

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Jay Morgan v. The State of Texas

No. 03-24-00519-CR (Tex. App.—Austin Mar. 18, 2026) (mem. op., modified and affirmed) · No. 03-24-00519-CR · Decided March 18, 2026

SUMMARY

The Texas Court of Appeals, Third District, reviews Jay Morgan’s conviction for indecency with a child by sexual contact and the trial court’s denial of his motion for new trial without a hearing. Morgan challenged the sufficiency of the evidence and alleged prosecutorial misconduct involving a post-trial affidavit from a former fiancée. The court modified the judgment to correct a clerical error and affirmed the judgment nunc pro tunc as modified.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| COURT                 | Texas Court of Appeals, Third District, at Austin                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Rosa Lopez Theofanis; Justice Triana; Justice Kelly                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| JURISDICTION          | Texas Court of Appeals, Third District at Austin                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | March 18, 2026                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| DOCKET                | 03-24-00519-CR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Morgan appealed his conviction for indecency with a child by sexual contact, challenging the denial of his amended motion for new trial without an evidentiary hearing and the sufficiency of the evidence. The State also sought correction of a clerical error in the judgment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| STANDARD OF REVIEW    | The denial of a hearing on a motion for new trial is reviewed for abuse of discretion. A hearing is required only when the motion and supporting affidavits raise matters that are not determinable from the record and are reasonable, meaning they could potentially entitle the defendant to relief. Sufficiency of the evidence is reviewed under Jackson v. Virginia, viewing all evidence in the light most favorable to the verdict and asking whether any rational factfinder could have found the essential elements beyond a reasonable doubt. Statutory disclosure error is subject to nonconstitutional harm review under Texas Rule of Appellate Procedure 44.2(b); constitutional false-testimony error is reviewed under Rule 44.2(a). |
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|---------------------------|----------------------------------|
| <b>PRECEDENTIAL VALUE</b> | nonprecedential                  |
| <b>PARTIES</b>            | Jay Morgan v. The State of Texas |

## TOPICS

criminal procedure

appellate procedure

evidence

standard of review

preservation of error

## PRACTICE AREAS

criminal procedure

appellate procedure

evidence

child sexual abuse prosecution

## QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Morgan's amended motion for new trial without an evidentiary hearing.
2. Whether the motion and supporting affidavit raised reasonable, non-record-based grounds potentially entitling Morgan to a new trial.
3. Whether the State's untimely disclosure of Leal's alleged recantation violated Brady v. Maryland or Texas Code of Criminal Procedure article 39.14 and, if so, whether the violation was harmful.
4. Whether the State's alleged violations of Texas Disciplinary Rules of Professional Conduct 3.03 and 3.09 warranted relief.
5. Whether Morgan was denied his Sixth Amendment right to effective cross-examination.
6. Whether Detective Conner's testimony created a materially false impression before the jury.
7. Whether the evidence was legally sufficient to support Morgan's conviction for indecency with a child by sexual contact.
8. Whether the judgment should be modified to correct the designation of who assessed punishment.

## HOLDINGS

1. The trial court's written order denying the motion within the applicable seventy-five-day period sufficiently established presentment, so the motion was timely presented.
2. A trial court does not abuse its discretion merely by ruling on a motion for new trial without receiving evidence at an evidentiary hearing; affidavits attached to the motion are not evidence unless admitted, but they may be considered in determining whether a hearing is warranted.
3. Morgan did not demonstrate a reasonable probability that disclosure of Leal's alleged recantation would have changed the outcome; therefore, the recantation was not material under Brady and did not provide a reasonable basis for a new-trial hearing.
4. The State violated article 39.14(h) by failing to timely disclose Leal's recantation, but the violation was harmless and did not affect Morgan's substantial rights.
5. The court did not decide whether the prosecutors violated disciplinary rules and held that Morgan failed to show actual prejudice or deprivation of a fair trial.

