

COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS,
CORPUS CHRISTI–EDINBURG

Zachary Jabe Riley v. the State of Texas

No. 13-23-00359-CR · No. 13-23-00359-CR · Decided March 16, 2026

SUMMARY

The Texas Thirteenth Court of Appeals reviews Zachary Jabe Riley’s convictions for two counts of unlawful interception of a wire, oral, or electronic communication based on his accessing his former wife’s voicemail. Riley challenged the prosecutor’s appointment, the constitutionality and vagueness of Texas Penal Code section 16.02, the sufficiency of the evidence, and several trial and new-trial rulings. The court affirmed the convictions as modified, rejecting the jurisdictional and constitutional arguments presented in the excerpt.

CASE DETAILS

COURT	Court of Appeals for the Thirteenth District of Texas, Corpus Christi–Edinburg
WRITING FOR THE COURT	Justice Clarissa Silva; Justice Silva; Justice Cron; Justice Fonseca
JURISDICTION	Texas Court of Appeals, Thirteenth District, Corpus Christi–Edinburg
DECIDED	March 16, 2026
DOCKET	13-23-00359-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Riley appealed judgments convicting him, after a jury trial, of two counts of unlawful interception of a wire, oral, or electronic communication. The court of appeals rejected his jurisdictional, constitutional, evidentiary, sufficiency, subpoena, and new-trial claims and affirmed the judgments as modified.
STANDARD OF REVIEW	Jurisdictional issues and statutory constitutionality were reviewed de novo. The Article 38.05 claim was reviewed de novo, with nonconstitutional harm under Texas Rule of Appellate Procedure 44.2(b). The denial or quashing of subpoenas was reviewed for abuse of discretion. Legal sufficiency was reviewed under Jackson v. Virginia, viewing all evidence in the light most favorable to the verdict and asking whether a rational jury could find each essential element beyond a reasonable doubt.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Zachary Jabe Riley v. The State of Texas

TOPICS

criminal procedure statutory interpretation void for vagueness suppression of evidence
appellate procedure

PRACTICE AREAS

criminal law criminal procedure constitutional law evidence appellate practice

QUESTIONS PRESENTED

1. Whether the trial court lacked subject-matter jurisdiction because the appointment of Texas Attorney General personnel as district attorney pro tem violated the Texas Constitution's separation-of-powers doctrine.
2. Whether Texas Penal Code section 16.02 was facially or as applied unconstitutionally vague.
3. Whether the trial court violated Texas Code of Criminal Procedure article 38.05 by commenting on the evidence or conveying an opinion of the case to the jury.
4. Whether the evidence was legally sufficient to support Riley's convictions for unlawful interception.
5. Whether the trial court improperly quashed a subpoena duces tecum and refused to permit testimony in support of Riley's motion for new trial.
6. Whether Riley was denied due process at the motion-for-new-trial hearing.
7. Whether the judgments contained an error concerning whether the sentences would run concurrently or consecutively.

HOLDINGS

1. The appointment did not violate the separation-of-powers doctrine and did not deprive the trial court of subject-matter jurisdiction because the elected district attorney sought recusal and consented to the appointment under former Texas Code of Criminal Procedure article 2.07; the appointed attorney pro tem acted with the elected district attorney's authority.
2. Section 16.02 is not facially void for vagueness because, read together with the definitions in Texas Code of Criminal Procedure article 18A.001, it gives persons of ordinary intelligence a reasonable opportunity to know what conduct is prohibited and does not authorize arbitrary enforcement.
3. Riley failed to preserve his as-applied constitutional challenge because he did not present that challenge to the trial court.
4. The record did not demonstrate that the judge who presided over the second trial violated article 38.05 by commenting on the evidence or advising the prosecution to correct an evidentiary error.

5. The evidence was legally sufficient to support both convictions under Texas Penal Code section 16.02(b) (1).
6. The trial court did not abuse its discretion or deny due process by quashing the subpoena duces tecum seeking the county judge's cell-phone records because Riley failed to make a plausible showing that the records contained material and favorable evidence.
7. The judgments were properly modified to state that the two sentences run concurrently because the trial court was silent when pronouncing sentence about cumulation.

KEY QUOTATIONS

“The separation of powers doctrine requires that ‘any attempt by one department of government to interfere with the powers of another is null and void.’” (at 7)

“The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not permit arbitrary and discriminatory enforcement.” (at 13)

“After reviewing the evidence in the light most favorable to the verdicts, we conclude that appellant’s convictions under Penal Code Section 16.02 are supported by legally sufficient evidence.” (at 25)

FACTUAL BACKGROUND

Riley's former wife, Chanda Riley, used four-digit voicemail passcodes on two phones and testified that she never gave Riley permission to access her voicemail or gave him the passcodes. After receiving voicemails from dating services, Chanda received text messages from Riley referring to those services and appointments. In a recorded telephone call, Riley admitted that he had checked her voicemails and knew her passcode; after Chanda changed the passcode, she testified that the related incidents stopped.

PROCEDURAL HISTORY

A superseding indictment charged Riley with two second-degree-felony counts under Texas Penal Code section 16.02 for allegedly accessing his former wife's voicemails without her knowledge or consent. The first trial ended in a mistrial after a hung jury. Riley was retried, convicted on both counts, and sentenced to two years' imprisonment on each count, suspended in favor of four years' community supervision. The trial court denied Riley's motion for new trial, and the court of appeals affirmed while correcting the judgments to state that the sentences run concurrently.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No remand was ordered. The judgments of conviction for Counts One and Two were modified to state: 'This Sentence Shall Run: Concurrently.'

