

No. 25-1195

IN THE
Supreme Court of the United States

JOHN DAVID TRICE,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the
Court of Appeals of Texas, Eleventh District

RESPONDENT'S APPENDICES

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of Texas

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Act of May 21, 2007, 80th Leg., R.S., ch. 593, § 1.17,
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Resp. App. A

Act of May 21, 2007, 80th Leg., R.S., ch. 593, § 1.17,
Tex. Gen. Laws 593

2007 TEX. PENAL CODE § 21.02

2007 TEXAS CODE ARCHIVE

LexisNexis ® Texas Annotated Statutes > PENAL
CODE > TITLE 5. OFFENSES AGAINST THE
PERSON > CHAPTER 21. SEXUAL OFFENSES

**§ 21.02. Continuous Sexual Abuse of Young Child
or Children**

- (a) In this section, "child" has the meaning assigned by Section 22.011(c).
- (b) A person commits an offense if:
 - (1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and
 - (2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age.
- (c) For purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of the following penal laws:
 - (1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;
 - (2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the

- breast of a child;
 - (3) sexual assault under Section 22.011;
 - (4) aggravated sexual assault under Section 22.021;
 - (5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)--(4); and
 - (6) sexual performance by a child under Section 43.25.
- (d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.
- (e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):
- (1) is charged in the alternative;
 - (2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or
 - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).
- (f) A defendant may not be charged with more than

- one count under Subsection (b) if all of the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.
- (g) It is an affirmative defense to prosecution under this section that the actor:
- (1) was not more than five years older than:
 - (A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or
 - (B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;
 - (2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and
 - (3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:
 - (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
 - (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).
- (h) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or

for any term of not more than 99 years or less than 25 years.

History

Enacted by Acts 2007, 80th Leg., ch. 593 (H.B. 8), § 1.17, effective September 1, 2007.

LexisNexis® Texas Annotated Statutes

6a

Resp. App. B
Indictment

CHARGE:

COUNT ONE: CONTINUOUS SEXUAL ABUSE OF CHILD
 § 21.02(b), (h) Texas Penal Code
COUNT TWO: INDECENCY WITH A CHILD (BY CONTACT)
COUNT THREE: INDECENCY WITH A CHILD (BY CONTACT)
COUNT FOUR: INDECENCY WITH A CHILD (BY CONTACT)
COUNT FIVE: INDECENCY WITH A CHILD (BY CONTACT)
 § 21.11(a)(1), (d) Texas Penal Code
COUNT SIX: SEXUAL ASSAULT OF A CHILD
 § 22.011(a)(2)(C), (f) Texas Penal Code
COUNT SEVEN: SEXUAL PERFORMANCE BY A CHILD
 § 43.25 (b), (c) Texas Penal Code

Agency: Texas Rangers

TRN: Count One: 9144651325 - A001 Offense Level F1
 Count Two: 9144651325 - A002 Offense Level F2
 Count Three: 9144651325 - A003 Offense Level F2
 Count Four: 9144651325 - A004 Offense Level F2
 Count Five: 9144651325 - A005 Offense Level F2
 Count Six: 9144651325 - A006 Offense Level F2
 Count Seven: 9144651325 - A007 Offense Level F2

CAUSE NO. 23CRDC77

STATE OF TEXAS § IN THE DISTRICT COURT

 VS § 266th JUDICIAL DISTRICT

 JOHN DAVID TRICE § ERATH COUNTY, TEXAS

GRAND JURY INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The GRAND JURY, for the County of Erath, State of Texas, duly selected, empaneled, sworn, charged, and organized as such in the January Term, A.D, 2023, of the 266th Judicial District Court for said County, upon their oaths present in and to said Court at said term that before the presentment of this indictment, in Erath

County, Texas, that:

