

TIBA's Case of the Week

Court of Criminal Appeals

Case Name: [Shedrick Joseph Baptiste v. The State of Texas](#)

- **OFFENSE:** Indecency with a Child
- **COUNTY:** Harris
- **COURT OF APPEALS:** Houston [1st] 2024
- **C/A CITATION:** Unpublished
- **C/A RESULT:** Conviction Affirmed
- **CCA. CASE No.** PD-0449-25 **DATE OF OPINION:** June 4, 2026
- **DISPOSITION:** Court of Appeals Affirmed
- **OPINION:** [Judge Lee Finley](#) **VOTE:** 6-1-2
- **TRIAL COURT:** 228th D/C; Hon. Frank Aguilar
- **LAWYERS:** [Ted Wood](#) (Defense); [Shawna Reagin](#) (State)

[§] 236 Jury Selection Procedures / Jury Challenges / Preservation of Error: An associate judge, Judge Kimberly McTorrey, presided over the voir dire portion of Appellant's trial without objection from the defense. During those proceedings, Judge McTorrey denied two defense challenges made pursuant to [Batson v. Kentucky](#), 476 U.S. 79 (1986). After voir dire, the defense moved to supplement the record with some exhibits in support of his [Batson](#) challenges, but Judge McTorrey denied the request and advised Appellant to take up the matter with Judge Frank Aguilar, the elected district judge. Judge Aguilar ruled on the defense request to supplement the record. He also addressed a problematic juror, whom the parties agreed to excuse and replace with an alternate. Judge Aguilar then presided over the remainder of Appellant's trial and orally pronounced sentence. On appeal, Appellant argued that his conviction was void because Judge McTorrey presided over voir dire. Finding that "the Texas Constitution does not bar associate judges from conducting voir dire in criminal cases," the Court of Appeals rejected Appellant's contention and affirmed Appellant's conviction and sentence in an unpublished opinion in May of 2025.

Holding: The question before the Court is whether the Texas Constitution authorizes an associate judge to preside over voir dire proceedings. *** However, we must first address whether Appellant preserved his complaints for appellate review. [Ford v. State](#), 305 S.W.3d 530 (Tex.Cr.App. 2009)[see [§](#), [Vol. 17, No. 42](#); 10/21/2009]. *** While the question before the Court

is not one of “preservation,” the State asserts that Appellant impermissibly “challeng[es] two statutes as facially unconstitutional for the first time on appeal, contrary to this Court’s holding in *Karenev v. State*, 281 S.W.3d 428 (Tex.Cr.App. 2009)(see ¶¶, [Vol. 17, No. 16](#); 04/27/2009). Appellant argues that his judgment is void. We note that a void judgment may be challenged for the first time on appeal. See *Nix v. State*, 65 S.W.3d 664 (Tex.Cr.App. 2001)[see ¶¶, [Vol. 9, No. 26](#); 07/02/2001]. *** Appellant, for his part, makes no attempt to meet any of the four situations laid out in *Nix* that would render his judgment of conviction void. Instead, Appellant relies on the civil rule we described in *Nix*: “a judgment is void . . . when there was . . . no capacity to act as a court” (quoting *Browning v. Placke*, 698 S.W.2d 362 (Tex. 1985)). This factual scenario - where Appellant alleges an unauthorized individual presided over only a portion of Appellant’s trial proceedings (and that portion was subject to review by the elected district judge) -- does not come close to the void judgment situations that are delineated in *Nix*. Consequently, because Appellant cannot show how his case fits within one of the four situations in *Nix*, Appellant’s judgment of conviction is not void. *** Appellant concedes that he is challenging the constitutionality of Sections 54A.006(d) and 54A.008(a)(15) of the Texas Government Code. In *Karenev*, this Court held that “a facial constitutional challenge to a statute does not implicate an absolute requirement or prohibition that is exempt from ordinary preservation-of-error requirements, and, therefore, such a challenge may not be presented for the first time on direct appeal.” *Ex parte Beck*, 541 S.W.3d 846 (Tex.Cr.App. 2017)[see ¶¶, [Vol. 25, No. 45](#); 11/27/2017]. In other words, a facial challenge to the constitutionality of a statute “falls within the third category” of [*Marin v. State*, 851 S.W.2d 275 (Tex.Cr.App. 1993)] rights that are subject to forfeiture. This is so because statutes “are presumed to be constitutional unless it is determined otherwise,” and “[t]he State and the trial court should not be required to anticipate that a statute may later be held to be unconstitutional.” *** Contrast that with *Smith v. State*, 463 S.W.3d 890 (Tex.Cr.App. 2015)[see ¶¶, [Vol. 23, No. 26](#); 06/29/2015]. In *Smith*, we allowed a defendant to raise a facial constitutionality challenge for the first time on appeal despite the lack of a trial court objection because the statute at issue had already been declared facially unconstitutional. We distinguished *Karenev*, reasoning that *Smith* was “seeking relief for a conviction of a non-crime under a statute that has already been held to be invalid,” unlike in *Karenev* where Karenev was challenging the constitutionality of a statute that had not yet been declared void. *** Appellant argues that Karenev does not apply and points to our decision in *Ex parte McCain*, 67 S.W.3d 204 (Tex.Cr.App. 2002)[see ¶¶, [Vol. 10, No. 2](#); 01/14/2002], where we defined a “void” conviction as one “in which the trial court lacked jurisdiction over the person or subject matter or in which the trial judge lacked qualification to act in any manner.” *** But *McCain* and the other cases Appellant cites, see, e.g., *Ex parte Miller*, 696 S.W.2d 908 (Tex.Cr.App. 1985), are inapposite. *McCain* did not deal with a judge’s qualifications, and in the other cases relied upon by Appellant, the judge was constitutionally disqualified from presiding over the defendant’s case. *** Furthermore, to the extent that Appellant relies on *Miller*, that case was overruled in *Ex parte Richardson*, 201 S.W.3d 712 (Tex.Cr.App. 2006)[see ¶¶, [Vol. 14, No. 37](#); 09/18/2006]. Appellant also cites *Davis v. State*, 956 S.W.2d 555 (Tex.Cr.App. 1997)[see ¶¶, [Vol. 5, No. 41](#); 10/20/1997], for the proposition that

