

# GRANTED ISSUES

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

## ISSUES GRANTED FEBRUARY 15, 2012

PDR NO. \_\_\_\_\_ NAME \_\_\_\_\_ COUNTY \_\_\_\_\_ OFFENSE \_\_\_\_\_

**11-1181      ORTIZ, OCTAVIO                      LUBBOCK                      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?

**11-1231      ABNEY, RICKY DEWAYNE                      KAUFMAN                      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?

**11-1688      GROSS, JIMMIE                      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?

## ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
11-1231	ABNEY, RICKY DEWAYNE	02/15/12
11-0864	AVERY, BILLIE JEAN	08/24/11
11-1102	BALENTINE, BRIAN KEITH	12/07/11
11-0889	BLACKSHEAR, GEORGE EDWARD	02/01/12
10-0767	BLANTON, DONALD GENE	12/08/10
10-1607	BOWEN, DEBORAH	03/02/11
11-1502	BREWER, SEAN CHRISTOPHER	01/25/12
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
10-0218	CLARK, VELLAR	10/06/10
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
11-0779	FULLER, LADEREK ADARIOUS	08/24/11
11-1516	GARCIA, AIMA LORENA	12/14/11
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
11-1682	HASSAN, ADBIHAKIM	01/11/12
11-0958	HENERY, PETER	09/21/11
11-0495	HICKS, NARADA	11/02/11
11-0324	HOLLOWAY, DANNY LEE	05/25/11
11-0241	JESSOP, MERRIL LEROY	09/14/11
11-1466	JACOBSON, JONATHAN	12/07/11
11-0068	JOHNSON, PERRY MONTEZ	06/29/11
11-0674-76	JONES, RIO SHAREESE	09/14/11
11-1837	KERWICK, STACIE MICHELLE	02/08/12
11-1632	KRAJCOVIC, PAUL	01/25/12
11-1279	KRETZER, ACE ALLEN, JR.	11/16/11
10-1621	LACKEY, RAYMOND DEAN	02/09/11
10-0551	LEONARD, WILLIAM THOMAS	09/29/10
11-0658	LILLY, CONRAD	06/29/11
11-1489	LOTHROP, DONALD ADAMS	12/07/11
11-0323	LOUIS, COREY DON	04/13/11
11-0795	MAHAFFEY, WILTON LARRON	08/24/11
11-1338	MARTINEZ, MIGUEL	12/07/11



**STATE'S****TARRANT****INJURY TO CHILD**

1. Did the Court of Appeals err in concluding, that in adjudication proceedings, a sex offender treatment provider was not permitted to testify to the results of polygraph examinations conducted as part of sex offender treatment, which were a condition of probation, and were admitted as a "fact or data" pursuant to Tex. R. Evid. 703 & 705(a) to support his expert's opinion as to why appellant was terminated from the mandated sex offender treatment program?
2. Did the Court of Appeals err in concluding this Court's holding, "that the existence and results of a polygraph examination are inadmissible of *all purposes*," applies to situations under Tex. R. Evid. 703 & 705(a), when an expert, in an adjudication proceeding, considers those results as a basis for rendering an expert opinion as to why a probationer was terminated for a order [sic] sex offender treatment program?
3. Did the Court of Appeals err in ruling that this Court's holding in Tennard v. State, 802 S.W.2d 678, 683 (Tex.Crim.App. 1990) and its progeny takes precedence over Tex. R. Evid. 703 & 705(a) in an adjudication proceeding?
4. Did the Court of Appeals err in not holding that Tex. R. Evid. 703 & 705(a) take precedence over Tennard v. State, 802 S.W.2d 678, 683 (Tex.Crim.App. 1990) and its progeny?
5. Did the Court of Appeals err in holding that the admission of polygraph results are always inadmissible notwithstanding a valid condition of community supervision required that the Appellant submit to and show no deception on a polygraph examination and other diagnostic tests or evaluations as directed by the Court of supervision officer?

**10-0767****BLANTON, DONALD GENE****12/08/10****APPELLANT'S****KAUFMAN****BURGLARY OF HABITATION**

Did the Court of Appeals correctly rule that Tex,R,App,P.,23.1, Rule 23. does not grant any additional jurisdiction for this Court to review the June 12, 2009, nunc pro tunc proceeding. (M.O.p3.).

