No._____

IN THE

SUPREME COURT OF THE UNITED STATES

JULIO TORRES PALOMO-PETITIONER

vs.

LORIE DAVIS,DIRECTOR-RESPONDENT(S)

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
CRIMINAL INSTITUTIONAL DIVISION

ON PETITION FOR A WRIT OF CERTIORARI
TO

UNITED STATES COURT OF APPEALS
THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JULIO TORRES PALOMO
1923341
MC CONNELL UNIT
3001 S. EMILY DRIVE
BEEVILLE,TEXAS 78102

QUESTION PRESENTED

FORMAL REQUISITE OF AN INDICTMENT:

THE INDICTMENT FAILED TO PROPERLY ALLEGE THE OFFENSE, AS WRITTEN IN THE TEXAS PENAL CODE ANN. § 21.02.

INSUFFICIENCY OF THE INDICTMENT:

WHERE INDICTMENT/JURY CHARGE"DO NOT" FACIALLY ALLEGE THE OFFENSE, THIS REVIEWING COURT MUST TAKE INTO CONSIDERATION "NOT ONLY THE INDICTMENT/ JURY CHARGE, BUT ALSO CONTROLLING PENAL PROVISIONS AND JURY INSTRUCTIONS".

SUFFICIENCY CHALLENGES-FACTUAL INSUFFICIENCY:

THE EVIDENCE IS INSUFFICIENT TO ESTABLISH FACTS OF "CONTINUOUS SEXUAL ABUSE AGAINST A CHILD YOUNGER THAN 14 YEARS OF AGE" OR A LESSER INCLUDED OFFENSE OF "INDECENCY WITH A CHILD BY CONTACT" THAT IS NOT LISTED IN THE ORIGINAL INDICTMENT OF THE COMPLAINT.

FAILURE TO TRACK INDICTMENT IN THE JURY CHARGE:

"NOT TRACKING THE EXACT LANGUAGE OF THE MANNER AND MEANS ALLEGED IN THE INDICTMENT".

AMENDMENT OF THE INDICTMENT:

TRIAL COURT FAILED TO EFFECTIVELY AMEND INDICTMENT OF PEOPLE'S COMPLAINT.

FACTUAL SUFFICIENCY STANDARD OF REVIEW:

THIS COURT IS CONSTITUTIONALLY EMPOWERED TO REVIEW THE JUDGMENT OF THIS COURT TO DETERMINE THE FACTUAL SUFFICIENCY OF THE EVIDENCE USED TO ESTABLISH THE ELEMENTS OF THE OFFENSE.

NO EVIDENCE DOCTRINE:

THUS SECURES AN ACCUSED THE MOST ELEMENT'S OF DUE PROCESS RIGHT'S; "FREEDOM FROM WHOLLY ABITRARY DEPRIVATION OF LIBERTY".

PREJUDICE:

THIS COURT SHALL HOLD TRIAL COURT ERRED IN ADMITTING THE COMPLAINED ABOUT EVIDENCE.

HARM ANALYSIS:

"ONE DOES NOT LOOK AT THE TAINED EVIDENCE, BUT AT THE UNTAINED EVIDENCE" AND ASK'S WHETHER IT ALONE COMPELS A VERDICT OF GUILT.

FIELD ASSESSING THE HARMFULNESS OF A FEDERAL CONSTITUTIONAL ERROR(S).

WAS THERE OVERWHELMING EVIDENCE OF GUILT ? THAT WAS NOT TAINED/ TURNISHED BY ERROR(S).

EGREGIOUS HARM:

REVERSAL IS REQUIRED,SHOULD THE ERROR(S),WERE CALCULATED TO INJURE THE RIGHT'S OF THE ACCUSED.

SUBSTANTIAL EVIDENCE/SUFFICIENCY OF EVIDENCE:

THIS APPELLATE COURT MUST DETERMINE WHETHER THE EVIDENCE AT TRIAL WOULD ENABLE A REASONABLE AND FAIR MIND PERSON TO FIND THE FACTS AT ISSUE,THAT THE EVIDENCE WAS SUFFICIENT TO SUPPORT A CONVICTION.

FACTUAL SUFFICIENCY REVIEW:

APPELLANT CHALLENGES THE LEGAL SUFFICIENCY OF THE EVIDENCE TO OVERTURN HIS CONVICTION AS BOTH EVIDENCE AND TESTIMONY ARE FACTUALLY INSUFFICIENT.

VARIANCE,PROOF ELEMENT:

THE EVIDENCE IS INSUFFICIENT,BECAUSE OF THE FATAL VARIANCE BETWEEN THE INDICTMENT AND PROOF AT TRIAL.

PRESERVATION FOR REVIEW:

IF ERROR(S) ARE SO...EGREGIOUS AND CREATE SUCH HARM THAT IT IS FAIR TO SAY THE ACCUSED DID NOT,HAVE A FAIR AND IMPARTIAL TRIAL.

LEGISLATION INTERPRETATION:

IF A STATUTE MAKE'S EACH "VIOLATION",A SEPARATE ELEMENT(STATUTE/JURY CHARGE)THE GOVERNMENT "DID NOT" PROVE THESE ELEMENTS,THEREFORE THIS REVIEWING COURT SHALL REVERSE AND REMAND FOR FACTUAL INSUFFICIENCY AND GRANT A NEW TRIAL.

REVERSIBLE ERROR'S:

REVERSIBLE FOR FACTUAL SUFFICIENCY:

THERE IS SOME OBJECTIVE BASIS IN THE RECORD THAT SHOWS THE GREAT WEIGHT AND PREPONDERANCE OF THE EVIDENCE WHICH CONTRADICTS THE JURY'S VERDICT,THAT SHOCK'S THE CONSCIENCE,OR CLEARLY DEMONSTRATES,BIAS AND PREJUDICE.

EXPERT WITNESS TESTIMONY/ ALLEGED INTERPRETER:

A HEARING MUST,TAKE PLACE BEFORE HER TESTIMONY CAN BE ADMITTED. NO HEARING ?

NO EDUCATION,STUDY OR TECHNICAL WORK,OR COMBINATION:

BEING BORN HISPANIC,FOR FORENSIC INTERVIEW OF VICTIMIZED CHILDERN OF SEXUAL ABUSE,DOES NOT MAKE ONE AN EXPERT.

RELIABILITY STANDARD:

RULE 702,TEX,R.CIV. EVID.,A RELIABILITY STANDARD NOTING THAT THE GOAL OF ROUTING OUT BOGUS EXPERT'S OPINION'S.

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HEARSAY GROUND:

APPELLANT OBJECTED TO HEARSAY,REQUESTED MISTRIAL,DENIAL.

EXPERT TESTIMONY:

APPELLANT COMPLAIN'S ABOUT ALLEGED EXPERT TESTIMONY AND INTRODUCTION OF NON-INTERPRETED FORENSIC VIDEO. APPELLANT ALSO DISPUTES THIS INTERPRETER'S RELIABILITY.

