

**SIGNIFICANT DECISIONS**  
**UNITED STATES SUPREME COURT AND THE COURT OF CRIMINAL APPEALS**  
**FROM SEPTEMBER 2020 TO APRIL 2021**

**HON. DAVID C. NEWELL**  
JUDGE, PLACE 9  
Court of Criminal Appeals

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### **Acknowledgement**

This paper has been the primary responsibility of my briefing attorney, Lynda Hercules Charleson. No, keep reading. She works really hard, and the summaries are really good. Actually she's not my briefing attorney anymore. She now works at central staff at the Court of Criminal Appeals. So that should give her more credibility. I edited the summaries, but she did most of the heavy lifting. I did the commentary, for what it is worth, but any commentary is written in my role as commentator not as part of my job. Late Justice Scalia once said that. Neat. So take the commentary with a grain of salt and I hope they aren't too salty. I hope you will find something in this paper to be helpful, preferably the part Lynda wrote because she is awesome. This is a working document so any typos and misspellings are my fault.

## Table of Contents

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>MOTIONS TO SUPPRESS.....</b>	<b>1</b>
A.	WARRANTLESS SEARCH .....	1
1.	<i>Court upholds warrantless search of luggage at an airport, probably as a search incident to arrest. ....</i>	<i>1</i>
2.	<i>Officer's warrantless entry into defendant's apartment to conduct safety check that was requested by firefighter who saw drug paraphernalia, guns, and flammable liquids was justified by the exigency of the fire and therefore not a Fourth Amendment violation. ....</i>	<i>3</i>
B.	SEARCH WARRANTS .....	5
1.	<i>Magistrate's determination that probable cause existed to justify seizure of blood was sufficient to justify the chemical testing of that blood, even though the search warrant itself did not expressly authorize the chemical testing. ....</i>	<i>5</i>
2.	<i>Magistrate was justified in issuing search warrant authorizing the police to seize surveillance equipment even though affidavit supporting the warrant said nothing about such equipment possibly being at the business. ....</i>	<i>6</i>
3.	<i>Good-faith exception to statutory exclusionary rule did not apply when officer knowingly submitted an unsworn probable-cause affidavit and then executed the subsequent search warrant. ....</i>	<i>8</i>
B.	CONFESSIONS.....	10
1.	<i>Defendant's confession to his wife, 911, and police detectives was still voluntary despite police's earlier statements to the defendant that if he "didn't do it" that meant his wife did so she could be arrested and that his children could end up in foster care. ....</i>	<i>10</i>
2.	<i>Taint of defendant's illegal arrest was not sufficiently attenuated to allow admission of his confession. ....</i>	<i>11</i>
<b>III.</b>	<b>TRIAL PROCEDURE .....</b>	<b>13</b>
A.	PRE-TRIAL DISCOVERY .....	13
1.	<i>SIGNIFICANT CASE – "Material" as used in Article 39.14 means that the evidence "having a logical connection to a consequential fact" and in context of the phrase "material to any matter involved in the action" is synonymous with "relevant." ....</i>	<i>13</i>
2.	<i>Trial judge exceeded his discretionary authority by ordering the State to create evidence in the form of a digital audiovisual recording of the crime lab's DNA testing. ....</i>	<i>16</i>
B.	MOTION TO DISQUALIFY – IT IS NOT WELL-SETTLED LAW THAT AN ENTIRE LAW FIRM IS DISQUALIFIED FROM REPRESENTING A CRIMINAL DEFENDANT WHEN THE FIRM'S PARTNER WAS THE FORMER DISTRICT ATTORNEY OF THE CASE. ....	18
C.	CONSENT TO WAIVER OF JURY TRIAL – EMERGENCY ORDER GIVING A COURT THE POWER TO MODIFY OR SUSPEND DEADLINES AND PROCEDURES DID NOT CONFER UPON THE TRIAL COURT THE AUTHORITY TO CONDUCT A BENCH TRIAL WITHOUT THE STATE'S CONSENT. ....	19
D.	DOUBLE JEOPARDY.....	20
1.	<i>Convictions and sentences for both aggravated assault of a deadly weapon and family-violence assault did not run afoul the Double Jeopardy Clause. ....</i>	<i>20</i>
2.	<i>The failure to appear statute creates as many actionable offenses as there are conditional releases even if all the offenses are scheduled for court on the same day. ....</i>	<i>22</i>
<b>IV.</b>	<b>EVIDENCE.....</b>	<b>23</b>
A.	CONFRONTATION CLAUSE .....	23
1.	<i>Admission of expert's remote testimony violated the Confrontation Clause because there was no showing that testifying remotely was necessary.....</i>	<i>23</i>
2.	<i>Family-violence-assault victim's prior out-of-court statements to police were not admissible under the doctrine of forfeiture by wrongdoing because defendant did not commit an act to cause her absence at trial. ....</i>	<i>26</i>
B.	CORPUS DELICTI RULE .....	27
1.	<i>Defendant's extrajudicial confession to police officer that he had been driving was adequately corroborated by independent evidence establishing him as driver, under corpus delicti rule, as required to support conviction for DWI. ....</i>	<i>27</i>