6. Morgan's confrontation rights were not implicated because Leal did not testify and Detective Conner's vague testimony did not introduce the substance of Leal's out-of-court statements or restrict cross-examination.
7. Even assuming Detective Conner's testimony created a false or misleading impression, Morgan failed to show materiality because there was no reasonable likelihood that the testimony affected the jury's judgment.
8. The evidence was legally sufficient for a rational jury to find beyond a reasonable doubt that Morgan caused a child younger than seventeen to engage in sexual contact by touching the child's body with his genitals and with the requisite intent.
9. The judgment was properly modified to reflect that the trial court, rather than the jury, assessed punishment.

#### KEY QUOTATIONS

*“a trial court does not abuse its discretion in overruling a motion for new trial without a hearing unless the motion and supporting affidavits state facts that, if true, would entitle the defendant to a new trial.”* (20)

*“The State’s duty of disclosure under this provision “is much broader than the prosecutor’s duty to disclose as a matter of due process under Brady v. Maryland.””* (26)

*“the restrictions the Confrontation Clause places on ‘the range of admissible hearsay,’ are not called into play”* (34)

*“When reviewing the sufficiency of the evidence to support a conviction, we consider all of the evidence in the light most favorable to the verdict to determine whether, based on that evidence and reasonable inferences therefrom, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.”* (38)

#### FACTUAL BACKGROUND

Morgan was convicted based principally on Emery's testimony that Morgan, when Emery was a child, caused Emery to touch Morgan's penis and placed his penis in Emery's mouth. Emery's accounts were supported in various respects by contemporaneous text messages, journals, later outcry evidence, testimony from family members and investigators, and Morgan's recorded police interview. Morgan's defense theory was that Emery had been induced by Emery's mother, who was involved in a custody dispute with Morgan and had a relationship with a convicted sex offender. After trial, Morgan obtained an affidavit from former fiancée Renee Leal stating that she had lied to investigators about Morgan's possession of a penis cage and sexual role-play, but Leal did not testify at trial.

#### PROCEDURAL HISTORY

A jury convicted Morgan of indecency with a child by sexual contact but failed to reach a unanimous verdict on aggravated sexual assault of a child, resulting in a mistrial on that count. The trial court assessed fifteen years' confinement. Morgan filed an amended motion for new trial based principally on the State's nondisclosure of Renee Leal's alleged recantation; the trial court denied the motion without a hearing. On appeal, the court

overruled Morgan's issues, modified the judgment to reflect that the trial court assessed punishment, and affirmed the judgment nunc pro tunc as modified.

## DISPOSITION

affirmed

## CASES CITED

- Brady v. Maryland, 373 U.S. 83 (1963)
- Strickler v. Greene, 527 U.S. 263 (1999)
- Kyles v. Whitley, 514 U.S. 419 (1995)
- United States v. Bagley, 473 U.S. 667 (1985)
- Diamond v. State, 613 S.W.3d 536 (Tex. Crim. App. 2020)
- Watkins v. State, 619 S.W.3d 265 (Tex. Crim. App. 2021)
- State v. Heath, 696 S.W.3d 677 (Tex. Crim. App. 2024)
- Stredic v. State, 663 S.W.3d 646 (Tex. Crim. App. 2022)
- Corporon v. State, 586 S.W.3d 550 (Tex. App.—Austin 2019, no pet.)
- House v. State, 947 S.W.2d 251 (Tex. Crim. App. 1997)
- Davis v. Alaska, 415 U.S. 308 (1974)
- Delaware v. Fensterer, 474 U.S. 15 (1985)
- Crawford v. Washington, 541 U.S. 36 (2004)
- Ex parte Reed, 670 S.W.3d 689 (Tex. Crim. App. 2023)
- Ex parte Robbins, 360 S.W.3d 446 (Tex. Crim. App. 2011)
- Ex parte Ghahremani, 332 S.W.3d 470 (Tex. Crim. App. 2011)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- Hernandez v. State, 556 S.W.3d 308 (Tex. Crim. App. 2017)
- Musgrove v. State, 960 S.W.2d 74 (Tex. Crim. App. 1998)
- Scaggs v. State, 18 S.W.3d 277 (Tex. App.—Austin 2000, pet. ref'd)
- Bigley v. State, 865 S.W.2d 26 (Tex. Crim. App. 1993)