OUTCRY STATEMENT:

APPELANT ASSERTS THAT TRIAL COURT ERRED IN ADMITTING VIDEO AND TESTIMONY OF CLAUDIA ALVARADO(ALLEGED EXPERT TRANSLATER)REGARDING COMPLAINANT'S OUTCRY STATEMENT.

DAUBERT CHALLENGE?

NURSE ROSELYN ANGLIN,R.N.,S.A.N.E.(SEXUAL ASSAULT NURSE EXAMINOR) TESTIMONY REGARDING ALLEGED PENETRATION AND IT'S ACCOMPANYING ALLEGATIONS "NO TRAUMA" WAS DISCOVERED.

SEXUAL ABUSE/ASSAULT:

NURSE ANGLIN IS SAID TO BE THE STATE'S EXPERT WITNESS.
IT IS SAID THAT THE COMPLAINANT'S ANUS RETRACED IN AN ABNORMAL 20 SECOND'S,HOWEVER THAT THEIR COULD HAVE BEEN A STOOL THERE.

BLACK LETTER OF THE LAW:

A PERSON "MAY NOT PRACTICE MEDICINE IN THIS STATE,UNLESS THAT PERSON HOLDS A LICENSE TO PRACTICE MEDICINE".
LICENSE TO PRACTICE MEDICINE: MEANING UNDER OCC.CODE ANN § 155.001, THE DIAGNOSES,TREATMENT,OR OFFER TREATMENT OF MEDICAL,OR PHYSICAL DISEASE,OR A PHYSICAL DEFORMITY OR INJURY.

PROFESSIONAL NURSING:

SUBSTANTIAL SPECIALIZED JUDGMENT AND SKILL,THIS TERM DOES NOT, INCLUDE ACT'S OF MEDICAL DIAGNOSES.

PROHIBITED BY LAW:

UNILATERALLY MAKING A DIAGNOSES.

HEARSAY OBJECTION'S:

APPELLANT COMPLAINED AT TRIAL COURT ERRED IN OVERRULING HEARSAY OBJECTIONS TO STATEMENTS FROM BOTH COMPLAINTANT'S,SPECIFICALLY APPELLANT COMPLAINED THAT(ALLEGED TRANSLATER)MS.ALVARADO "DOES NOT" HOLD A LICENSE,CERTIFICATION,EDUCATION,SKILL,NEEDED TO PROPERLY ASSIST IN A FORENSIC INTERVIEW OF A CHILD SEXUAL ABUSE CASE. "SHE CIRCUMVENT QUESTIONS AND ANSWERS TO GATHER INTENDED RESULTS.

THIS COURT MUST CONSIDER THE FOLLOWING FACTOR'S IN EVALUATING EXPERT'S RELIABILITY:

1.ACCEPTANCE BY RELEVANT SCIENTIFIC COMMUNITY;
2.QUALIFICATIONS OF THE EXPERT;
3.LITERATURE POTENTIAL CONCERNING THE TECHNIQUE;
4.POTENTIAL RATE FOR ERROR OF THE TECHNIQUE;
5.THE AVAILABILITY OF OTHER EXPERT(S);
6.THE CLARITY WITH WHICH THE UNDERLYING THEORY OR TECHNIQUE; CAN BE EXPLAINED IN THE COURT;
7.EXPERIENCE AND SKILL OF THE PERSON APPLYING THE TECHNIQUE.

AGENTS OF THE STATE/DISCOVERY PURPOSES:

THE PRIMARY PURPOSE OF THE STATE AGENTS INTERVIEW,THEY WORK IN CONJUNCTION WITH LAW ENFORCEMENT TO GATHER EVIDENCE FOR CRIMINAL PROSECUTION.

REVERSIBLE ERROR:DISCOVERY:

1.THE STATE FAILED TO DISCLOSE EVIDENCE(PRIOR VIDEO TAPE);
2.THE STATE WITHHELD EVIDENCE IN FAVOR OF THE ACCUSED;
3.EVIDENCE WITHHELD IS MATERIAL WITH A REASONABLE PROBABILITY THAT HAD EVIDENCE(INTERPRETER VIDEO)FOR DECISION OF ADMISSIBILITY HAD BEEN DISCLOSED THE OUTCOME WOULD HAVE BEEN DIFFERENT. THERE WAS NO PROOF OF SEXUAL ABUSE IN PRIOR VIDEO;

ABUSE OF DISCRETION:

TRIAL COURT ABUSED IT'S DISCRETION BY NOT ADMITTING A DR.PENA AS THE PROPER OUTCRY WITNESS,TEX.CODE CRIM.PROC. ART.38.072 § 2 (a);RATHER THAN COMPLAINANT'S AUNT MARISOL; PSYCHISTRIST(DOCTOR PENA)IS THE PRIMARY OUTCRY WITNESS.

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

TABLE OF CONTEXT

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STATEMENT OF FACTS-CASE

THE FORMAL PREREQUISITE OF AN INDICTMENT:

Appellant as in Duron v. State,956 S.W.2d 547(Tex.Crim.App.1997). Point of error,the indictment failed to properly allege the offense of "Continuous Sexual Abuse Against a Child Younger Than 14 Years of Age," as is written in the Texas Penal Code Ann. § 21.02.

The indictment must set-out a particularly and appear clearly in the record that defendant had been convicted of the statuted offense listed. "Continuous Sexual Abuse Against A Young Child," is "Not," an offense listed in the Texas Penal Code as directed by Constitutional requirement of the Texas Constitution art.5 § 12.
The indictment must "NOT BE," compromised,but fully composed in the charge which the State's Attorney intends to gain a conviction and no less,as the Legislature had intended.
Therefore,this charging instrument/information and jury charge must charge:
1. A person;
2. With the commission of the proper offense,as is written by the legislature,and"NOT," make a reasonable person guess at the meaning;
As it violates the Texas Constitution of art. 5 § 12 and the Fifth and Fourteenth Amendments of the United States Constitution, of Due Process and Equal Protection under law.

The indictment should have sufficient information to support the charge and conviction,of all the elements of the alleged offense which should be measured by this Appellate court. What is the intended charge is "NOT," just a watered down version of The staute as is posted in the jury charge.

Not all indictments defects are matters of substance which a defendant must object to before the Court or lose his rights to complain about it in his appeal,some defects and jury charges remove the waiver from ambit of the Texas Code of Criminal Criminal Procedure Ann. art. 1.14(b),because the State rendered the charging instrument,"A Non-Indictment!"

This Appellate Court perhaps,the State may claim,the Texas Code of Criminal Procedure Ann. art. 1.14(b). As defense Attorney failed to object to form or substance of the indictment/information therefore,defendant waives/waived his right to complain about this issue on appeal, Excuse me !!
I certainly beg to differ,defense counsel made a timely complaint about this issue at trial. "Not allowing a substantial/meaningful pre-trial hearing." Defense Counsel was only given a few minutes to confer with his client,then was told by the trial court,"You've had your pre-trial hearing" Excuse Me !! May this be duly noted for the record,since my trial Attorney was not allowed to do otherwise.