2.	<i>Closely-related-crimes exception to the corpus delicti rule applied to case involving improper relationship, sexual assault, and sexual performance offenses.</i>	28
<b>V.</b>	<b>OFFENSES</b>	<b>30</b>
A.	AGGRAVATED ROBBERY – ELECTRIC DRILL DISGUISED AS A GUN WAS NOT A DEADLY WEAPON BECAUSE IT WAS NOT USED OR INTENDED TO BE USED IN A MANNER CAPABLE OF CAUSING DEATH OF SERIOUS BODILY INJURY.	30
B.	POSSESSION OF PENALTY GROUP 2-A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER – EVIDENCE WAS SUFFICIENT TO SUPPORT CONVICTION BECAUSE EXPERT TESTIMONY AS TO TECHNICAL ELEMENTS OF THE OFFENSE WAS NOT MERELY CONCLUSORY.	31
C.	INDECENT EXPOSURE – EXPOSING YOUR GENITALIA IN A PUBLIC PARK IN THE DAYLIGHT IS RECKLESS EVEN IF NO ONE ELSE IS PRESENT TO SEE IT.	32
D.	EVADING ARREST OR DETENTION – ILLEGAL INITIAL DETENTION DID NOT MAKE OFFICER’S SUBSEQUENT ATTEMPTED ARREST OR DETENTION UNLAWFUL GIVEN THE VALID, OUTSTANDING ARREST WARRANT AT THE TIME OF FLIGHT.	33
E.	DEFENDANT COULD NOT BE CONVICTED OF BOTH CONTINUOUS SEXUAL ABUSE OF A CHILD AND INDECENCY WITH A CHILD BY CONTACT BECAUSE THE INDECENCY OFFENSE OCCURRED WITHIN THE PERIOD FOR THE OFFENSE OF CONTINUOUS SEXUAL ABUSE OF A CHILD.	35
<b>VI.</b>	<b>JURIES AND JURY INSTRUCTIONS</b>	<b>37</b>
A.	JURIES.	37
1.	<i>Challenges for Cause – Court rejects defendant’s allegations that the trial court erred in denying his challenges for cause to two veniremembers.</i>	37
2.	<i>Sound of siren heard while jurors were deliberating in an evading arrest case was not “other evidence” in violation of Texas Rule of Appellate Procedure 21.3(f).</i>	39
B.	ALTERNATE JURORS	40
1.	<i>Any error in trial court’s failure to instruct jury to deliberate anew following a mid-deliberations substitution of alternate juror was harmless in penalty phase of capital murder prosecution.</i>	40
2.	<i>Grounds for objection to the alternate juror being sent into the jury room were not apparent until counsel became aware of the error.</i>	42
C.	DEFENSIVE INSTRUCTIONS - TRIAL COURT’S REFUSAL TO GIVE SUDDEN-PASSION INSTRUCTION AT PUNISHMENT HEARING WAS NOT ERR BECAUSE LAW APPLICABLE TO THE CASE WAS THE LAW IN EFFECT WHEN THE OFFENSE OCCURRED.	43
D.	LESSER-INCLUDED INSTRUCTIONS - BODILY-INJURY ASSAULT IS NOT A LESSER-INCLUDED OFFENSE OF OCCLUSION ASSAULT WHEN THE DISPUTED ELEMENT IS THE INJURY.	44
E.	EGREGIOUS HARM - ERRONEOUS INCLUSION OF RECKLESS CULPABLE MENTAL STATE IN THE JURY CHARGE, UNDER THE FACTS OF THE CASE, WAS A MERE FORMATTING DEFECT THAT DID NOT CAUSE EGREGIOUS HARM.	45
<b>VII.</b>	<b>SENTENCING</b>	<b>47</b>
A.	EXCLUSION OF RELEVANT MITIGATING EVIDENCE OFFERED BY THE DEFENDANT FACING A POSSIBLE DEATH SENTENCE WAS HARMLESS.	47
B.	A SENTENCER IS NOT REQUIRED TO MAKE A SEPARATE FACTUAL FINDING OF PERMANENT INCORRIGIBILITY BEFORE IMPOSING A DISCRETIONARY SENTENCE OF LIFE WITHOUT PAROLE ON A JUVENILE HOMICIDE OFFENDER.	49
C.	STATE COULD NOT USE STATUTORY ELEMENTAL AGGRAVATING FACT OF PRIOR FAMILY-MEMBER-ASSAULT CONVICTION AT PUNISHMENT TO ELEVATE THE OFFENSE TO A THIRD-DEGREE FELONY WHEN JURY CONVICTED DEFENDANT OF MISDEMEANOR ASSAULT.	50
D.	PLAYGROUND SURROUNDED BY A CHAIN LINK FENCE THAT WAS NOT COMPLETELY LOCKED ON PRIVATE PROPERTY WAS NOT “OPEN TO THE PUBLIC” AS REQUIRED UNDER THE DRUG-FREE ZONE PUNISHMENT ENHANCEMENT STATUTE.	51
<b>VIII.</b>	<b>APPEALS</b>	<b>55</b>
A.	PRESERVATION - COURT OF APPEALS COULD NOT AFFIRM LOWER COURT’S DECISION BASED ON A LEGAL THEORY NOT PRESENTED TO THE TRIAL COURT BECAUSE THE STATE HAD NOT BEEN GIVEN AN OPPORTUNITY TO DEVELOP A COMPLETE FACTUAL RECORD WITH RESPECT TO THAT THEORY.	55
B.	HARM	56

