

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Andrew Alan Brown v. The State of Texas

Brown v. State, No. 03-24-00366-CR (Tex. App.—Austin Nov. 26, 2025) (mem. op.) · No. 03-24-00366-CR ·
Decided November 26, 2025

SUMMARY

The Texas Court of Appeals, Third District, affirmed Andrew Alan Brown’s conviction for continuous sexual abuse of a young child and his sentence of life imprisonment. Brown argued that the trial court improperly limited DNA-related testimony, overruled an objection to the State’s closing argument, and allowed questioning about his post-arrest silence. The opinion excerpt addresses whether excluding testimony about DNA found on a vibrator violated Brown’s constitutional right to present a defense and concludes that it did not.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Rosa Lopez Theofanis; Justices Triana; Crump
JURISDICTION	Texas Court of Appeals, Third District at Austin
DECIDED	November 26, 2025
DOCKET	03-24-00366-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brown appealed his jury conviction for continuous sexual abuse of a young child and life sentence, challenging the exclusion of DNA testimony, the State's closing argument, and cross-examination concerning his post-arrest silence.
STANDARD OF REVIEW	Evidentiary rulings and rulings on objections to improper jury argument are reviewed for abuse of discretion. Constitutional-error harm is reviewed under Texas Rule of Appellate Procedure 44.2(a), while nonconstitutional improper-argument error is reviewed under Rule 44.2(b).
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Andrew Alan Brown v. The State of Texas

TOPICS

suppression of evidence

sixth amendment

prosecutorial misconduct

fifth amendment

harmless error

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether excluding testimony that Sara Brown and unknown males contributed DNA found on vibrator attachments violated Brown's Sixth Amendment right to present a defense or constituted an abuse of discretion under Texas Rule of Evidence 403.
2. Whether the prosecutor's statement contrasting the State's duty to seek justice with the defense's duty to zealously represent its client was improper jury argument and, if so, whether the error was harmful.
3. Whether questioning Brown about his failure to provide his trial account after arrest and Miranda warnings violated the Fifth Amendment, and whether the constitutional error was harmless.

HOLDINGS

1. The trial court did not violate Brown's constitutional right to present a defense and did not abuse its discretion by excluding testimony concerning DNA from Sara Brown and unknown males on the vibrator attachments.
2. The prosecutor's statement contrasting the State's oath to seek justice with the defense's obligation to zealously represent its client was improper because it contrasted the ethical obligations of prosecutors and defense attorneys. The error was harmless under Rule 44.2(b).
3. The State violated Brown's Fifth Amendment rights by questioning him about why he had not previously spoken to law enforcement or prosecutors after his arrest and Miranda warnings. The constitutional error was harmless beyond a reasonable doubt.

KEY QUOTATIONS

"We find Raborn persuasive and conclude that the State's argument in this case was improper." (at 23-24)

"By asking why Brown had not previously spoken to law enforcement or prosecutors and why he was first providing his account at trial, the State was clearly and impermissibly attempting to impeach him with his post-arrest silence, in violation of Brown's constitutional rights." (at 30-31)

"From our review of the record, we conclude beyond a reasonable doubt that the error did not contribute to Brown's conviction." (at 33)

FACTUAL BACKGROUND

Brown was accused of repeatedly sexually abusing Jessica Caldwell, a child who regularly spent time at Brown's home, including during an August 2021 sleepover. Jessica gave detailed accounts of two incidents, including digital touching and anal penetration with a vibrator, and portions of her account were corroborated by testimony, text messages, receipts, clothing, household items, and circumstances observed during the search of Brown's home. DNA testing excluded Brown and Jessica as contributors to DNA found on vibrator attachments,

but the trial court excluded testimony concerning possible DNA from Sara Brown and unknown males. During cross-examination, the State also questioned Brown about not previously providing his exculpatory account to law enforcement or prosecutors after his arrest and Miranda warnings.

PROCEDURAL HISTORY

A jury found Brown guilty of continuous sexual abuse of a young child and assessed life imprisonment. The 207th District Court of Hays County sentenced him accordingly. The court of appeals overruled all three appellate issues and affirmed the judgment of conviction.