The Texas Constitution art. 5 § 12,states: "A pleading which does not actually charge a person with the commission of an offense is NOT, an indictment with in the meaning of the Texas Constitution. "Therefore,any conviction based upon such instrument,is "Not merely defective,but irregular and void in it's contents and should be reversed and remanded for a new trial."

INSUFFICIENCY OF THE INDICTMENT:

In Fisher v. State, 887 S.W.2d 49(Tex.Crim.App. 1994). Where indictment/jury charge "do not",facially allege the offense, this reviewing court must take into consideration " Not only the indictment/jury charge,but also,the controlling penal provisions and jury instructions."

Reviewing sufficiency of the evidence,also bind with Due Process principals of notice and given a fair opportunity to defend. An indictment must be"Constitutionally valid" A written instrument which charges "A person with the commission of an offense,of "Continuous Sexual Abuse oF A Young Child" is'not'a Texas Penal Offense.

This court did not, give proper notice to the defendant of the alleged offense for which he was being charged. The Court of Criminal appeals held an appeal could be based on error in sudstance of an indictment to which "No Objection" had been made at trial,stating;"Whatever is essential to the gravaman of the indictment must be set-out particulary,that whatever it's clearly apparent in the record that the defendant has been covicted on an indictment this is clearly defective in substance,to include a jury charge,an indictment that"did not"properly charge the offense is 'Not an Indictment'in terms of this States Constitution. This appellant make this same argument.

SUFFICIENCY CHALLENGES-FACTUAL INSUFFICIENCY:

Appellant contends the evidence is insufficient to establish facts of "Continuous Sexual Abuse Against A Child Younger Than 14 Years of Age" or a Lesser Included Offense of"Indecency with A Child by Contact" not listed in the original indictment of the complaint. When examining the appellant's record,this court should consider the following facts:

1. The evidence admitted;
2. Nature of the evidence supporting the verdict,including whether the evidence was overwhelming;
3. Character of the alleged error(s);
4. Jury Instructions;
5. The State's and Defense theory(s);
6. Closing argument(s);
7. Voir dire;
8. Whether the State emphasized the error(s);

See,Vela v. State,159 S.W.3d 181(Tex.Crim.App.-Corpus Christi 2004).

HARM ANALYSIS:

In, Motilla v. State,38 S.W.3d 826(Tex.App.Hous.-14th dist.2001). 78 S.W.3d 355(Tex. Crim.App. 2002). This court determined appellants issues were meritous,and it must conduct a "Harm Analysis"under rules of Appellate procedure rule 44.2(a). "Continuous Sexual Abuse oF A Young Child" as stated in the jury charge,in closing arguments,as the District Attorney of Hunt County,Texas continued to insist that "They've met their burden of proof"without reasonable doubt and the jury "MUST CONVICT"the accused of"Continuous Sexual Abuse Of A Young Child" Which is NOT,a Texas Penal Code Offense, Making the indictment and jury charge VOID.

The evidence offered by the State,it's witness(es),is scant. The court should be troubled,as is the appellant,that the adduced testimony regarding the State's attempt to persuade the jury to base it's verdict on sympathy and not on the facts of the evidence(See closing argument).

Applying a harm analysis as is the requirement in rule 44.2 and to evaluate the actual harm that any reasonable person would believe it is of such a great magnitude that a reversal and remand back to trial court is required.

FAILURE TO TRACK INDICTMENT IN THE JURY CHARGE:

Appellant agues the court erred by "Not tracking the exact language of the manner and means alleged in the indictment" The jury charge alleged "Continuous Sexual Abuse of A Young Child" The jury charge,does not track the actual statute language of "Continuous Sexual Abuse Against A Child Younger Than 14 Years Of Age" Texas penal Code Ann. § 21.02.

The jury charge must allege the'same'means and manner as the indictment,or this makes both the indictment and jury charge void. Therefore,Habeas relief should be Granted,and returned to trial court for a new trial. See,Arcement v. State,2009 Tex. App. Lexis 1096.

An appellate Court,reviewing factual sufficiency,has the ability to second guess the jury to a limited degree. The review should still be differential,with a high level of skepticism about the jury's verdict.

This Appellate Court must first determine whether if error(s),exist in the charge and if there is error(s),whether it produced sufficient harm from the error(s),to compel a reversal. "When an error(s),occur and the trial court fails in it's duty to properly instruct the jury,a review should be conducted under the Almanza, standard" Id.

Under the Almanza standard,of review for error(s),also the jury charge,depends on whether the defendant properly objected,if so, a reversal and remand is required. If the error(s),was calculated to injure the right's of the accused.

Normally,the best practice is to track the exact language of the inductment,as a jury charge should contain all the elements as required in the indictment.
The failure to track the exact language may not be an error in it's self,however this indictment is "Factually Void and Insufficient."

In, Weatherred v. State,15 S.W.3d 543(Tex.Crim.App.2000).
Analysis under Rule 702,Texas rules of Evidence. The proponent of the scientific evidence,must show"Clear and Convincing Proof," that the evidence was admissible. See,Nemo v. State,970 S.W.2d 561.
The Appellate Court reviewing the trial court's ruling on admissibility of the evidence must utilized the abuse of discretion standard. See,Prystash v. State,3 S.W.3d 522,527(Tex.Crim.App.1999).
This Appellate Court must review the trial court's ruling in light of what was before the trial court at the time of the ruling was made. See,Hoyos v.State,841 S.W.2d 419,422(Tex.Crim.App.1998).

AMENDMENT OF THE INDICTMENT:

Montoya v.State,841 S.W.2d 419(Tex.Crim.App.-Dallas 1994).Trial Court failed to effectively amend the indictment of people's complaint. This case was reversed and remanded back to trial court as this case should be.

FACTUAL SUFFICIENCY STANDARD OF REVIEW:

As the court stated in Clewis,in it's progeny,"This Court is Constitutionally empowered to review the judgment of this Court to determine the factual sufficiency of the evidence used to establish the elements of an offense.

In,Cain v. State, 958S.W.2d 408;Clewis v. State,922 S.W.2d 129,130 thiscourt should review evidence weighed by the jury that tends to prove the existence of the elements/facts in dispute and compare it with the evidence that tends to disprove that fact.

In Jones v. State,944 S.W.2d 642,647(Tex.Crim.App.1996).
In assessing the likelihood that the jury's decision was adversely affected by the error(s),this reviewing court may also consider the jury's instruction,the State's and defense theory and their closing arguments. LLames v. State,12 S.W.3d 469,471(Tex.Crim.App. 2000);Motilla v.State,78 S.W.3d 355(Tex.Crim.App.2002).

