailing professional norms -- all in the face of a silent record. Further, what record does exist actually supports a finding of reasonable conduct. RR 3:155-56; CR:232.
2. The lower court failed to properly apply the deferential review required by *Strickland v. Washington's* conduct prong and instead construed every presumption of reasonableness against defense counsel. RR 3:155-56; CR:232.
3. The lower court failed to properly apply *Strickland v. Washington's* prejudice prong by ignoring evidence in the record which affirmatively demonstrated that Appellant was not harmed. CR:245; RR 6:150.
4. The lower court's opinion in this case is in conflict with this court's holding in *Andrews v. State*. The lower court held that defense counsel was ineffective for not ensuring that the jury had the correct information on the stacking law even though the trial court in this case gave the very instruction that this court held would have cured the misstatement in *Andrews*. CR:245; RR 6:150.
5. The lower court failed to properly apply *Strickland v. Washington's* prejudice prong by failing to point to any evidence in the record that supported its conclusion that there was a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. See RR *passim*.

11-1889 **MOULTON, DAVID LEN** **02/01/12**
STATE'S **CASS** **MURDER**

1. Did Appellant's objection to all three manners and means on the basis that cause of death was not established preserve a complaint about the submission of the unknown means of asphyxiation on grounds consistent with Sanchez?
2. Is an appellant barred from complaining about alleged Sanchez error that results from his strategic decisions?
3. Does the reasoning of Sanchez apply outside the narrow confines of that case, i.e., a sealed crime scene with the suspect inside, combined with testimony expressly limiting the manner and means of the cause of death?
4. Did Appellant suffer actual harm, egregious or otherwise, from submission of an unknown manner and means of asphyxiation?

11-1892 **BLASDELL, BRANDON SCOTT** **03/21/12**
APPELLANT'S **MONTGOMERY** **AGGRAVATED ROBBERY**

The Trial Court Abused its Discretion When it Excluded the Testimony of the Appellant's Eyewitness Identification Expert as to the "Weapon Focus Effect."

11-1909 **BAYS, MICHAEL** **04/25/12**
STATE'S **GREGG** **INDECENCY W/CHILD**

Does Article 38.72 of the Texas Code of Criminal Procedure "clearly contemplate" that an outcry statement will be offered only through an outcry witness, or may a videotape of the child's outcry to that witness be played if both the witness and child are available for cross-examination?

11-1917 **RAMOS, DAVID** **04/04/12**
APPELLANT'S **EL PASO** **MANSLAUGHTER**

Whether the Court of Appeals erred in holding that a hypothetically correct jury charge for manslaughter did not require the State to prove the act or acts relied upon to constitute recklessness.

12-0039
STATE'S

BONDS, MICHAEL RAY
MONTAGUE

03/28/12
POSSESSION OF CONTROLLED
SUBSTANCE

1. Did the court of appeals err in holding that the search warrant failed to provide a nexus between Appellant, the drugs, and the house searched because the warrant listed a possibility incorrect numerical address for the target house when other definitive descriptive facts in the warrant established a sufficient nexus?
2. Can the subsequent discovery of a warrant's ambiguity, as a result of the use of a possibly incorrect numerical address to describe the place to be searched, provide a reason for invalidating the warrant when the officer reasonably relied upon Appellant's use of that address to identify his home?

12-0049
STATE'S

BRYANT, ROBERT
MIDLAND

03/07/12
MISAPPLICATION OF
TRUST FUNDS

1. Did the trial court's alleged failure to comply with Tex. Code Crim. Proc. art 42.037(h), which mandates that a judge "consider" factors concerning an individual's ability to pay restitution, render the evidence insufficient to support its decision to revoke community supervision or is this alleged failure merely trial court error that must be preserved by objection?
2. Did the trial court fail to "consider" factors concerning Appellant's ability to pay restitution as required under Tex. Code Crim. Proc. art 42.037(h)?