**10-0997****RUNNINGWOLF, MICHAEL****01/12/11****APPELLANT'S****FLOYD****SIMULATING LEGAL  
PROCESS**

The appellate court erred in affirming the conviction in regard to Petitioner's point of error number two in that the evidence was legally insufficient to support the jury's guilty verdict.

**10-1356****STEADMAN, JEFFREY DEE****04/06/11****APPELLANT'S****TAYLOR****AGGRAVATED SEXUAL  
ASSAULT; INDECENCY W/CHILD**

The court of appeals erred when it held that the trial court's findings were sufficient to meet the Walker test.

**10-1547****DOAN, DUSTIN****05/04/11****APPELLANT'S****TRAVIS****THEFT**

The Court of Appeals erred in holding that the Brazos County Attorney and the Travis County Attorney were not the "same parties" for collateral estoppel purposes.

**10-1607****BOWEN, DEBORAH****03/02/11****STATE'S****FISHER****MISAPPLICATION OF  
FIDUCIARY PROPERTY**

Should Collier v. State, 999 S.W.2d 779 (Tex.Cr.App. 1999), be overruled?

**10-1621****LACKEY, RAYMOND DEAN****02/09/11****STATE'S****FANNIN****DRIVING WHILE INTOXICATED**

1. Does the statutory non-qualification of a judge render his judgments void?
2. Did Appellant waive error in the trial court's non-qualification by not objecting at the earliest opportunity?

**10-1675****CAVAZOS, ABRAHAM****05/04/11****APPELLANT'S****EL PASO****MURDER**



**11-0321**                      **VASQUEZ, ANIBAL**                      **01/25/12**  
**STATE'S**    **FORT BEND**    **AGGRAVATED ROBBERY**

If refusing a request to cut the general application of the law of parties and copy the abstract paragraph into the application paragraph is error, should there be "some harm" per se because the State prosecuted the defendant on a parties theory as in Johnson v. State, 739 S.W.2d 299, 305 (Tex. Crim. App. 1987)(en banc)(plurality op.), or should harm be determined in context of the entire record as in Watson v. State, 693 S.W.2d 938, 941 (Tex. Crim. App. 1985), and Nelson v. State, 297 S.W.3d 424, 433-34 (Tex.App.–Amarillo 2009, pet. ref'd).

**11-0323**                      **LOUIS, COREY DON**                      **04/13/11**  
**STATE'S**    **FANNIN**    **CAPITAL MURDER**

1. Did the Court of Appeals violate Jackson v. Virginia by not considering all of the evidence, re-assigning weight and credibility, and generally not viewing the evidence in the light most favorable to the verdict?
2. Was the evidence sufficient?
3. Is an instruction on mistake of fact appropriate when the mistaken "fact" is the result of the conduct in a result-of-conduct offense?
4. Is mistake of fact applicable to lesser-included offenses when the culpability negated by the mistaken belief applied only to the greater offense?
5. Does mistake of fact apply to the culpable mental states of recklessness and criminal negligence?
6. Is the failure to submit a mistake of fact instruction that merely denies the charged offense ever harmful?
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?

**11-0324**                      **HOLLOWAY, DANNY LEE**                      **05/25/11**  
**APPELLANT'S**    **LAMAR**    **MANSLAUGHTER**

1. The Sixth Court of Appeals erred when it determined that the trial court had no jurisdiction to order a new trial under Chapter 64 of the Texas Code of Criminal Procedure.
2. The Sixth Court of Appeals erred when it determined that the trial court erred when it concluded that there was a reasonable probability that Holloway would not have been convicted if the DNA results had been available at trial.

**11-0442**                      **SCALES, COURTNEY JAY**                      **06/15/11**  
**STATE'S**    **HARRIS**    **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.

**11-0473**                      **WISE, JEFFREY SHANE**                      **09/14/11**  
**STATE'S**    **WICHITA**    **SEXUAL ASSAULT; INDECENCY**  
**W/CHILD; POSSESSION OF CHILD**  
**PORNOGRAPHY**

The Court of Appeals failed to properly apply the Jackson v. Virginia standard of review, and thereby erred in holding that the evidence was legally insufficient to prove that the appellant knowingly possessed the child pornography images found in "free space" on the hard drive of his computer.

**11-0495**                      **HICKS, NARADA**                      **11/02/11**  
**STATE'S & APPELLANT'S**    **HARRIS**    **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.