In,Jackson v. Virginia, 99S.Ct. 2786(1970).This Court held in Thompson,that a conviction based upon the record wholy devoid any "Relevent Evidence"of a crucial element of the charge is "Constitutionally Infirm";See, Vachon v. New Hampshire,414 U.S. 478,94 S.Ct.669; Adderly v. Florida,412 U.S. 430,93 U.S.2199.

The "NO Evidence Doctrine of Thomas v. Louisville,thus secures an accused the most element's of Due Process right's,"Freedom from wholy arbitrary deprivation of liberty."
When determining factual sufficiency,as in Johnson v. State, 23 S.W.3d 1(Tex.Crim.App.2000).

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The Corpus Christi Court of Appeals 978 S.W.2d 703,reversed and remanded the findings of evidence insufficent.
This Appellate Court has a Constitutional authority to conduct a factually insufficient review,from the evidence which is factually insufficient,that is so weak to be clearly wrong and manifestly unjust in it's adverse findings,which is so against the great weight of the evidence,that this court of appeals should apply the correct standard of review and consideration,which include all other relevent evidence. The only other recourse is of improper application of a factual sufficiency review,which will lead to reversal of this court of appeals decision and remand back to trial court for a new trial.

In,determining the factual sufficiency of all elements of the offense,this reviewing court views all evidence in a neutral light,rather than in the light most favorable to the verdict,and set aside the verdict because it is so contrary to the alleged overwhelming weight of the evidence as to be clearly wrong and unjust.

This Appellate Court reviews the evidence weighed by the jury that tends to prove the existence of the elements of facts in dispute and compares it with the evidence that tends to disprove that fact.

PREJUDICE:

Motilla v. State,38 S.W.3d 826(Tex.App.Hous.14th dist.20 10.) Assuming arguendo that the evidence was relevent,this court needs to find any probative value the evidence may have that substantially outweighed by it's prejudice. See,Tex.R.Evid. 403. This court shall hold Trial Court erred in admitting the complained about evidence.

In,Zuniga v. State,144 S.W.3d 477,481(Tex.Crim.App.2004). There two ways evidence maybe "Factually Insufficient";

1. The evidence suppoting the verdict or judgment,considered by it's self is too weak to support the findings of guilt beyond a reasonable doubt.

2. When there is evidence both supporting and contradicting the verdict or judgment,weighing all the evidence,but the contrary evidence is so strong that the guilt,cannot be proven beyond a reasonable doubt.
See,Dotson v.State,146 S.W.3d 291(Tex.App.-Ft.Worth 2009). "This standard of acknowledgement that the evidence of guilt can"preponderate",in favor of conviction,but still be Insufficient, disprove the elements of the crime beyond a reasonable doubt.Id.

In other words,evidence supporting a guilty verdict can outweigh the contrary proof and still be insufficient to prove the elements with a reasonable doubt. Addressing factual sufficiency must include a discussion of the most important and relevent evidence to support this appellant's complaint on appeal. See,Sims v.State, 99 S.W.3d 600.603(Tex.Crim.App.2003).

This Court must review the prosecutions comment's which constitutes improper inference of appellant's guilt.
This reviewing Court must consider whether language used(closing argument) was manifestly intended for the sole purpose of bias and prejudicial intent of this appellant's guilt,which without otherwise,this jury would notnaturally consider this beyond a reasonable doubt that this accused is guilty of the alleged crime. I should think not...(emphasis mine),Texas Code of Criminal Procedure Ann. art.38.08.

In Kotteakos v.United States,328 U.S. 750,776,66 S.Ct. 1239(1946).

If the reviewing court is unsure whether the error(s),affected the outcome,this court should treat the error(s), as harmful,i.e., as having a substantial injurious effect or influence in determining the jury's verdict. See.Web,36 S.W.3d 183,Neither party has the burden of proof under Rule 44.(b).Rather Appellate Court will examine the record for the purpose of determining harm.Id. King v. State, 953 S.W.2d 266,271(Tex,Crim.App.1997).

HARM ANALYSIS:

In performiming a harm analysis the easiest and consequenal, the most convenient approach one could employ is to determine whether the correct result was achieved dispite the error(s), this is commonly referred to as the"overwhelming evidence test" one does not look at the tained evidence but to the untained evidence,and ask whether it alone compels a verdict of guilt.

FIELD ASSESSING THE HARMFULNESS OF A FEDERAL CONSTITUTIONAL ERROR(S):

A process in need of a rationale: 125Univ.Pen.1,R.15(1976).
Stated another way"was there overwhelming evidence of guilt,that was'Not' turnish by error(s) ?
The Supreme Court cautioned that "It is Not,the Appellant Court's function to determine guilt or innocence. Id. at 763,66 S.Ct. 1247. Thus it is not so simple or appropriate to inquire; "Would the Appellant have been convicted in any event" ? Fahy v. Connecticut,375 U.S. 85,84 S.Ct. 229(1963).

The Supreme Court stated: "We are not concerned here whether there was sufficient evidence,on which petitioner could have been convicted without the evidence complained about" The question is whether there was a reasonable possibility that the evidence adduced at trial or lack of...Id. @ 88,84 S.Ct. 231.

As noted in Rule 81(b),(2),mandates this Appellate Court to focus upon the error(s),and determine whether it can contribute to the conviction and punishment,should that be found true.
This approach obviously implacates a review of the evidence(lack of) but also concerns a sole trace of the impact of error(s).

In,Jackson v. Virginia,99 S.Ct. 2781(1979).
A challenge of a State conviction brought under Habeas Corpus statue which may require the Federal Court to entertain a State prisoner's claim that he is being held in State custody in violation

of the United States Constittuion or laws of this State. This Appellant,is entitled to Habeas Corpus relief if it is found upon the evidence,adduced at trial,that "No reasonable trier of fact"could have found proof of guilt beyond a reasonable doubt without prejudice and bias manipulation from the State's Attorney. "It's,axiomatic that upon conviction a charge "NOT"properly made or one upon a charge made,but "NOT"tried,which constitutes a denial of Due Process.

In,Cole v. Arkansas,333 U.S. 196,201,68 S.Ct. 514,517,also, Prisnell v. Georgia,438 U.S. 14,99 S.Ct. 235.
These standards do no more than reflect a broader premise that has never been doubted in our Contitutional system "That a person cannot incurr the lost of liberty,without proper notice or meaningful opportunity to defend self,If not the right to a fair trial itself." That a total want for evidence to (inclusive/conjuncture) support the charge.

EGREGIOUS HARM:

Almanza jr. v. State,686 S.W.3d 157(1985) Tex.Code Criminal Procedure Ann. art. 39.19,contains the standard for both fundamental error(s),and ordinary reversible error(s).
If the error(s), in the charge was the subject of a timely objection reversal is required,should the error(s),was calculated to injure the right's of this accused,which means some harm was made to the accused from the error(s). In determining whether error(s),are material,this court must look at the whole record bearing the subject matter,was it overwhelming ?
Whenever,it appears in the record that any criminal action upon appeal of the appellant;that any of the requirement's have been disregarded the judgment shall not be reversed unless these error(s), appearing from the record was calculated to injure the right's of the accused,which this record shall show this,that accused "did not," have a fair trial. All objections were made in a timely fashion and denied.

