

TEXAS COURT OF APPEALS, FOURTH DISTRICT, SAN ANTONIO

Gustavo Bouvier Hernandez a/k/a Gustavo Bovier-Hernandez v. The State of Texas

No. 04-24-00162-CR · No. No. 04-24-00162-CR · Decided February 25, 2026

SUMMARY

The Fourth Court of Appeals of Texas affirmed Gustavo Bouvier Hernandez’s convictions for aggravated sexual assault of a child and possession of child pornography. The court held that the trial court properly denied a mistake-of-fact jury instruction, that an objection to investigator testimony was not preserved, and that Hernandez knowingly, intelligently, and voluntarily waived his rights before making custodial statements. The opinion also addresses Hernandez’s claim that the jury should have received an instruction concerning the voluntariness of his statements.

CASE DETAILS

COURT	Texas Court of Appeals, Fourth District, San Antonio
WRITING FOR THE COURT	Lori Massey Brissette, Justice; Irene Rios, Justice; Adrian A. Spears II, Justice
JURISDICTION	Texas Court of Appeals, Fourth District, San Antonio
DECIDED	February 25, 2026
DOCKET	No. 04-24-00162-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Following a jury trial and convictions for aggravated sexual assault of a child and possession of child pornography, the defendant appealed the denial of a mistake-of-fact jury instruction, the admission of investigator testimony, the denial of a motion to suppress custodial statements, and the omission of a jury instruction on voluntariness.
STANDARD OF REVIEW	Suppression rulings are reviewed under a bifurcated standard: the appellate court gives almost total deference to historical findings and mixed questions dependent on credibility and demeanor, but reviews de novo mixed questions that do not depend on those considerations. Jury-charge error is reviewed in two steps, first determining whether error exists and then conducting a harm analysis; unobjected-to charge error is reviewed for egregious harm. Preservation issues are governed by Texas Rule of Appellate Procedure 33.1.

PRECEDENTIAL VALUE	unpublished
PARTIES	Gustavo Bouvier Hernandez a/k/a Gustavo Bovier-Hernandez v. The State of Texas

TOPICS

criminal procedure miranda rights suppression of evidence jury instructions preservation of error

PRACTICE AREAS

criminal law criminal procedure evidence constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by denying Bouvier's requested mistake-of-fact jury instruction on the aggravated-sexual-assault charge.
2. Whether Bouvier preserved his complaint that Investigator Donna gave improper opinion testimony regarding the truthfulness of Bouvier's mistake-of-fact defense.
3. Whether Bouvier knowingly, intelligently, and voluntarily waived his rights and whether the trial court erred by denying his motion to suppress his custodial statements.
4. Whether the trial court reversibly erred by failing to instruct the jury under Texas Code of Criminal Procedure article 38.22, sections 6 and 7, regarding the voluntariness of Bouvier's custodial statements.
5. Whether Bouvier preserved his separate argument that pre-Miranda statements were inadmissible under a deliberate two-step interrogation theory.

HOLDINGS

1. The trial court properly denied the requested mistake-of-fact instruction because Bouvier's asserted belief that the child was his adult wife did not negate any culpable mental state required for aggravated sexual assault of a child under Texas Penal Code section 22.021.
2. Bouvier failed to preserve his complaint that Investigator Donna improperly testified about Bouvier's truthfulness because his trial objection that the question was vague did not comport with the improper-opinion theory raised on appeal.
3. The trial court did not err by denying the motion to suppress because, considering the totality of the circumstances, Bouvier received the required warnings and knowingly, intelligently, and voluntarily waived his rights before making the challenged statements.
4. The court affirmed despite the omission of a voluntariness instruction because Bouvier did not request or object to the omission and failed to show egregious harm.
5. The court declined to consider Bouvier's argument that pre-Miranda statements should be suppressed because he failed to preserve that argument in the trial court.

KEY QUOTATIONS

“Just as Donna was not required to orally use the word “waive,” neither was Bouvier for his waiver to be valid: its validness can be inferred from Bouvier’s actions and words.” (-12)

“On this record, we cannot conclude that the trial court’s failure to provide a voluntariness instruction to the jury caused Bouvier actual harm, affected the very basis of his case, deprived him of a valuable right, or vitally affected a defensive theory.” (-17)

FACTUAL BACKGROUND

Bouvier's wife discovered an explicit video on his cell phone depicting Bouvier performing a sexual act on an eight-year-old child who was his wife's sister and their adoptive daughter. Bouvier was arrested and gave a recorded custodial interview in Spanish after receiving Miranda and Texas statutory warnings; he confessed to the sexual act but claimed he believed the child was his adult wife. At trial, Bouvier again admitted engaging in and filming the act, while the video and testimony from his wife were admitted into evidence. The jury convicted him of aggravated sexual assault of a child and possession of child pornography and assessed stacked sentences.