“it is incorrect to suggest that the authority of the judge presiding over the case has no bearing on the validity of the proceedings.” *** But this Court in [Davis](#) rejected precisely the same argument that Appellant attempts to make in this case. *** In this case, Appellant does not challenge either (1) the district judge’s authority over the case or (2) the associate judge’s qualifications to be an associate judge, nor does Appellant contend that the associate judge performed an act unauthorized under the Government Code. Appellant simply challenges the constitutionality of two statutes for the first time on appeal and attempts to backdoor his challenges as “void judgment” claims in order to sidestep [Karenev](#). We reject Appellant’s attempts to do so.

[Concurring / Dissenting Opinions]: [Judge Gina Parker](#) concurred. Responding to the dissent’s “various misunderstandings of the law of procedural default,” she argued that “the dissent misconstrues [Karenev v. State](#), 281 S.W.3d 428 (Tex.Cr.App. 2009)(see [§8](#), [Vol. 17, No. 16](#); 04/27/2009) misunderstands Texas law on procedural default, misunderstands pretrial habeas, and misconstrues the federal magistrate cases.” She also argued that, with or without [Karenev](#), “Appellant’s claim here was forfeitable and was in fact forfeited by Appellant’s failure to object.” **Judge Kevin Yeary** concurred without note. [Presiding Judge David Schenck](#) filed a dissenting opinion in which Judge Scott Walker joined in part. Judge Schenk disagreed with the majority because he agrees “with the United States Supreme Court that jury selection is a critical stage of a felony proceeding and selecting a jury implicates the core judicial power and must be conducted by a judge authorized to exercise that power. I also agree that failure to obtain the defendant’s consent or to allow for objection in the statute purporting to authorize the assignment results in structural error within the reach of this Court’s decision in [Marin v. State](#), 851 S.W.2d 275 (Tex.Cr.App. 1993).” He also argued that the Court “should not ignore our Constitution’s assignment of judicial power or its restrictions on its reassignment to others.”

Sidebars

([David A. Schulman](#)) This is a third category of [Marin](#) right. Thus, by failing to object to having the Associate Judge preside over voir dire --- either at the time the case was referred to her **OR** when the parties litigated the [Batson](#) challenges in front of the District Court. I would also look at this case a different way than the Court does here. I’ve practiced in several counties in which associate judges or magistrates preside over proceedings which are normally heard by a District Judge. Some were on specific referrals to the associate judge while some were based on county policies. In all of those cases, what the associate judge did was subject to the ultimate decision of the District Judge . . . which is kind of what happened here. It appears that Appellant has no complaint about anything the associate judge did, other than her rulings on the [Batson](#) questions, which he ultimately was able to get rulings on by the District Judge. Thus, I see a problem with his initial (per the Court of Appeals) and fundamental complaint, that the “conviction is void because voir dire was

conducted by an associate judge.” In my mind, the associate judge merely assisted the District Judge during jury selection, AND, this is one of those rare occasions in which the Court **should** have given us a “belt and suspenders” opinion, finding both that the complaint wasn’t preserved **and** that, even if preserved, would have been unsuccessful.

[\(John G. Jasuta\)](#) While I respect the PJ’s thoughts regarding use of a magistrate in jury selection, I disagree because attacks on judicial qualifications have always been pre-trial, usually through quo warranto, and the failure to utilize that procedure to dispute the presiding judge’s qualification has always been treated as a waiver. Why should an attack on this judicial officer's authority to act be treated any differently? It is, and should be, a pre-trial matter."