SUBSTANTIAL EVIDENCE/SUFFICIENCY OF THE EVIDENCE:

RWH Homebuilders v. Black Diamond Development;2015 Tex. App. Lexis 8876.
This Appellate Court must determine whether the evidence at trial would enable a reasonable and fair minded person to find the fact at issue,evidence is sufficient when viewed:

1. There is a complete absence of evidence or vital facts ;
2. The Court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact;
3. The evidence offered to prove a vital fact(s),is no more than a mere scientilla,and all negitive;
4. The evidence established conclusively the opposite of the vital fact(s):

FACTUAL SUFFICIENCY REVIEW:

Appellate Court must consider and weigh all the evidence in a "Natural Light". The evidence is factually insufficient.

If the Appellant Court concludes that the verdict is so...against the great weight and the prepoderance of the evidence as to be manifestly unjust,regardless of whether the record contains some evidence of probated force in support of the verdict.

INSUFFICIENCY OF EVIDENCE:

Appellant challenges the legal sufficiency of the evidence to overturn his conviction as both evidence and testimony are factually insufficient due to testimony given by the alleged complainant and other alleged witness(es),expert's which are not consistent. No determination can be made as to "When the alleged incident had taken place,if at all...
The indictment reads; "On or About",September 1,2010 testimony and jury charge make claim after September 1,2012.
The State nor it's witness(es),nor expert's can positively identify "When and if",These alleged offense(s),occurred,dispite what the complainant's wish the jury to believe or not...(reasonable doubt).

VARIANCE PROOF OF ELEMENT:

Montoya v. State,841 S.W.2d 419(Tex.Crim.App.-Dallas 1992).
As in Montoyo(Palomo)contends that the evidence is insufficient because of a fatal variance between the indictment and proof at trial,to include jury instructions and it's charge about the element's of the alleged offense.
The jury found me guilty of "Continuous Sexual Abuse oF A Young Child",which is Not,an offense of Texas Penal Code art. 21.02 which reads: "Continuous Sexual Abuse Against A Child Younger Than 14 Years of Age".
Article 21.02 Subsec(e),states:"A defendant"maynot"be convicted in the same criminal action of an offense listed under Sudsec.(c), The victim of which is the same victim,as a victim of the alleged offense under Subsec.(b),unless the offense is listed in Subsec. (c).

1. Is the charge in the alternative;
2. Ocurred outside the period in which the offense allege under subsec.(b),or was committed;
3. Is considered by the trial court/trier of fact to be a lesser included offense,of the offense alleged under subsec.(b).
A. A defendant"maynot"be charged with more than one count under subsec.(b),if all the specific acts of sexual abuse that are alleged to have been committed alleged to have been committed against the same victim.
B. If all of the specific acts of sexual abuse that are alleged occurred to the youngest victim,it is an affirmative defense of the prosecution,if committed against more than one victim.
2. Did not use duress,force or a threat against the victim at the time of the commission of any acts of sexual abuse alleged,as an element of the offense.
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 a person who under chapter 62,had a reportable conviction or adjudication for an offense under this section of

of sexual abuse as described by subsec.(c). Therefore,this court must construe the statute to carry-out legislature intent. 787 S.W.2d 113,115(Tex.Crim.App.-Dallas 1990,NoPet.;Tex.Gov. Code Ann. § 311.01(A).(Vernon Supp. 1992).

PRESERVATION FOR REVIEW:

The degree fo harm necessary for reversal,depends on whether the appellant preserved the error(s),by objection.T.C.C.P. Ann. art.36.19(Supp.2009). "Error(s),in the charge"if timely objected to,this requires reversal.If the error(s),is so egregious and create such harm that it is fair to say the accused,did not, have a fair and impartial trial.

LEGISLATION INTERPRETATION:

If a statue makes each "violation"a separate element(statue/jury charge)the government"did not"prove these elememts,this reviewing court shall reverse and remand for factual insufficiency and grant a new trial.

REVERSIBLE ERROR(S):

Reversible for factual error(s)/sufficiency occurs when:
1. Evidence supporting the verdict is so weak the verdict seems clearly wrong and manifestly unjust;
2. There is some objective basis in the record that shows the great weight and preponderance of the evidence which contradicts the jury's verdict,that shocks the conscience or clearly demo-strates bias and prejudice.

EXPERT WITNESS,TESTIMONY,INTERPRETER:

In,United States V. Valance,600 F.3d 389(2010). The District Court's are assigned a gatekeeper role to determine the addmiss-ibility of expert testimony(to-wit),Spanish/English interpreter testimony to acertain both relevent and reliable,"before it may be admitted" meaning a hearing must take place before his/her testimony can be admitted,whether a particular expert assert's a causal or correlative testimony,but is closely tied to the law,of fact's at issue. See,U.S. vs. John, 579 F3d 1799(2004). Special knowledge which qualify's a witness,training that gives an expert an opinion may be driven from "special education", study or technical work,a combination,thereof...being born his-panic is not the basis for a forensic interview interpreter of a victimized child of sexual abuse,and does not make one an expert.(emphasis mine). See,Taber v. Roush,2010 Tex.App.Lexis 2827.

Expert testimony,is admissible when;
1. The expert is qualified(trial court did not,have a hearing to qualify Ms. Alvarado,as a Spanish/English interpreter.
2. The testimony is relevent and based on a reliable foundation (Ms. Alvarado,admitted under oath,several times on record,she had to circumvent both questions and answers in the forensic interview,not once,asked that the question(s),be repharsed. If

expert's scientific evidence is Not,reliable,of all the evidence, the trial court,refused to view the forensic video,that showed exculpatory evidence.

The Robinson factor,cannot always be used in assessing an expert's reliability,however,there must be some basis of an opinion offered to show reliability,expert testimony is other wise unreliable. "There,is simply to great of an analytical gap,between the date's and the proof offered.

A reviewing court is not required to ignore gaps in an expert's ipse dixit(some thing alleged not,yet not proven) or bad assurance of validity,"does not suffice". The underlying data,it should be independently evaluated in determining whether an expert's conclusion's are correct,rather whether the analysis,the expert used to reach those conclusions were therefore admissible.

The trial court refusal(without opinion) to review the video and determine whehter or not it,was made in accordance with the Daubert,and other rules of evidence.pursuant to the Tex.R.Evid. Rule 702,before admitting expert testimony,trial court must be satisified.that three condition's are met:

1. Knowledge,skill,experience,training and education of the alleged expert/interpreter that conducted/assisted in the forensic interview,acknowledge if the witness was qualified as an expert.
2. Whether the subject matter of testimony was appropriate(defense not allowed to have expert interpreter review said video of interview)so fact finder could be assured that the topic of forensic interview question's and answer's were correct and not simply adding or subtracting original information which brought bias and prejudice for the State conviction,(after all interpreter is directly employed by the Hunt County Sheriff's Office) she may have had her own motive.

