

TEXAS COURT OF APPEALS, FOURTH DISTRICT, SAN ANTONIO

Justin Michael Persinger v. The State of Texas

No. 04-24-00637-CR (Tex. App.—San Antonio Apr. 29, 2026) (mem. op.) · No. 04-24-00637-CR · Decided April 29, 2026

SUMMARY

The Fourth Court of Appeals of Texas affirmed Justin Michael Persinger’s conviction for smuggling of persons with intent to obtain a pecuniary benefit under Texas Penal Code section 20.05. The court rejected his as-applied field and conflict preemption challenges based on federal immigration law and his facial First Amendment challenge. The court issued the opinion as an unpublished memorandum opinion.

CASE DETAILS

COURT	Texas Court of Appeals, Fourth District, San Antonio
WRITING FOR THE COURT	Lori Massey Brissette, Justice; Irene Rios, Justice; Lori I. Valenzuela, Justice
JURISDICTION	Texas Court of Appeals, Fourth District, San Antonio
DECIDED	April 29, 2026
DOCKET	04-24-00637-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a jury conviction for smuggling of persons with intent to obtain a pecuniary benefit under Texas Penal Code section 20.05.
STANDARD OF REVIEW	Constitutional challenges, including preemption and facial-constitutionality challenges, are reviewed de novo.
PRECEDENTIAL VALUE	Unpublished, nonprecedential memorandum opinion
PARTIES	Justin Michael Persinger v. The State of Texas

TOPICS

- preemption
- first amendment
- federalism
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal law
- constitutional law
- immigration and federalism

QUESTIONS PRESENTED

1. Whether Texas Penal Code section 20.05(a)(1)(A) was field preempted by federal law as applied to Persinger's prosecution.
2. Whether Persinger's prosecution under section 20.05(a)(1)(A) was conflict preempted by federal immigration law or federal prosecutorial discretion.
3. Whether section 20.05(a)(1)(A) facially violated the First Amendment.
4. Whether Persinger's as-applied First Amendment challenge was waived for inadequate briefing.

HOLDINGS

1. Persinger's prosecution under Texas Penal Code section 20.05(a)(1)(A) was not field preempted because the statute did not require proof of the passengers' unlawful immigration status and criminalized conduct independent of that status.
2. Persinger's prosecution was not conflict preempted by federal law.
3. Section 20.05(a)(1)(A) does not facially violate the First Amendment because any unconstitutional applications are not substantial in comparison with the statute's constitutional applications.
4. Persinger waived his as-applied First Amendment challenge by failing to provide substantive analysis and record references.

KEY QUOTATIONS

“As to conflict preemption, state anti-smuggling and harboring laws that target non-citizens may be preempted if they conflict with federal immigration law.” (-4)

“Accordingly, for the reasons articulated in Roberts, we overrule Appellant’s First Amendment facial challenge.” (-5)

FACTUAL BACKGROUND

A Department of Public Safety trooper observed a passenger vehicle stop near an area known for smuggling, saw multiple people emerge from brush and enter the vehicle, and later saw six individuals flee after the vehicle stopped. The driver, Justin Michael Persinger, was arrested, and officers found identification cards from Mexico and Honduras in the vehicle. With Persinger's consent, the trooper photographed text messages coordinating the pickup and payment for transporting the individuals.

PROCEDURAL HISTORY

Persinger was indicted in the 365th Judicial District Court of Maverick County for smuggling of persons with intent to obtain a pecuniary benefit. Following a jury trial, he was convicted and sentenced to four years' imprisonment. His motion for new trial was denied by operation of law, and he appealed, asserting field and conflict preemption and a facial First Amendment challenge.

DISPOSITION

affirmed

CASES CITED

- Tex. Mut. Ins. Co. v. PHI Air Med., LLC, 610 S.W.3d 839, 846 (Tex. 2020)
- State v. Flores, 679 S.W.3d 232, 243, 245–47 (Tex. App.—San Antonio 2023, pet. ref'd)
- Ex parte Lo, 424 S.W.3d 10, 14 (Tex. Crim. App. 2013)
- State ex rel. Lykos v. Fine, 330 S.W.3d 904, 910 (Tex. Crim. App. 2011)
- Roberts v. State, No. 04-24-00485-CR, 2026 WL 290378, at *2–9 (Tex. App.—San Antonio Feb. 4, 2026, no pet. h.)
- Kansas v. Garcia, 589 U.S. 191, 208–09, 211 (2020)
- Gutierrez v. State, 721 S.W.3d 639, 655, 657 (Tex. App.—Corpus Christi–Edinburg 2025, pet. ref'd)
- Arizona v. United States, 567 U.S. 387, 399 (2012)
- Wolfe v. State, 509 S.W.3d 325, 342–45 (Tex. Crim. App. 2017)

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