COUNT ONE

JOHN DAVID TRICE, hereinafter styled Defendant, did then and there, during a period that was 30 or more days in duration, namely from on or about the 15th day of May, 2010 through the 15th day of August 2010, when the Defendant was 17 years of age or older, commit two or more acts of sexual abuse against a child younger than 14 years of age, namely, the Defendant did then and there, with the intent to arouse or gratify the sexual desire of the Defendant, engage in sexual contact with Child Victim #2 (a pseudonym) hereinafter styled the Complainant, by touching the genitals of the Complainant;

And further, from on or about the 15th day of May, 2010 through the 15th day of August, 2010, in Erath County, Texas, the Defendant did then and there, with the intent to arouse or gratify the sexual desire of the Defendant, engage in sexual contact with Child Victim #2 (a pseudonym) hereinafter styled the Complainant, by touching the genitals of the Complainant;

And further, from on or about the 15th day of May, 2010 through the 15th day of August, 2010, in Erath County, Texas, the Defendant did then and there, with the intent to arouse or gratify the sexual desire of the Defendant, engage in sexual contact with Child Victim #2 (a pseudonym) hereinafter styled the Complainant, by causing the Complainant to touch the genitals of the Defendant.

COUNT TWO

JOHN DAVID TRICE, on or about the 15th day of March, 2007, did then and there, with the intent to arouse or gratify the sexual desire of the Defendant, engage in sexual contact with Child Victim #1, a pseudonym, hereinafter styled the Complainant, by touching the genitals of the Complainant, a child younger than 17 years of age.

COUNT THREE

JOHN DAVID TRICE, on or about the 1st day of June, 2007, did then and there, with the intent to arouse or gratify the sexual desire

of the Defendant. engage in sexual contact with Child Victim #1, a pseudonym, hereinafter styled the Complainant, by touching the genitals of the Complainant, a child younger than 17 years of age.

COUNT FOUR

JOHN DAVID TRICE, on or about the 15th day of August, 2007, did then and there, with the intent to arouse or gratify the sexual desire of the Defendant. engage in sexual contact with Child Victim #1, a pseudonym, hereinafter styled the Complainant, by touching the genitals of the Complainant, a child younger than 17 years of age.

COUNT FIVE

JOHN DAVID TRICE, on or about the 20th day of May, 2017, did then and there, with the intent to arouse or gratify the sexual desire of the Defendant. engage in sexual contact with Child Victim #3, a pseudonym, hereinafter styled the Complainant, by touching the genitals of the Complainant, a child younger than 17 years of age.

COUNT SIX

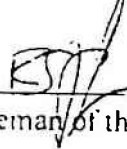
JOHN DAVID TRICE, on or about the 20th day of May, 2017, did then and there intentionally or knowingly cause the penetration of the mouth of the Defendant by the sexual organ of Child Victim #3, a pseudonym, a child who was then and there younger than 17 years of age.

COUNT SEVEN

JOHN DAVID TRICE, on or about the 5th day of January, 2017, did then and there intentionally or knowingly induce a child who was then and there younger than 18 years of age, namely, Child Victim #5, to engage in sexual conduct, namely, touching the genitals of the Defendant, and the Defendant knew the character and content of the sexual conduct or sexual performance.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

FILED FOR RECORD


Foreman of the Grand Jury

10a

at_____O'Clock

JUN 14 2023

Resp. App. C
Judgment of Conviction

THE STATE OF TEXAS	§	IN THE 266TH DISTRICT
	§	
V.	§	COURT
	§	
JOHN DAVID TRICE	§	ERATH COUNTY, TEXAS
	§	
STATE ID NO. TX 19946913	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. JASON C. CASHON	Date Sentence Imposed:	01/26/2024
Attorney for State:	M. ALAN NASH #24027680 JETT A. SMITH #24075543 JOHN TERRILL #19792500	Attorney for Defendant:	DAVID STOKES-(R) #19267950

Offense for which Defendant Convicted:
COUNT ONE: CONTINUOUS SEXUAL ABUSE OF A CHILD
COUNT TWO: INDECENCY W/CHILD (BY SEXUAL CONTACT)
COUNT THREE: INDECENCY W/CHILD (BY SEXUAL CONTACT)
COUNT FOUR: INDECENCY W/CHILD (BY SEXUAL CONTACT)
COUNT FIVE: INDECENCY W/CHILD (BY SEXUAL CONTACT)
COUNT SIX: SEXUAL ASSAULT OF A CHILD
COUNT SEVEN: SEXUAL PERFORMANCE BY A CHILD (EMPLOY INDUCE/AUTHORIZE)