CASES CITED

- State v. Dunbar, 297 S.W.3d 777, 780 (Tex. Crim. App. 2009)
- Ex parte Moss, 446 S.W.3d 786, 788-89 (Tex. Crim. App. 2014)
- State v. Stephens, 663 S.W.3d 45, 47-57 (Tex. Crim. App. 2021)
- Armadillo Bail Bonds v. State, 802 S.W.2d 237, 239 (Tex. Crim. App. 1990)
- Meshell v. State, 739 S.W.2d 246, 252 (Tex. Crim. App. 1987)
- Financial Commission of Texas v. Norwood, 418 S.W.3d 566, 570 (Tex. 2014)
- Wood v. State, 693 S.W.3d 308, 326 (Tex. Crim. App. 2024)
- Ex parte Sutton, No. 12-24-00162-CR, 2024 WL 3532944, at *4 (Tex. App.—Tyler July 24, 2024, no pet.)
- Ex parte Lo, 424 S.W.3d 10, 14 (Tex. Crim. App. 2013)
- Gutierrez v. State, 721 S.W.3d 639, 648 (Tex. App.—Corpus Christi–Edinburg 2025, pet. ref'd)
- Estes v. State, 546 S.W.3d 691, 697-98 (Tex. Crim. App. 2018)
- United States v. Salerno, 481 U.S. 739, 745 (1987)
- State ex rel. Lykos v. Fine, 330 S.W.3d 904, 908, 910 (Tex. Crim. App. 2011)
- State v. Holcombe, 187 S.W.3d 496, 499 (Tex. Crim. App. 2006)
- Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972)
- Kolender v. Lawson, 461 U.S. 352, 357-58 (1983)
- Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)
- Mills v. Fletcher, 229 S.W.3d 765, 770 (Tex. App.—San Antonio 2007, no pet.)
- Zaborac v. Texas Department of Public Safety, 168 S.W.3d 222, 225 (Tex. App.—Fort Worth 2005, no pet.)
- Ochoa v. State, 355 S.W.3d 48, 55 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd)
- Cooper v. State, 673 S.W.3d 724, 749 (Tex. App.—Fort Worth 2023, no pet.)
- Reynolds v. State, 423 S.W.3d 377, 383 (Tex. Crim. App. 2014)
- Karenev v. State, 281 S.W.3d 428, 434 (Tex. Crim. App. 2009)
- Flores v. State, 245 S.W.3d 432, 437 n.14 (Tex. Crim. App. 2008)
- Ex parte Ellis, 309 S.W.3d 71, 79 (Tex. Crim. App. 2010)
- State v. Rosseau, 398 S.W.3d 769, 779 (Tex. App.—San Antonio 2011), aff'd, 396 S.W.3d 550 (Tex. Crim. App. 2013)
- Sheldon v. State, 100 S.W.3d 497, 505 (Tex. App.—Austin 2003, pet. ref'd) (op. on reh'g)
- Lovill v. State, 319 S.W.3d 687, 691-92 (Tex. Crim. App. 2009)
- Proenza v. State, 541 S.W.3d 786, 798-801 (Tex. Crim. App. 2017)
- Costilla v. State, 650 S.W.3d 201, 218 (Tex. App.—Houston [1st Dist.] 2021, no pet.)
- Simon v. State, 203 S.W.3d 581, 590-92 (Tex. App.—Houston [14th Dist.] 2006, no pet.)
- Laster v. State, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009)
- Stahmann v. State, 602 S.W.3d 573, 577 (Tex. Crim. App. 2020)
- Murray v. State, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015)
- Anderson v. State, 416 S.W.3d 884, 888 (Tex. Crim. App. 2013)

- Hooper v. State, 214 S.W.3d 9, 16 (Tex. Crim. App. 2007)
- Clayton v. State, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007)
- Villarreal v. State, 286 S.W.3d 321, 327 (Tex. Crim. App. 2009)
- Malik v. State, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)
- Ramjattansingh v. State, 548 S.W.3d 540, 546 (Tex. Crim. App. 2018)
- Curry v. State, 30 S.W.3d 394, 404 (Tex. Crim. App. 2000)
- Guevara v. State, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004)
- Lasiter v. State, 283 S.W.3d 909, 920 (Tex. App.—Beaumont 2009, pet. ref'd)
- Torres v. State, 424 S.W.3d 245, 261-62 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd)
- United States v. Valenzuela-Bernal, 458 U.S. 858, 874 (1982)
- Hampton v. State, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002)
- Freeman v. State, 413 S.W.3d 198, 205-06 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd)
- Emenhiser v. State, 196 S.W.3d 915, 921 (Tex. App.—Fort Worth 2006, pet. ref'd)
- Zhang v. Capital Plastic & Bags, Inc., 587 S.W.3d 82, 90 (Tex. App.—Houston [14th Dist.] 2019, pet. denied)
- Ex parte Hernandez, 758 S.W.2d 594, 596 (Tex. Crim. App. 1988) (en banc)
- Bigley v. State, 865 S.W.2d 26, 27 (Tex. Crim. App. 1993)