1.	<i>The Court clarifies the harm analysis for the denial of face-to-face confrontation when witness testified remotely despite the lack of a finding that testifying remotely was necessary.</i>	56
2.	<i>Trial court’s failure to admonish defendant that guilty plea may result in his deportation was harmless.</i>	57
C.	COURT COSTS – ASSESSMENT OF “TIME PAYMENT FEE” WAS PREMATURE BECAUSE A DEFENDANT’S APPEAL SUSPENDS THE DUTY TO PAY COURT COSTS.	58
D.	REFORMATION – AGGRAVATED ROBBERY CONVICTION WAS REFORMED TO ROBBERY WHEN EVIDENCE WAS INSUFFICIENT AS TO THE AGGRAVATING ELEMENT OF USE OR EXHIBITION OF A DEADLY WEAPON.	60
<b>VIII.</b>	<b>HABEAS CORPUS</b>	<b>60</b>
A.	<i>BRADY</i> – DWI BLOOD ANALYST’S CERTIFICATION OF REPORT IN UNRELATED CASE THAT CONTAINED LABELING ERROR BY SUBMITTING OFFICER AND HER TEMPORARY REMOVAL FROM CASEWORK TO DOCUMENT THAT ERROR WAS NOT MATERIAL.	60
B.	FALSE EVIDENCE - CELL PHONE RECORDS USED TO IMPEACH TWO WITNESSES BUT NEVER ADMITTED INTO EVIDENCE NOR MADE PART OF THE RECORD DID NOT CONSTITUTE “FALSE TESTIMONY.”	62
C.	SUBSEQUENT WRITS	65
1.	<i>Legal basis for claim that counsel violated Sixth Amendment right to assistance of counsel by making a strategic concession of guilt over express objection was previously available.</i>	65
D.	JUVENILE JURISDICTION – LACK OF FACTUALLY-SUPPORTED, CASE-SPECIFIC FINDINGS DO NOT MAKE A JUVENILE COURT’S TRANSFER ORDER INVALID OR DEPRIVE THE DISTRICT COURT OF JURISDICTION.	67
E.	INEFFECTIVE ASSISTANCE OF COUNSEL – TRIAL COUNSEL’S FAILURE TO INVESTIGATE OR FULLY DEVELOP SEVERAL TYPES OF MITIGATING EVIDENCE WAS PREJUDICIAL.	69
F.	ACTUAL INNOCENCE – COMPTROLLER EXCEEDED MINISTERIAL DUTY UNDER TIM COLE ACT BY REVERSING DISTRICT COURT’S DETERMINATION THAT IT HAD JURISDICTION TO DECLARE INMATE ACTUALLY INNOCENT.	71
<b>IX.</b>	<b>FEDERAL LAW</b>	<b>73</b>
A.	FEDERAL APPELLATE COURT REVIEWING STATE INMATE’S FEDERAL POST-CONVICTION CLAIM DID NOT GIVE PROPER DEFERENCE TO THE STATE COURT’S DECISION.	73
B.	QUALIFIED IMMUNITY – PRISON OFFICIALS RESPONSIBLE FOR TEXAS-INMATE’S CONFINEMENT WERE NOT ENTITLED TO QUALIFIED IMMUNITY BECAUSE CELL CONDITIONS WERE SO EGREGIOUS THAT THEY HAD FAIR WARNING THAT THEIR SPECIFIC ACTS WERE UNCONSTITUTIONAL.	75
C.	SEIZURE – POLICE WHO SHOT FLEEING WOMAN COMMITTED A “SEIZURE” UNDER THE FOURTH AMENDMENT.	75
D.	HABEAS CORPUS – FEDERAL COURT OF APPEALS VIOLATED PROHIBITION ON DISTURBING STATE COURT JUDGMENT IN ABSENCE OF ERROR LYING “BEYOND ANY POSSIBILITY FOR FAIRMINDED DISAGREEMENT.”	77