3. Expert testimony must demonstrate by clear and convicing evidence(trial court did not allow a comparison test with defense expert interpreter from the same field).

When addressing field of study outside hard science,that are based primarily on experience and training as opposed to scientific methods,this requirement still applies. See,E.T.Du Pont de Nemous & Co. v. Robinson,923 S.W.2d 549,"It is especially important,that the trial court/Judge scrutinize proffered evidence."
In light of the increased use of expert witnesses),and the likelihood of prejudice impact of their testimony...the judge,has a heightened responsibility to ensure that the expert testimony shows some indicta of reliability. See,In Re Air Crash Disaster 795 F.2d 1234.

Reliability Standards:

Rule 702,Tex.R.Civ.Evid.,A reliability standard noting that the "goal of routing out,bogus expert's opinion's,e.g.2. Goode Supra § 702-5 @ 37-38,from Texas court's is laudable.See,Sutton,art. VIII opinion and expert's testimony in Texas Rules of Evidence

handbook,30 Houston,L.Rev, 797,842(2d ed, 1993),stating the reliability,rather than general exceptance is appropriate standard for dealing with problems related to expert testimony.

The Court granted Du Ponts.application for writ of error to resolve the conflect. The court ofrappeals by determining the appropriate standard addmission of expert testimony,DuPont argued(now appellant),"This trial court was not,a gatekeeper of the alleged expert witness testimony,nor it's evidence,but rather a spectator, who seemed rendered powerless,by the State Attorney,and did not to insure the integrity of this trial".

Appellant as in Du Pont,urges this court to adopt the "Reliability Standard" similar to the standard applicable to Rule 702 of the Federal Rules of Evidence and the Texas Rules of Civil Evidence. "Inadmissible under Rule 702" See,Kelly V. State824 S.W.2d 572. quoting,Krieling,scientific evidence;providing the lay trier comprehaensive and reliable evidence needed to meet the rules of evidence.32 Ariz.L.Rev.915,941-42,1990).
Scientific evidence that is" Not grounded" in method and procedure is no more than a subjective belief and unsupported speculation,it's reliability is "Inadmissible under rules dealing with expert opinion",Rules of Civil Evidence702,the facts that an opinion was formed solely for the purposes of litigation,"does not automatically render reliable".

However,opinions formed solely for the purposes of testifying are more likely to be bias and prejudicial to gain a particlar result. See,Lubojasky v. State, 2012 Tex.App.Lexis 8760.
There are several factors that cause a trial court's determination of reliability,including but not limited too;

1. The underlying scientific theory and technique are valid by relevent scientific community(Ms.Alvarado was not educated,skilled, trained or experienced to assist or interprete in a forensic interview with a Child abuse victim.

2. The qualifications of the alleged expert testifying.

3. No existence of documentation of education,skill,training, supporting Ms. Alvarado's scientific knowledge or technique was presented as an alleged interpreter.

4. Potential rate of error,is such a large magnitude,which is unfair and bias to this accused.

5. Availability of other expert's to evaluate this interpreter's testimony/technique was available and this court did not allow review.

6. The clarity with which the underlying scientific theory can be explained in court.

7. The experience,skill,training of the person who applied the technique.Tex.R.App.art.33.1 (A).States: "To preserve an error for appellate review,party must preserve a spcific and timely request motion or mistrial and running objection were timely, requested/filed,appellant was denied with an adverse ruling.

See,Muellar V.Bran,2013 Tex.App.Lexis 176,trial court must, "Ensure that those who purpose to be expert's,truly have the expertise," concerning the actual subject matter about which they are offering an opinion.
Ms.Alvarado,is self proclaimed expert,"She did not,qualify as an interpreter/expert." She only had a generalized experience, in this specialized field,this is not enough to officially qualify as an expert witness." I should think not...

This brought grave harm an and prejidice to this accussed. Testimony from an alleged expert ? "Whom simply does not,qualify as an expert ? Please. As if did not raise above mere hearsay speculation or conjecture. This offers no genuine assistance to the fact finder. Defense Counsel asked/requested this court to review the video for admissibility(it refused),with no opinion, for the refusal. This is a case of overt "Abuse of Discretion" by this trial court,in disrespect of the Fifth and Fourteenth Amendment of the United States Constitution of Due process and Equal Protection of the law.

HEARSAY GROUNDS:

In,Long v.State,800.S.W.2d 546(Tex.Crim.App.1990).
Appellant objected on hearsay grounds,requested mistrial. Appellant, complained on appeal that complainant's testimony,to Char Ralph, (Forensic interviewer)via Claudia Alvarado,alleged expert interpreter,was hearsay and should not have been admitted as trial court failed in it's duty to conduct a hearing ofadmissibility to determine the testimony is reliable in accordance with rule 702,of the Texas Rules of Evidence.

This mandatory requirement,of V.C.C.P.art.38 072.
This reviewing court should hold that the defendant's objection's are sufficient to preserve error(s),for review.
Therefore,this court should address these merit's of his point of error,in his petition. Appellant assert's that art.38.072 V.C.C.P. is applicable as his conviction was obtained pursuant to the V.T.C.A. Penal Code art.21.02 "Continuous Sexual Abuse Against A Child Younger Than 14 Years of Age."

Appellant further argues that because art.38.072,specifically address(es),"Hearsay statement's of Children",his objection of hearsay matter should be invoked,in it's procedure.
Appellant further argues that because art.38.072,his specific objection,pursuant to this statute and this court should not, deprive him of his review,as was due by the lower court's.

The trial court immediately overruled the objection,this automatically removed the burden from the State to show hearsay evidence (hearsay statement's)were admissible,instead of immediately convening for a hearing as required by the statute. The State was not required to show cause whether any exception was applicable to show the State complied with the provisions of this statute. Appellant argues "Not only non-complaince," with the statue,but that said testimony is "hearsay and not admissible."

This argument comport's with the appellant's objection's,brings the error(s),of the greatess magnitude. This Honorable Court of review should grant,Habeas Corpus relief for a new trial,due to unfair bias and prejudice and abuse of discretion.

EXPERT TESTIMONY:

Appellant complains about alleged expert testimony and the introduction of the non-interpreted forensic video. Appellant also disputes this interpreter's reliability.
In,Weatherred v. State,15 S.W.3d 540(Tex,Crim.App.2000);Bryant v. State,340 S.W.3d 1,11(Tex.App.-Hous.1st.Dist.2010);Nemo v. State,970 S.W.2d 549,561(Tex.Crim.App.1998);Terraze v. State, 4 S.W.3d720.727(Tex.Crim.App.1999);Russeau v. State,171 S.W.3d 871,883(Tex.Crim.App.2005);Cabrera v. State,2014 Tex.App.Lexis, 7033. As case under review,expert(s),testified regarding a wide range of possible)(not probable) cause(s),and behavioral changes, none specifically noted other than possible constepation,it was also testified as how other children reacted about being abused,that children remebered and forgot detail's. The difficulties of a child to testify about sexual abuse in front of the alleged abuser, Nurse Anglin,alleged her so-called opininon's in general terms.