DISPOSITION

affirmed

CASES CITED

- Henley v. State, 493 S.W.3d 77, 82-83, 93 (Tex. Crim. App. 2016)
- Dabney v. State, 492 S.W.3d 309, 316 (Tex. Crim. App. 2016)
- Dewalt v. State, 307 S.W.3d 437, 451 (Tex. App.—Austin 2010, pet. ref'd)
- State v. Hill, 499 S.W.3d 853, 865 (Tex. Crim. App. 2016)
- Johnson v. State, 490 S.W.3d 895, 908 (Tex. Crim. App. 2016)
- De La Paz v. State, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009)
- Crane v. Kentucky, 476 U.S. 683, 689-90 (1986)
- Tate v. State, 988 S.W.2d 887, 890 (Tex. App.—Austin 1999, pet. ref'd)
- Ray v. State, 178 S.W.3d 833, 835-36 (Tex. Crim. App. 2005)
- Potier v. State, 68 S.W.3d 657, 663 (Tex. Crim. App. 2002)
- Hammer v. State, 296 S.W.3d 555, 561 (Tex. Crim. App. 2009)
- Castaneda v. State, 694 S.W.3d 13, 24 (Tex. App.—Houston [14th Dist.] 2023, pet. ref'd)
- Bryant v. State, 187 S.W.3d 397, 400 (Tex. Crim. App. 2005)
- Pawlak v. State, 420 S.W.3d 807, 811 (Tex. Crim. App. 2013)
- Valadez v. State, 663 S.W.3d 133, 142 (Tex. Crim. App. 2022)
- Hart v. State, 688 S.W.3d 883, 893 (Tex. Crim. App. 2024)
- Bell v. State, 566 S.W.3d 398, 404-05 (Tex. App.—Houston [14th Dist.] 2018, no pet.)
- Cockrell v. State, 933 S.W.2d 73, 89 (Tex. Crim. App. 1996)
- Garcia v. State, 126 S.W.3d 921, 924 (Tex. Crim. App. 2004)
- Milton v. State, 572 S.W.3d 234, 239 (Tex. Crim. App. 2019)
- Fuentes v. State, 664 S.W.2d 333, 335 (Tex. Crim. App. 1984)
- Orona v. State, 791 S.W.2d 125, 128 (Tex. Crim. App. 1990)
- Mosley v. State, 983 S.W.2d 249, 258-60 (Tex. Crim. App. 1998)
- Wilson v. State, 938 S.W.2d 57, 58-60 (Tex. Crim. App. 1996)

- Raborn v. State, No. 05-10-00685-CR, 2011 WL 653776, at *2-3 (Tex. App.—Dallas Feb. 24, 2011, no pet.) (mem. op., not designated for publication)
- Jacobson v. State, 398 S.W.3d 195, 204 (Tex. Crim. App. 2013)
- Hallman v. State, No. PD-0332-22, 2025 WL 1812902, at *5 (Tex. Crim. App. July 2, 2025)
- Malloy v. Hogan, 378 U.S. 1, 8 (1964)
- Ramos v. State, 245 S.W.3d 410, 418 (Tex. Crim. App. 2008)
- Dickerson v. United States, 530 U.S. 428, 438-39 (2000)
- Miranda v. Arizona, 384 U.S. 436, 444 (1966)
- Griffith v. State, 55 S.W.3d 598, 604-05 (Tex. Crim. App. 2001)
- Hampton v. State, 121 S.W.3d 778, 782, 784 (Tex. App.—Austin 2003, pet. ref'd)
- Dinkins v. State, 894 S.W.2d 330, 356-57 (Tex. Crim. App. 1995)
- Sanchez v. State, 707 S.W.2d 575, 580 (Tex. Crim. App. 1986)
- United States v. Hale, 422 U.S. 171, 182 (1975) (White, J., concurring)
- Waldo v. State, 746 S.W.2d 750, 754-55 (Tex. Crim. App. 1988)