12-0087
APPELLANT'S

BELL, VAUGHN RAY
FANNIN

04/25/12
POSSESSION OF CONTROLLED
SUBSTANCE

1. The Court of Appeals erred in holding that continued, systemic, and unabated violations of a defendant's right to be tried free of restraint and shackle by a trial judge could never be considered by a reviewing court in a harmless error analysis.
2. The Court of Appeals erred by placing the burden of proof on the Petitioner to show that the leg irons by which he was shackled were visible to the jury, or otherwise infringed upon his constitutional right to be tried without restraints.

12-0119
APPELLANT'S

FIENEN, CASEY RAY
FANNIN

04/18/12
DRIVING WHILE INTOXICATED

The Court of Appeals erred in concluding that Mr. Fienen voluntarily provided a specimen of his breath following his arrest for DWI, contrary to the holdings in Erdman, Hall and Sells.

12-0207
STATE'S

OKONKWO, CHIDIEBELE GABRIEL
FORT BEND

03/28/12
FORGERY

1. Must a reviewing court look beyond the testimony of trial counsel to determine whether not requesting a mistake-of-fact instruction was objectively reasonable?
2. Can it ever be deficient performance not to request a mistake-of-fact instruction when the offense requires the State to prove knowledge of that fact beyond a reasonable doubt?
3. Does the failure to request an instruction on mistake of fact necessarily result in prejudice, or must the reviewing court perform a complete review of the record to determine whether there is a reasonable probability that, but for counsel's deficient performance, the result would have been different?

12-0209
APPELLANT'S

JOHNSON, JACKIE
HARRIS

04/04/12
POSSESSION OF MARIJUANA

1. Did the panel majority of the Fourteenth Court of Appeals misconstrue and misapply the standard of review dictated by the Texas Court of Criminal Appeals and the United States Supreme Court when it substitutes the trial court's explicit findings with the panel majority's implicit findings and applied these substituted findings to the law to support trial court's ruling?
2. Did the Panel Majority, in conflict with opinions of the Texas Court of Criminal Appeals and decisions of the United States Supreme Court, err to infer from the record testimony that, notwithstanding the trial court's finding to the contrary, the evidence demonstrates the trial court could have concluded that a reasonable person in Johnson's position would have believed that he was free to ignore officer Hendrie's requests or terminate the interaction, and therefore the initial interaction between Hendrie and Johnson was a voluntary encounter rather than a Fourth Amendment seizure?

12-0282
12-0283

JONES, CHRISTINA CARLETTA

05/02/12

APPELLANT'S

DALLAS

FRAUDULENT USE OR
POSSESSION OF IDENTIFYING INFORMATION

1. Did the Court of Appeals err in holding that § 32.51 and § 38.02 of the Texas Penal Code are not in pari materia.
2. Did the Court err in its opinion that Petitioner waived the *Jackson v. Virginia* standard of review when she entered a conditional plea of no contest to every element except the intent to defraud and the Trial Court agreed to hear the case based on the conditional plea of no contest to protect Petitioner's right to deferred adjudication.

12-0344

COOK, DAVID

05/09/12

STATE'S & APPELLANT'S

DENTON

MANSLAUGHTER

STATE'S GROUND:

Whether the Court of Appeals properly found that Appellant's sole issue was preserved for appellate review where his objection at trial (motion for mistrial) was not timely made and was not specific enough to apprise the trial court of the complaint he makes on appeal (the trial court erred in reconvening jury and accepting new punishment verdict) (*see* 6 R.R. at 58; Appendix A at 12).

APPELLANT'S GROUND:

If a trial judge accepts a jury verdict, releases the jurors from their oaths, allows the former jurors to leave the courtroom and tells them they are free to discuss the case, sentences the defendant in accordance with the legal verdict, and then improperly reconvenes the jury for a second deliberation over objection, should the court of appeals reform the judgment to reflect the only proper, legal verdict?