**11-0570 SALINAS, GENOVENO**  
**APPELLANT'S HARRIS**

**09/14/11**  
**MURDER**

Did the appeals court err in holding, based merely on a United States Supreme Court concurrence, that the Fifth Amendment does not apply to pre-arrest, pre-Miranda silence used as substantive evidence of guilt in cases in which a defendant does not testify?

**11-0594 SCHMITT, ROBERT JOSEPH**  
**APPELLANT'S 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 CRABTREE, MARK**  
**APPELLANT'S 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.

**11-0658 LILLY, CONRAD**  
**APPELLANT'S JONES**

**06/29/11**  
**ASSAULT**

1. The Eleventh Court of Appeals erred in finding that Lilly did not show that the prison chapel was not open to the public.

2. The Eleventh Court of Appeals correctly found that the State violated the Establishment Clause by conducting Lilly's court proceedings in the chapel, but it erred when it found that this violation was not structural error and dismissed the violation as "harmless."

**11-0674 JONES, RIO SHAREESE**  
**11-0675**  
**11-0676**  
**APPELLANT'S GALVESTON**

**09/14/11**  
**POSSESSION OF FIREARM BY**  
**FELON; POSSESSION OF**  
**CONTROLLED SUBSTANCE**  
**W/INTENT TO DELIVER**

The majority of the en banc court of appeals erred in holding that the search warrant affidavit was sufficient to provide the magistrate with a substantial basis for concluding that probable cause existed to search Appellant's residence when the affidavit was silent as to the time the controlled buy – the linchpin for a finding of probable cause – allegedly took place.

**11-0683 GONZALES, JIMMY**  
**APPELLANT'S 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?

**11-0685**                      **WASHINGTON, BILLIE DEAN**                      **09/28/11**  
**APPELLANT'S**                      **HARRIS**                      **SEXUAL ASSAULT**

The First Court of Appeals erred in dismissing Mr. Washington's appeal because the trial court's certification was defective and the Court of Appeals had before it a sufficient record to determine the defect.

**11-0705**                      **MILLER, CHRISTINA JEAN**                      **11/02/11**  
**APPELLANT'S**                      **KERR**                      **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.

**11-0779**                      **FULLER, LADEREK ADARIOUS**                      **08/24/11**  
**APPELLANT'S**                      **DALLAS**                      **CAPITAL MURDER**

The Court of Appeals erred in finding that the trial court did not abuse its discretion when it prohibited defense counsel from discussing the differences in the burdens of proof with the venire and questioning the venire on their understanding of "proof beyond a reasonable doubt."

**11-0795**                      **MAHAFFEY, WILTON LARRON**                      **08/24/11**  
**APPELLANT'S**                      **HENDERSON**                      **DRIVING WHILE INTOXICATED**

Did the Court of Appeals incorrectly decide the sole issue, in direct conflict with the Texas Transportation Code and in direct conflict with the Courts of Criminal Appeals, in ruling that it was reasonable for the officer to believe that Appellant's merge amounted to a "lane change" that required a signal under chapter 545 of the Texas Transportation Code?

**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?

**11-0849**                      **SANDERS, DEL RAY**                      **09/14/11**

**APPELLANT'S****POLK****MURDER**

1. The Court of Appeals erred when it held the trial court did not err by denying Appellant's request to instruct the jury on manslaughter
2. The Court of Appeals erred when it held the trial court did not err by denying Appellant's request to instruct the jury on criminally negligent homicide.

**11-0864**  
**STATE'S****AVERY, BILLIE JEAN**  
**BEE****08/24/11**  
**FRAUD: Attempt to obtain increased quantity of controlled substance through use of a fraudulent prescription form**

Should "fraudulent prescription form" be construed so narrowly as to prevent conviction unless the prescription form was created and filled out entirely by the defendant?

**11-0882**  
**APPELLANT'S****ELIZONDO, BECKY**  
**LUBBOCK****11/02/11**  
**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**  
**APPELLANT'S****TEMPLE, DAVID MARK**  
**HARRIS****01/11/12**  
**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**  
**STATE'S****BLACKSHEAR, GEORGE EDWARD**  
**HARRIS****02/01/12**  
**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?

**11-0916**  
**STATE'S****MERRITT, RYAN, RASHAD**  
**FORT BEND****09/14/11**  
**ARSON**

1. To establish identity in an arson case, must motive be combined with some other circumstance(s) or should the reviewing court simply consider the logical force of the evidence on a case by case basis?
2. Did the First Court ignore evidence that supported the jury's verdict?
3. Did the First Court's analysis disregard the jury's prerogative to draw reasonable inferences and resolve conflicting theories of the case, in turn resurrecting the alternative reasonable hypothesis construct?