PROCEDURAL HISTORY

A Webb County grand jury indicted Bouvier on aggravated sexual assault of a child and possession-related child-pornography charges; the second count was amended by court order to possession of child pornography under Texas Penal Code section 43.26(a). The trial court denied Bouvier's motion to suppress after a two-day hearing and entered findings of fact and conclusions of law. After a jury convicted him on both counts and assessed stacked sentences of eighty years and ten years, respectively, Bouvier timely appealed. The Fourth Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Martin v. State, 541 S.W.2d 605, 606 (Tex. Crim. App. 1976)
- Mays v. State, 318 S.W.3d 368, 382 (Tex. Crim. App. 2010)
- Fleming v. State, 455 S.W.3d 577, 582-83 (Tex. Crim. App. 2014)
- Arias v. State, 503 S.W.3d 523, 530 (Tex. App.—San Antonio 2016, pet. ref'd)
- Miller v. State, 605 S.W.3d 877, 882 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd)
- Yazdchi v. State, 428 S.W.3d 831, 844 (Tex. Crim. App. 2014)
- Fuller v. State, 253 S.W.3d 220, 232 (Tex. Crim. App. 2008)
- Clark v. State, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012)
- Williams v. State, 402 S.W.3d 425, 437 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd)
- Blackshear v. State, 385 S.W.3d 589, 591 (Tex. Crim. App. 2012)
- Lerma v. State, 543 S.W.3d 184, 189-90 (Tex. Crim. App. 2018)

- *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007)
- *Guzman v. State*, 995 S.W.2d 85, 89 (Tex. Crim. App. 1997)
- *Carter v. State*, 309 S.W.3d 31, 40-42 (Tex. Crim. App. 2010)
- *Weems v. State*, 493 S.W.3d 574, 577 (Tex. Crim. App. 2016)
- *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010)
- *Miller v. State*, 393 S.W.3d 255, 263 (Tex. Crim. App. 2012)
- *State v. Arellano*, 660 S.W.3d 53, 57 (Tex. Crim. App. 2020)
- *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)
- *Berghuis v. Thompkins*, 560 U.S. 370, 382-83 (2010)
- *Joseph v. State*, 309 S.W.3d 20, 24-25 (Tex. Crim. App. 2010)
- *Oursbourn v. State*, 259 S.W.3d 159, 169-78, 182 n.89 (Tex. Crim. App. 2008)
- *Colorado v. Connelly*, 479 U.S. 157, 167 (1986)
- *Vasquez v. State*, 179 S.W.3d 646, 657 (Tex. App.—Austin 2005), *aff'd*, 225 S.W.3d 541 (Tex. Crim. App. 2007)
- *Lozano v. State*, 636 S.W.3d 25, 29 (Tex. Crim. App. 2021)
- *Estrada v. State*, 313 S.W.3d 274, 299-300 (Tex. Crim. App. 2010)
- *Posey v. State*, 966 S.W.2d 57, 60 (Tex. Crim. App. 1998)
- *Almanza v. State*, 686 S.W.2d 157 (Tex. Crim. App. 1985)
- *Sandoval v. State*, 665 S.W.3d 496, 528 (Tex. Crim. App. 2022)
- *Marshall v. State*, 479 S.W.3d 840, 843 (Tex. Crim. App. 2016)
- *Paz v. State*, 548 S.W.3d 778, 793 (Tex. App.—Houston [1st Dist.] 2018, *pet. ref'd*)
- *Reeves v. State*, 420 S.W.3d 812, 816 (Tex. Crim. App. 2013)
- *Ramjattansingh v. State*, 587 S.W.3d 141, 155, 157 (Tex. App.—Houston [1st Dist.] 2019, *no pet.*)
- *Missouri v. Seibert*, 542 U.S. 600, 611 (2004)
- *Vasquez v. State*, 483 S.W.3d 550, 557 (Tex. Crim. App. 2016)