OUTCRY STATEMENT:

Appellant asserts that the trial court erred in allowing video and testimony of Claudia Alvarado(alleged expert translater) Ashsha Colin(CPS),Char Ralph(Forensic Interviewer),regarding complaint's outcry statements which did not comport with the indictment or jury chargenor other allegations of art.38.072, T.C.C.P.,art.38.072 state's:"allowing a hearsay statement from child abuse victim to be admitted as evidence if,the trial court find's"In a hearing conducted outside the jury that the statement is reliable"(Appellant was not allowed interpretation before the jury by defense expert interpreter)about ,time and date,or rebut issues of alleged statements.
See,Gregory V. State,56 S.W.3d 177(Tex.App.-Hous.-14th dist.2001) Tex.Code Crim. Proc. art.38.072,subsec.2(b),(2),(b)(Vernon Supp. Pamphet 2001).
1. Violation of Appelant's right's to a fair and impartial trial of Due Process,Equal Protection of Law,under the Fifth and Fourteenth Amendment.
2. Accused denied right's to confrontation under the Sixth Amendment of the United States Constitution.

This Appellant,objected numerous times about proffered testimony during the hearing outside the presence of the jury each time trial court abused it's discretion,allowing Nurse Anglin,to testify as an expert in complainant's case.

1. Nurse Anglin,has No Medical License or Doctor's degree.
2. Unlike Physican's she cannot,render Medicel treatment nor Medical diagnoses.
3. Nurse Anglin,lacks Medical License to prescribe treatment under a Physican's order and authority,she did not request/recommend further examination(s),from Licensed Physican.

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Nurse Anglin,R.N.,S.A.N.E.,States: "She found'No Truama"
Which conclusively denies,that any "Continuous Sexual Acts of Assault,had occurred as alleged"

Nurse Anglin,based part of her theory on the history recorded from patient's diagnoses and treatment. Nurse Anglin,states: "She performed a detailed gential examination,in a Lithotomy position and conducted a hymenal rim examination,no use of a colposcope,which magnifies the tissues and enables the examiner, to make a conclusive findings of abrasions,tears or any other abnormalities during her examination" None were found.
This reviewing Court should grant Habeas Corpus relief and remand for a new trial.

According to"Nurse Practicing Act"(NPA),Texas Nursing Association guide of the Texas Nursing Practicing Act,NPA.3.6(4th Ed. 1999,Tex. Occ.Code Ann. § 301.002(2),(Vernon pamphet 2001).
It is said using above case law,The Texas Supreme Court has defined "Medical Diagnoses,As an Analysis of the cause of nature of a patient's condition" Texas Employer's Ins. Ass'n.v. Sauceda, 636 S.W.2d 494,498(Tex.App.-San Antonio,1982,no writ). Neither the Texas Supreme Court,The Board of Nursing Examiner's,NPA, had defined "Nursing Diagnose's...According to the Board Nursing Examiner's Standard of Professional Nursing a "Nurse shall make a Nursing Diagnoses"which serves as the base for strategy of care"which is..."To accurately and completely report and document the client's status including sign's,symptom's and response's to collabrate with the client's health care" 22 Tex.Tex.Admin.Code § 217.11(2),(b),(4) and (2),(2001). Board of Nursing(BNE)licensure, Peer Assistance and practice.Id.

DAUBERT CHALLENGE:

The Daubert Challenge apply it to the case under review,Nurse Anglin,R.N.,S.A.N.E.,testimony regarding alleged penteration and it's accompying allegation's found "NO TRAUMA",yet the State continued to allege the penetration occurred,to the anus and complainant's sex organ"
For this testimony to be considered admissible or even reliable, it must be based on"scientific findings,and it's conclusion's" Is this NOT,what the State's witness/expert"Sexual Assault Nurse Examiner" Nurse Anglin's job is ? She testified she found"NO TRUAMA" to sustain these allegation's ?

Nurse Anglin is said to have the knowledge,skill,experience,otherwise, she could not be an expert for the State,There must be three issue's to meet this criteria:
1. A underlying scientific theory and it must be valid;
2. The technique applying this theory must be valid;
3. The techinque must have been properly applied on the occasion in question.
Appellant agrees with all of the above. All findings and conclusion's, "Were Negitive" "NO TRUAMA,NO FINDINGS,to sustain the claim of "Continuous Sexual Abuse Against a Child Younger Than 14 Years of Age"

Nurse Anglin,is said to be the State's expert witness,during her physical examination of said complainant's person,her sexual organ,including her anus. it was said that the complainant's anus retracted in an abnormal 20 seconds ?
That this is an abnormality for this child andor children of this age ? Nurse Anglin,is not,medically qualified to make this type of diagnoses or medical conclusion,although it was explained away by "There could have been a stool there." All issues are conjecture. See,Hartman v. State,946 S.W.2d 60 (Tex.Crim.App.1992); Daubert v. Merrel Dow Pharm. Inc.,509 U.S. 579,113 S.Ct. 2786. 125 L.Ed.2d 469(1993).

Under Texas Rules of Evidence,104(A),(C),Rule 702.
The proponent must establish all criteria,before the court,may admit the testimony/evidence, The Defense/Accused agrees,with all three criteria was met by the State,and it's Nurse S.A.N.E. expert "Proved nothing," had taken place. As alleged in the indictment of the Texas Penal code art.21.02 "Continuous Sexual Abuse Against a Child Younger Than 14 years of Age."
The rule reflect's trial court,had determine the proffered expert's testimony of Nurse Anglin,R.N.,S.A.N.E.,was reliable(although no hearing was conducted outside the presents of a jury).

The Texas Rules of Criminal Procedure,has no notice of pretrial discovery requirement's tailored to use of evidence based upon scientific theories or techniques. But without notice of what's coming, counsel for the defense can hardly obtain "Any prior court approval for fund's to pay for the defense expert's."
Provision's for"Full Disclosure," the opportunity to re-examine the evidence(need of expert's),the appointment of defense expert(s), is critical,of the type procedure the majority advocates. See,Giannelli,supra at 1254.

THE BLACK LETTER OF THE LAW:

A person"May not practice Medicine in this State,unless that person,holds a license to practice Medicine," issued under subtitle Texas Occ.Code Ann. § 155.001.
A person is reqiured a "License to Practice Medicine",meaning: "The Diagnoses,Treatment and offer of Treatment of Medical or Physical Disease(s),or Physical deformity's,injury by any system, or method,attempt to affectively care or cure these conditions." Id.§ 151.002.