## SCOTUS/CCA Update

### Significant Decisions from September 2020 to April 2021

#### I. INTRODUCTION

This paper covers the published opinions issued by the Court of Criminal Appeals between September 1, 2020 and April 28, 2021. It also includes the significant criminal cases from the United States Supreme Court that have broad applicability, issued during that same time frame. If you feel something is missing, please email me through Nichole Reedy at [nichole.reedy@txcourts.gov](mailto:nichole.reedy@txcourts.gov) and we'll do our best to either correct or explain ourselves. Additionally, we will continue to update the paper throughout the terms of the respective courts. If you'd like a copy of the updated paper, do not lose the email mentioned above.

#### II. MOTIONS TO SUPPRESS

##### A. Warrantless Search

1. **Court upholds warrantless search of luggage at an airport, probably as a search incident to arrest.** San Antonio Police Officer Carl Bishop received a tip from an Austin police officer that a reliable informant had indicated Braden Price would be flying into the San Antonio airport, on a specified date, with a quantity of marijuana he had purchased from out of state. Bishop verified that Price was on an incoming flight, and a drug dog alerted to the presence of contraband in suitcases bearing labels with Price's name. Bishop and at least two other detectives then watched as Price retrieved the suitcases from the baggage claim area and rolled them out to the curb. There, the officers detained Price, seized the suitcases from him, and handcuffed him behind his back. They then transported both him and his rolling suitcases to a "secure office" inside the airport. After reading Price his rights, they searched the suitcases and discovered marijuana.

Prior to trial, Price filed a motion to suppress, arguing that the officers' search of the suitcases was impermissible under the Fourth Amendment. The trial court denied the motion, assessed punishment, and certified Price's right to appeal the pretrial denial of his

motion. The court of appeals reversed, holding that the warrantless search was not justified as a search incident to arrest because, as a categorical matter, luggage is never "property immediately associated with the arrestee." The court also concluded that the trial court's denial could not otherwise be upheld because the search constituted an application of the inevitable discovery doctrine, which does not apply to Texas' statutory exclusion rule.

The Texas Court of Criminal Appeals reversed. *Price v. State*, \_\_\_S.W.3d\_\_\_, 2020 WL 5754618 (Tex. Crim. App. Nov. 23, 2020) (4:4:1). Judge Yeary announced the judgment of the Court and delivered an opinion, which Judges Keasler, Keel, and Slaughter joined. At least where—as in the instant case—an arrestee is in actual possession of a receptacle at the time of, or reasonably contemporaneously to, his custodial arrest, and that receptacle must inevitably accompany him into custody, a warrantless search of that receptacle at or near the time of the arrest is reasonable under the Fourth Amendment as a search incident to the arrestee's person. Such a search requires no greater justification than the fact of the lawful arrest itself. Application of this principle does not turn on the specific nature or character of the receptacle. In *United States v. Robinson*, 414 U.S. 218 (1973), the Supreme Court identified two types of searches under the search-incident-to-arrest exception to the warrant requirement: (1) searches of the person, or of property within the "immediate control" of the person, of the arrestee; and (2) searches of the area within the control of the arrestee. The State argued that the search in this case was of the first kind, and thus the court of appeals erred when it held that a suitcase is necessarily excluded from the category of receptacles that may be regarded as "immediately associated with the person" of an arrestee. Price argued that it was of the second.