<u>Charging Instrument:</u>	<u>Statute for Offense:</u>
	COUNT ONE: §21.02(b), (h) Texas Penal Code
	COUNT TWO: §21.11 (a)(1), (d) Texas Penal Code
	COUNT THREE: §21.11 (a)(1), (d) Texas Penal Code
	COUNT FOUR: §21.11 (a)(1), (d) Texas Penal Code
	COUNT FIVE: §21.11 (a)(1), (d) Texas Penal Code
	COUNT SIX: §22.011(a)(2)(C), (f) Texas Penal Code
	COUNT SEVEN: §43.25 (b), (c) Texas Penal Code

<u>Date of Offense:</u>	<u>Plea to Offense:</u>
COUNT ONE: 05/15/2010 – 08/15/2010	
COUNT TWO: 03/15/2007	
COUNT THREE: 06/01/2007	NOT GUILTY COUNTS ONE, TWO, THREE,
COUNT FOUR: 08/15/2007	FOUR, FIVE, SIX, SEVEN
COUNT FIVE: 05/20/2017	
COUNT SIX: 05/20/2017	
COUNT SEVEN: 01/05/2017	

Degree of Offense:
COUNT ONE: 1ST DEGREE FELONY
COUNT TWO: 2ND DEGREE FELONY
COUNT THREE: 2ND DEGREE FELONY
COUNT FOUR: 2ND DEGREE FELONY

COUNT FIVE: 2ND DEGREE FELONY
COUNT SIX: 2ND DEGREE FELONY
COUNT SEVEN: 2ND DEGREE FELONY

Verdict of Jury:

GUILTY-COUNTS ONE, TWO, THREE,
FOUR, FIVE, SIX, SEVEN

Findings on Deadly Weapon:
N/A

1 st Enhancement Paragraph:	N/A	Finding on 1 st Enhancement Paragraph:	N/A
2 nd Enhancement Paragraph:	N/A	Finding on 2 nd Enhancement Paragraph:	N/A
<u>Punishment Assessed by:</u> JURY		<u>Date Sentence Commences:</u> (Date does not apply to confinement served as a condition of community supervision.) 01/26/2024	

Punishment and Place
of Confinement:

Count No. One: 40 YEARS TDCJ, CORRECTIONAL INSTITUTIONS DIVISION
Count No. Two: 10 YEARS TDCJ, CORRECTIONAL INSTITUTIONS DIVISION
Count No. Three: 12 YEARS TDCJ, CORRECTIONAL INSTITUTIONS DIVISION
Count No. Four: 15 YEARS TDCJ, CORRECTIONAL INSTITUTIONS DIVISION
Count No. Five: 12 YEARS TDCJ, CORRECTIONAL INSTITUTIONS DIVISION
Count No. Six: 20 YEARS TDCJ, CORRECTIONAL INSTITUTIONS DIVISION
Count No. Seven: 10 YEARS TDCJ, CORRECTIONAL INSTITUTIONS DIVISION

THIS SENTENCE SHALL RUN: COUNTS ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN TO RUN
CONCURRENT

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR .		
☐ Defendant is required to register as sex offender in accordance with Chapter 62, Tex. Code Crim. Proc. (For sex offender registration purposes only) The age of the victim at the time of the offense was N/A .		
<u>Fines:</u>	<u>Restitution:</u>	<u>Restitution Payable to:</u>
\$ N/A	\$ N/A	(See special finding or order of restitution which is incorporated herein by this reference.)
<u>Court Costs:</u>	<u>Reimbursement Fees:</u>	
\$ N/A	\$ N/A	

Was the victim impact statement returned to the attorney representing the State? YES

(FOR STATE JAIL FELONY OFFENSES ONLY) Is Defendant presumptively entitled to diligent participation credit in accordance with Article 42A.559, Tex. Code Crim. Proc.? N/A

Total Jail
Time Credit: ☐ If Defendant is to serve sentence in county jail or is given credit toward the fine and costs, enter days credited below.
5 DAYS N/A DAYS NOTES: N/A

This cause was called for trial by jury and the parties appeared. The State appeared by her District Attorney as named above.