**11-0934**  
**APPELLANT'S****GARRETT, KIMBERLY SHERVON**  
**DALLAS****09/28/11**  
**POSSESSION OF CONTROLLED SUBSTANCE**

The Court of Appeals erred in failing to apply the rule of lenity in the decision to allow the trial court to extend Garret[t]'s state jail probationary period when the extension was not statutorily provided.

11-0943 WINFREY, MEGAN  
APPELLANT'S SAN JACINTO

11/16/11  
CAPITAL MURDER;  
CONSPIRACY TO COMMIT  
CAPITAL MURDER

1. The divided panel's holding that the evidence is legally sufficient to sustain petitioner's convictions conflicts with this Court's decision in *Winfrey v. State* with respect to the same evidence and with this Court's decision in *Brooks v. State*, which requires rigorous and proper application of *Jackson v. Virginia's* exacting standards.
2. An important question implicating the administration of justice is presented by the court of appeals' holding, contrary to the dictates of §15.02(c)(2), Texas Penal Code, that a conviction for conspiracy can be sustained even though the only other conspirators have been acquitted.

11-0958 HENERY, PETER  
STATE'S HARRIS

09/21/11  
INDECENT EXPOSURE

1. The Fourteenth Court of Appeals erred in failing to treat the trial court's written ruling on the appellant's motion to quash as nothing more than a clerical error, especially in light of the other evidence in the record revealing that the appellant's motion to quash had been denied (R.R. 4; C.R. I-9).
2. The Fourteenth Court of Appeals erred in failing to abate the appeal to have the trial court correct the clerical error in the written ruling on the appellant's motion to quash (R.R. 4; C.R. I-9).
3. The Fourteenth Court of Appeals erred in ignoring the trial court's oral order denying the appellant's motion to quash, and this Court should resolve the question of whether an oral pronouncement of an order controls over a written pronouncement (R.R. 4; C.R. I-9).

11-0965 MOORE, JAMMIE LEE  
APPELLANT'S POTTER

10/05/11  
POSSESSION OF CONTROLLED  
SUBSTANCE

1. May a court of appeals interpret a statute, as a matter of first impression statewide, with an opinion that omits any consideration of the issue raised?
2. Is insufficient evidence of an *increased punishment* -- which would bar consecutive sentencing under §481.134(h) -- cognizable on direct appeal?
3. Does the statutory phrase "*punishment that is increased...*" require only that the punishment *range* have been increased?
4. Is a conviction for an offense *listed* in TEX. HEALTH & SAFETY CODE § 481.134 -- but not alleged to have been committed in a drug-free zone -- a "conviction under any other criminal statute"?

11-1000 MENDOZA, VANESSA M.  
APPELLANT'S EL PASO

12/14/11  
DRIVING WHILE INTOXICATED

The Court of Appeals disregarded the standard of review that requires it to uphold the trial court's ruling so long as the trial court's ruling is supported by the record and is correct under some theory of law applicable to the case.

11-1035 MAZUCA, ALVARO  
STATE'S EL PASO

09/14/11  
POSSESSION OF CONTROLLED  
SUBSTANCE W/INTENT TO  
DELIVER

By holding that the officers' discovery of outstanding arrest warrants and the officers' arrest of Mazuca on those warrants failed to attenuate or break the connection between the initial illegal detention and the subsequent discovery of evidence pursuant to a search incident to the arrest on the outstanding warrants, the Court of Appeals has improperly rejected established precedent from the Court of Criminal Appeals, other intermediate courts of appeals, and its own opinions. (RR at 56-58); (CR at 32, 35-37); *State v. Mazuca*, slip op. at 4-7.

11-1054 WIRTH, RAYMOND WAEIR  
STATE'S FANNIN

09/21/11  
THEFT

1. Did the Sixth Court of Appeals conflict with opinions of this Court and the rules of appellate procedure by refusing to address the issues raised in the State's brief, even though the State's arguments squarely contradict the court's conclusion that the evidence was legally insufficient?
2. May the Sixth Court of Appeals effectively ignore this Court's holding in *Brooks* and review the sufficiency of the evidence without considering all of the evidence or according any deference to the jury?

