

ELEVENTH COURT OF APPEALS OF TEXAS

Johnathan Irvin McKissick v. The State of Texas

McKissick v. State · No. 11-24-00022-CR · Decided February 20, 2026

SUMMARY

The Eleventh Court of Appeals of Texas affirmed Johnathan Irvin McKissick’s conviction for first-degree felony injury to a child and ninety-nine-year sentence. The court rejected challenges based on variances between the victim’s name and the manner and means alleged in the reindictment and the evidence presented at trial. The court also held that McKissick waived his Article 39.14 discovery claim and that a postconviction habeas proceeding was the proper vehicle for addressing the undisclosed video.

CASE DETAILS

COURT	Eleventh Court of Appeals of Texas
WRITING FOR THE COURT	John M. Bailey, Chief Justice; Trotter, Justice; Williams, Justice
JURISDICTION	Eleventh Court of Appeals of Texas
DECIDED	February 20, 2026
DOCKET	11-24-00022-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	McKissick appealed his jury conviction for first-degree felony injury to a child, raising challenges to the sufficiency of the evidence based on alleged variances and asserting a discovery violation under Article 39.14 of the Texas Code of Criminal Procedure.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed under Jackson v. Virginia by considering all the evidence in the light most favorable to the verdict and determining whether any rational trier of fact could have found the offense's elements beyond a reasonable doubt. The court measures sufficiency against a hypothetically correct jury charge, defers to the jury's credibility and weight determinations, and presumes that conflicting inferences were resolved in favor of the verdict. Whether to permit supplementation of the appellate record and the admissibility or consideration of materials outside the trial-court record are reviewed under applicable appellate-record principles.

PRECEDENTIAL VALUE	Unpublished memorandum opinion; not designated for publication under Texas Rule of Appellate Procedure 47.2(b).
PARTIES	Johnathan Irvin McKissick v. The State of Texas

TOPICS

criminal procedure appellate procedure evidence post-conviction relief

PRACTICE AREAS

criminal law criminal procedure appellate practice

QUESTIONS PRESENTED

1. Whether the evidence was insufficient because the victim's name in the reindictment differed from the victim's name as proved at trial and created a material variance.
2. Whether the evidence was insufficient because the State failed to prove the specific manner and means alleged in the reindictment.
3. Whether the State violated Article 39.14 of the Texas Code of Criminal Procedure by disclosing a silent video after trial and whether the appellate court could consider that evidence.
4. Whether the appellate record should be supplemented with the postjudgment video and related correspondence.

HOLDINGS

1. The variance was immaterial because the trial record established that the child proved at trial was the same child identified in the reindictment, and the variance did not expose Appellant to a subsequent prosecution for the same offense or otherwise prejudice his substantial rights.
2. Any variance between the manner and means alleged and the proof was immaterial because injury to a child is a result-oriented offense, and the precise act causing the serious bodily injury is not the focus or gravamen of the offense.
3. The Article 39.14 complaint was waived, and a postconviction habeas proceeding was the proper mechanism for addressing a disclosure violation involving evidence that did not come before the trial court. The appellate court therefore declined to consider the supplemental materials and overruled the motion to supplement the record.

KEY QUOTATIONS

“Only a ‘material’ variance, one that prejudices a defendant’s substantial rights, will render the evidence insufficient.” (6)

“What caused the victim’s injury is not the focus or gravamen of this offense. . . . ‘The precise act or nature of conduct in this result-oriented offense is inconsequential.’” (10)

“We agree that a postconviction habeas proceeding is the correct avenue to address the complaint presented by Appellant in his third issue.” (14)

FACTUAL BACKGROUND

McKissick was in a relationship with the mother of A.N., a twenty-one-month-old child. Surveillance footage showed the child appearing able to hold his head up when arriving at a hotel with McKissick and later appearing unable to hold his head up after McKissick left the room with him. The child subsequently exhibited vomiting, bruising, loss of motor control, and other serious symptoms; medical evidence showed a traumatic brain injury and extensive lasting impairments. McKissick was charged with causing the child's serious bodily injury, and the jury convicted him after he argued that he did not cause the injuries.

PROCEDURAL HISTORY

A jury convicted Appellant of intentionally and knowingly causing serious bodily injury to a child younger than fourteen years of age and assessed punishment at ninety-nine years' confinement. Appellant timely filed a motion for new trial, which was overruled by operation of law. The Eleventh Court of Appeals affirmed the trial court's judgment and overruled Appellant's motion to supplement the appellate record.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 319, 326 (1979)
- Brooks v. State, 323 S.W.3d 893, 899, 912 (Tex. Crim. App. 2010)
- Polk v. State, 337 S.W.3d 286, 288-89 (Tex. App.—Eastland 2010, pet. ref'd)
- Isassi v. State, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010)
- Winfrey v. State, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013)
- Clayton v. State, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007)
- Malik v. State, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)
- Delarosa v. State, 677 S.W.3d 668, 680 (Tex. Crim. App. 2023)
- Gollihar v. State, 46 S.W.3d 243, 246, 257-58 (Tex. Crim. App. 2001)
- Ramjattansingh v. State, 548 S.W.3d 540, 547 & n.24 (Tex. Crim. App. 2018)
- Byrd v. State, 336 S.W.3d 242, 244, 246-47 (Tex. Crim. App. 2011)
- Fuller v. State, 73 S.W.3d 250, 251, 253-54 (Tex. Crim. App. 2002)
- Santana v. State, 59 S.W.3d 187, 195-96 (Tex. Crim. App. 2001)
- Alvarado v. State, 704 S.W.2d 36, 39 (Tex. Crim. App. 1985)
- Johnson v. State, 364 S.W.3d 292, 296, 298 (Tex. Crim. App. 2012)
- Landrian v. State, 268 S.W.3d 532, 533, 537 (Tex. Crim. App. 2008)
- Stuhler v. State, 218 S.W.3d 706, 717 (Tex. Crim. App. 2007)

- Rodriguez v. State, 630 S.W.3d 522, 524-25 (Tex. App.—Waco 2021, no pet.)
- Foyt v. State, 602 S.W.3d 23, 49 (Tex. App.—Houston [14th Dist.] 2020, pet. ref'd)
- Glover v. State, 496 S.W.3d 812, 816 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd)
- Hucabee v. State, No. 02-24-00058-CR, 2025 WL 353056, at *6 n.7 (Tex. App.—Fort Worth Jan. 30, 2025, pet. ref'd) (mem. op., not designated for publication)
- Martinez v. State, No. 02-23-00032-CR, 2023 WL 7852122, at *5 (Tex. App.—Fort Worth Nov. 16, 2023, pet. ref'd) (mem. op., not designated for publication)
- Amador v. State, 221 S.W.3d 666, 677 (Tex. Crim. App. 2007)
- Whitehead v. State, 130 S.W.3d 866, 872 (Tex. Crim. App. 2004)
- Thompson v. State, 612 S.W.2d 925, 928 (Tex. Crim. App. 1981)

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