Counsel/Waiver of Counsel (select one)

- ☒ Defendant appeared with counsel.
☐ Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.
☐ Defendant was tried in absentia.

Both parties announced ready for trial. It appeared to the Court that Defendant was mentally competent to stand trial. A jury was selected, impaneled, and sworn, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

In accordance with the jury's verdict, the Court **ADJUDGES** Defendant **GUILTY** of the above offense. The Court **FINDS** that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court **ORDERS** Defendant punished in accordance with the jury's verdict or Court's findings as to the proper punishment as indicated above. After having conducted an inquiry into Defendant's ability to pay, the Court **ORDERS** Defendant to pay the fines, court costs, reimbursement fees, and restitution as indicated above and further detailed below.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court **ORDERS** Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions in this paragraph. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Defendant shall be confined in the county jail for the period indicated above. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court **ORDERS** Defendant to proceed immediately to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay the fine, court costs, reimbursement fees, and restitution ordered by the Court in this cause.

☐ **Confinement as a Condition of Community Supervision.** The Court **ORDERS** Defendant confined _____ days in _____ as a condition of community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Fines Imposed Include (check each fine and enter each amount as pronounced by the court):

- ☐ General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, Transp. Code, or other Code) \$ _____ (not to exceed \$10,000)
- ☐ Add'l Monthly Fine for Sex Offenders (Art. 42A.653, Code Crim. Proc.) \$ _____ (\$5.00/per month of community supervision)
- ☐ Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) \$ _____ (\$100)
- ☐ EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) \$ _____ (\$100)
- ☐ Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) \$ _____ (\$100)
- ☐ Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) \$ _____ (\$50)
- ☐ State Traffic Fine (§ 542.4031, Transp. Code) \$ _____ (\$50)
- ☐ Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) \$ _____ (not to exceed \$50)
- ☐ Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) \$ _____ (To Be Determined by the Court)
- ☐ Repayment of Reward Fine - as Cond of CS (Art. 42A.301 (b) (20), Code Crim. Proc.) \$ _____ (not to exceed \$50)
- ☐ DWI Traffic Fine (a/k/a Misc. Traffic Fines) (§ 709.001, Transp. Code) \$ _____ (not to exceed \$5,000)

Execution of Sentence

☒ The Court ORDERS Defendant's sentence EXECUTED. The Court FINDS that Defendant is entitled to the jail time credit indicated above. The attorney for the state, attorney for the defendant, the County Sheriff, and any other person having or who had custody of Defendant shall assist the clerk, or person responsible for completing this judgment, in calculating Defendant's credit for time served. All supporting documentation, if any, concerning Defendant's credit for time served is incorporated herein by this reference.

Furthermore, the following special findings or orders apply:**Sex Offender Registration Requirements**

The sentence in Counts One, Two, Three, Four, Five, Six, Seven are to run concurrent.

The Court ORDERS Defendant to apply for an original or renewed Texas Driver's License or personal identification certificate not later than 30 days after release from confinement, release by this Court on community supervision, or upon receipt of written notice from the Texas Department of Public Safety (DPS). The Court further ORDERS Defendant to annually renew the license or certificate. The DPS shall place an indication on the Defendant's driver's license or personal identification certificate that the Defendant is subject to the sex offender registration requirements. The Court ORDERS the clerk of the Court to send a copy of this order to the DPS and to Defendant

Date Judgment Entered: January 26, 2024

X
HON. JASON C. CASHON
JUDGE PRESIDING

FILED FOR RECORD
AT 4:24 O'CLOCK PM

JAN 26 2024

Wanda Green
CLERK DISTRICT COURT BRATH COUNTY, TEX