**11-1102**                      **BALENTINE, BRIAN KEITH**                      **12/07/11**  
**APPELLANT'S**                      **MONTGOMERY**                      **ROBBERY**

1. The Court of Appeals erred in their finding that the phrase the State deleted from the indictment, "...and causing Robert Rhodes hand to be sprained..." was an abandonment of another manner and means and was not a substantial amendment
2. The Court of Appeals erred in finding that Balentines' substantial rights were not prejudiced by the State's alteration to the indictment
3. The Court of Appeals erred in not finding that the evidence was insufficient to support Balentines conviction for robbery

**11-1117**                      **TURNER, SEQUEASIA**                      **09/28/11**  
**APPELLANT'S**                      **TARRANT**                      **FORGERY**

The Second Court of Appeals has held that Texas Code of Criminal Procedure Article 42.12, Sec. 15(b)(Vernon Supp. 2010), in its entirety, applies to defendant's [sic] placed on deferred adjudication probation, which is an important question of state law that has not been, but should be, decided by the Court of Criminal Appeals.

**11-1161**                      **MENEFIELD, BILLY DON**                      **11/23/11**  
**STATE'S**                      **WHEELER**                      **POSSESSION OF CONTROLLED  
SUBSTANCE**

Did the Court of Appeals err in determining the record on direct appeal was sufficient to find trial counsel ineffective under *Strickland v. Washington* where counsel's actions could have been based on reasonable strategy?

**11-1169**                      **MONTGOMERY, JERI DAWN**                      **09/21/11**  
**STATE'S**                      **HARRIS**                      **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**                      **ORTIZ, OCTAVIO**                      **02/15/12**  
**STATE'S**                      **LUBBOCK**                      **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 PAYNE, JASON THAD  
APPELLANT'S 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 ABNEY, RICKY DEWAYNE  
APPELLANT'S 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?

**11-1234 PFEIFFER, LAVERNE A.  
STATE'S RED RIVER**

**09/28/11  
POSSESSION OF CONTROLLED  
SUBSTANCE**

This Court should resolve the conflict among the courts of appeals concerning whether the State must file a notice of appeal under 44.01(c) of the Texas Code of Criminal Procedure, and if the State must not file a notice of appeal, remand this cause to the Court of Appeals to address the merits of the State's cross-issue.

**11-1252 CRENSHAW, BRADLEY KELTON  
STATE'S 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 SANCHEZ, ARTEMIO ORLANDO  
STATE'S 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 REINKE, BRAD WILLIAM  
STATE'S 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 KRETZER, ACE ALLEN, JR.  
APPELLANT'S 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**                      **BURT, LEMUEL CARL**  
**APPELLANT'S**    **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).

**11-1304**                      **TREVINO, RICHARD NEITO**  
**APPELLANT'S**    **BELL**

**12/14/11**  
**INDECENCY W/CHILD**

The Court of Appeals erred when it determined that a definition of "female genitalia" in the jury charge was not an improper comment on the weight of the evidence.

**11-1338**                      **MARTINEZ, MIGUEL**  
**APPELLANT'S**    **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**  
**APPELLANT'S**    **COLLIN**

**11/09/11**  
**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**  
**APPELLANT'S**    **JEFFERSON**

**11/16/11**  
**OFFICIAL OPPRESSION**





## 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.

**11-1682 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?

**11-1717 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?

**11-1837 KERWICK, STACIE MICHELLE 02/08/12**  
**STATE'S TARRANT DRIVING WHILE INTOXICATED**

1. The Court of Appeals misapplied the bifurcated standard of review mandated by *Guzman v. State*, 995 S.W.2d 85, 89 (Tex. Crim. App. 1997), by failing to apply settled Fourth Amendment principles de novo to the trial court's written fact findings.

2. The Court of Appeals misapplied *Terry v. Ohio* and its Texas progeny by affirming evidentiary suppression where the trial court's written fact-findings mirrored the officer's suppression-hearing testimony and described articulable facts setting out unusual activity connected to the detainee which reasonably appeared to be crime-related. See *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968); *Derichsweiler v. State*, 348 S.W.3d 906 (Tex. Crim. App. 2011), cert. denied, 132 S.Ct. 150 (2011).

3. The Court of Appeals misapplied *Terry v. Ohio* by ignoring *Terry*'s underlying rationale which, in effect, authorizes law enforcement to call a proverbial time-out to maintain the status quo in order to discern whether a scenario requires further legal action when a reasonable articulable suspicion exists.

**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?