

19-6403

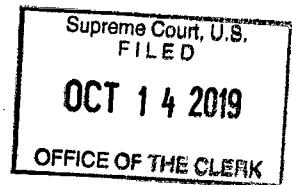
No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Davon Crenshaw — PETITIONER  
(Your Name)



vs.  
UNITED STATES  
SUPREME COURT — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Davon D. Crenshaw AKA Davin D. Crenshaw  
(Your Name)

2101 FM 369 N. Allred Unit  
(Address)

Iowa Park, Texas, 76367  
(City, State, Zip Code)

940-855-7477  
(Phone Number)

QUESTION(S) PRESENTED

Is it "reasonably pertinent to diagnosis or treat(ment)" when the statements made are clearly beyond the scope of a SANE examination? Would this be hearsay if the same examiner from SANE testified as to the psychological and emotional injury and the actions of the accused?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Lucas Allan and Emily Dixon Assistant District Attorneys  
401 W. Belknap  
Fort Worth, Tx. 76196

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at Court of Appeals Second App. Dist. of Texas; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

### [ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

### [ ] For cases from **state courts**:

The date on which the highest state court decided my case was 2/21/19. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: Sept. 30, 2019, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6th Amendment right to a fair trial  
Texas Rules of Evidence 803(4)

## STATEMENT OF THE CASE

Petitioner was indicted in a six count indictment in cause number 1474789D as follows; count 1 - Continuous Sexual Abuse, count 2 - Agg. Sexual Assault, count 3 - Agg. Sexual assault, count 4 - Indecency with a child - contact, count 5 - Indecency with a child contact, count 6 - Indecency with a child - contact.

The indictment contained a Habitual Offender Notice (CR 6-7). On June 27, 2017 Petitioner entered his plea of Not Guilty before the Court and on the 29th after jury trial, Petitioner was acquitted of Count three but found Guilty on all other counts. The Court found the Habitual Offender allegation to be true, assessed punishment at Life in the Texas Department of Criminal Justice, with each count to be served concurrently. However trial Court stacked the LIFE sentence atop sentence Petitioner is currently serving.

The same day, Petitioner filed his Notice of Appeal and the Trial Court certified Petitioner's right to appeal.

On direct appeal before the Second district Court of Appeals, Fort Worth, Petitioner raised the claim that the Trial Court erred when it allowed the SANE nurse to testify about hearsay statements made by the complainant over objection.

On 21st February 2019, Petitioner direct appeal was denied and his conviction and sentence affirmed. Petitioner filed a Motion for Extension of time to file a Petition for Discretionary Review, which was granted until May 24, 2019. Petition for Discretionary Review was denied Sept. 11, 2019.

Petitioner now seeks Certiorari from this Honorable Court.

## REASONS FOR GRANTING THE PETITION

The Court of Appeals' decision has decided an important question of law that has not been, but should be, settled by the Court of Criminal Appeals and now rises to the level of national importance.

Neither the State, nor Petitioner could find any controlling precedent from the Texas Court of Criminal Appeals or the fifth Circuit Court of Appeals, which addresses this particular interpretation of Texas Rules of Evidence 803(4). There are however precedent of consequence from other state jurisdictions that side against the Court of Appeals interpretation.

Petitioner avers that to be "reasonably pertinent to diagnosis or treatment" an alleged victim's hearsay statements should only be admissible if they are clearly within scope of the actual medical exam being conducted. The Court of Appeals paints this medical diagnosis exception to the hearsay rule with too broad of a brush by interpreting the rule to allow the statements if any medical rational can be construed.

The gage as to whether a statement is admissible under this rule is whether it is "reasonably Pertinent to diagnosis or treatment". So, to be reasonably pertinent, the statement must have a clear and decisive relevance to the examination at hand. Not a general medical application.

The Court of Appeals used Estes v. State, 481 S.W.3d 737 (Tex. App. Ft. Worth 2014) as its justification holding the petitioner falls within the "ambit of the medical diagnosis exception" because it is allegedly relevant to treatment, particularly in child and family violence cases, insofar as it presents an environmental and safety issue that could frustrate diagnosis and treatment. This is flawed in three parts. 1) ambit, implies the bounds or limits of a sphere or action - in this case the medical field. In contrast "Pertinent" holds a parochial requirement. 2) there is a distinct difference between a medical examination and a evidentiary examination, specifically a SANE practitioner is a NON-Treating nurse whom merely testifies on behalf of a patient. 3) the Court of Appeals now blurs the line of a medical provider and a child advocate. For the above the ramifications if allowed to persist would continue to carry not only a miscarriage of justice but a fail in the Due Process clause inherent in our Constitution, thus Certiorari should be granted to correct this error.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Daron D. Crenshaw

Date: October 12th 2019