Judge Yeary agreed with the State. First, the Court has not explicitly endorsed the view that suitcases and luggage should never be regarded as "immediately associated with the person" of an arrestee. Second, the highest courts of several states have recently held that the search of a suitcase in an arrestee's possession at the time of his arrest constitutes a *Robinson* search of property immediately associated with his person, requiring no greater justification than the arrest itself when the police intend to take the arrestee to jail or to

the stationhouse for booking. Third, under the rationale of *Lalande v. State*, 676 S.W.2d 115 (Tex. Crim. App. 1984) (holding that where a detainee asserts an ownership interest in the item leaving no alternative to its accompanying him into custody, once it becomes unequivocally clear that the item is to accompany the detainee, the right of inspection accrues immediately and is not limited to inspections carried out within the station itself), the officers were entitled to search the suitcases as a search of his person incident to arrest. The suitcases unquestionably belonged to him and would inevitably accompany him into custody, where a protective search would take place. And contrary to the court of appeals' belief, *Lalande* does not conflict with *State v. Daugherty*, 931 S.W.2d 268 (Tex. Crim. App. 1996) (holding that inevitable discovery doctrine—evidence obtained illegally would have eventually been obtained in any event by lawful means—does not apply to Texas' statutory exclusionary rule). The inevitable discovery doctrine discussed in *Daugherty* assumes that an illegal search has already occurred. But under *Lalande*, there is no illegality in the initial search. Therefore, there is no need to invoke the inevitable discovery doctrine to insulate the product of such a search from the exclusionary rule's application when the search was constitutionally reasonable to begin with.

Presiding Judge Keller filed a dissenting opinion. She argued that holding in *Lalande* had nothing to do with the inevitable-discovery doctrine or the search-incident-to-arrest doctrine. Rather, it was based on the inventory-search doctrine and on the proposition that the Fourth Amendment permitted the police to do on the scene what they were authorized to do at the station. Accordingly, the search of Price's suitcase might have been valid as a legal accelerated inventory search. In order for police to validly search a closed container during an inventory search, the arresting agency must have a policy or established routine authorizing such a search. Because the court of appeals did not address whether these requirements would have been met if a search had been conducted at the station, she would remand the case to the court of appeals to do so.

Judge Newell filed a dissenting opinion, joined by Judge Hervey. He agreed with the court of appeals that the Court's holding in *Daugherty* that the statutory

exclusionary rule does not incorporate the inevitable discovery doctrine undermined the Court's previous holding in *Lalande*. In *Lalande*, the Court held that the search was justified at the time of arrest because the luggage would have eventually been searched. The Court did not base its decision upon the theory that the search was a legal inventory search; it based it on the theory that discovery during a future inventory search was inevitable. Moreover, while the search in this case felt reasonable, the Supreme Court has held that the search-incident-to-arrest exception does not justify a search of luggage once police have that luggage in their personal control and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence. *United States v. Chadwick*, 433 U.S. 1 (1997). Although the luggage at issue in *Chadwick* was a footlocker, Judge Newell found that case dispositive. And while subsequent holdings related to searches of containers in cars have watered down *Chadwick*, the Supreme Court has maintained the distinction between a search pursuant to the automobile exception and a search incident to arrest. Finally, he acknowledged that the search at issue in this case might have been justified as a "present" inventory search rather than as an "inevitable" one, but that theory would have required proof of an established departmental policy to inventory such property at the airport as well as proof that the policy was followed. Because the State did not make that argument to the trial court and the record didn't support it, he would have affirmed the court of appeals' opinion and waited for a case in which the issue is squarely presented.

Judge Walker filed a dissenting opinion. He believed that the search violated the Fourth Amendment's proscription against warrantless searches; therefore, the marijuana seized from the luggage should have been suppressed from evidence at trial. First, contrary to the Court's opinion, the search of Price's luggage was not "an incident of the arrest." Neither purpose of the search incident to arrest exception—officer safety and evidence preservation—was threatened here. From the moment of arrest and until the luggage was searched, officers had exclusive control of Price's luggage. There was no danger, after Price was in handcuffs and not holding his bags, that he "might gain access to the property to seize a weapon or

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