PROFESSIONAL NURSING:

The preformance for compensation of an act that require's"substantial specialized judgment and skill;however,this term does not include act's of"Medical Diagnoses or Prescription of Therapeutic and or Corrective Measure's." Id. at art.301.002(2),Tex. Occ.Code Ann. Clearly a Professional Nurse,is an expert in certain area's as duly noted,equally clear,ordinarily,a Nurse is "Prohibited by Law",from unilaterally making a diagnoses.
Ordinarily,diagnoses and prescribed treatment are exclusively realms of a license Physician,in this case in review Nurse Anglin, was admitted to testify as an expert witness. Her diagnoses was

allowed as evidence,she testified that "NO TRAUMA" was discovered or apparent in this case,neither did she request review fron a Licensed Physician to conduct a follow-up to confirm or deny her conclusion's.

HEARSAY OBJECTION'S:

Appellant complain's trial court erred in overturning hearsay, objection's to statement's of both the complainant's(Kay & Nancy), specifically appellant complained that Ms. Alvarado,"Does Not, hold a License or certification,educational degree,or the skill, needed to properly assist in a forensic interview of a Child sexual abuse case. Ms. Alvarado,under oath several times admitted "She had to Circumvent question's and answer's to gather intended result's. Not once was it purposed by her to have Ms. Ralph, repharse the question's to remain within the range of the interview. No other interpreter was premitted by this court to interprete the submitted video interview.

Nurse Anglin,may be certified by the Attorney General's office, however,that office is NOT,a licensing board,nor a major universitythat may hand - out Medicial degree's to practice medicine, nor is it a legislature body to create and pass it's own laws. The Attorney General's office is simply a Law enforcemwnt agency of the State,that solely enfoces the law,not to circumvent existing laws on it's own merit.

Appellant continue's to argue,trial court erred in judgment by allowing testimony of CPS investigator,forensic interviewer as neither had true personal knowledge of the fact(s).
CPS interviewer,due to her failure to conduct a proper investigation(self-admitted)in the record. Ms. Alvarado,failed to conduct proper interpretation to Ms. Ralph's questions as per rule 604,Texas Rules of Evidence for Interpreter's,she self-admitted "She has no special skill,experience,training as an interviewer/interpreter,to assist a forensic interviewer for a Child sexual abuse case,per TexasR.Evid.rule 702. See,Vela v. State,209 S.W.3d 128,131 (Tex.Crim.App.2006).

The qualification inquiry simply involves two parts:
1. Whether withess,interpreter has sufficient background,skill in that particular field;
2. Whether background,skill,goes to the very matter to give an opinion.

In Brucia v. State,case "Special worker,interpreter,obtained a Bachelor degree,Master's degree,in social work,she was a licensed, social worker of the State,she attended continuing education classes to maintain her license,dispite trial court's wide range, of discretion(room for abuse),the alleged interpreter expert does not even come close to other State witness(es),how can it be said that Ms.Alvarado,is an expert interpreter,qualified to conduct interprete child abuse cases,with no formal training,education?
Ms.Alvarado,is employed as a background clerk,not hired as an official interpreter for the Hunt County Sheriff's office.

This totally violates,this accused Due process right's,his right to confrontation of the State witness(es),cruel and unusual punishment,right to a fair and impartial trial,the Fifth and Fourteenth Amendment's and the laws of Equal Protection.
This court certainly acted outside the zone of reasonableness.

Appellant assert's that witness testimony/video,should have been excluded on the grounds of reliability and relevance.
Appellant further asserts that Ms.Alvarado, and Ms.Ralph's testimony are unreliable,as Ms. Ralph,did not speak to complainant directly, and it's therefore hearsay.

In,Jordan v. State, 928 S.W.2d 550,554-55(Tex.Crim.App.1994;
Rose v.State,2 S.W.3d 225,234(Tex App.-Austin 1999).
To be Considered reliable evidence derived from Spanish/English testimony,three criteria must be satisified:

1..The underlying theory must be vaild;
2. The technique applying the theory must be valid;
3. The technique"Must have been properly applyied"

This court must consider the following factor's in evaluating reliability:

1. Acceptance by relevent scientific community;
2. Qualifications of the expert;
3. Literature potential concerning the technique;
4. Potential rate for error of the technique;
5. The availability of other expert's;
6. The clarity with which the underlying theory or technique can be explained in the court;
7. Experience and skill of the person applying the technique;

There must be a fit between subject matter and alleged expert's qualification's. Thus the proponent must establish that the expert has skill's,experience and training with the respect to this specific issue before the court,Id.

During Voir dire,Defense Counsel questioned Ms. Alvarado,alleged expert interpreter the State,about her education and training Ms. Alvarado,the alleged interpreter admitted she"did not have any formal or special training at the time and had to circumvent, question's and answer's to get the proper response".

Ms. Alvarado,testified "She was not a professional interpreter, and only conducts interpretations on occasions"
That her primary duty(s), with the Hunt County Sheriff's office, is a "Background Clerk" her testimony as an interpreter is hearsay,thus void... Rule 702,provides "an expert must be qualified, by skill,experience,training,education" This lady is simply Hispanic,she is not qualified,to conduct or assist in a forensic interview of a "Child of an alleged sexual abuse" case.

The questions and answer's were circumvented,misleading,bias, prejudicial,and caused a great miscarriage of justice,which is the very reason this jury came back with a guilty verdict and a life sentence,No doubt this appellant was denied a fair and impartial trial. This case should be reversed and remanded.

AGENTS OF THE STATE/DISCOVERY PURPOSES:

Wilkson v. State,173 S.W.3d 521(Tex.Crim.App.2005). "All State employee's are clearly under the color of law,making a person an agent of the State" See, Estelle v. State,451 U.S.451, 101 S.Ct. 1866(1981); Mathis V. United States,391 U.S.1.,88 S.Ct. 1503(1968). While neither case fit neatly into normal miranda "Custodial Intergation" by an agent of law enforcement,they are premised upon the fact that the primary purpose of the State Agent's Interview" be it CPS(Child Protective Services),CAC(Child Advocacy Center),it's purposes remain,they work in conjunction with law enforcement to gather evidence for criminal prosecution, See,2 W.L.A. Fave and J. Isreal,Criminal Procedures, § 6.10(c), at 623,24(1991).

Once parallel paths of CPS,CAC,and police coverage,they become State Agent's,beit they afe conduting an interview/investigation, for a criminal offense in tandum at this point a CPS,CAC,worker, be it a forensic interviewer,contract S.A.N.E.(Sexual Assualt Nurse Examinor,therary counselor or any/all can be viewed an extention of law enforcement,without arresting powers.

The term agent/agency denotes a consensual relationship,which exist between the two parties where one acting on behalf of another,a repressentive. In,Cantu v.State,817 S.W.2d 74.75,(Tex. Crim.App.(1991).In Cates the evidence gathered by CPS/CAC workers, interviewer's,interpreter;S.A,N.E.Nurse,were the instrumental agent of the State,to convict the accused. Although it may be difficult to determine where the two paths meet,they are nonetheless,now paraell with one another and coverage on this particular case.

This reviewing court need only to review the record. This record shall show that the police,prosecutor's used CPS, CAC workers/agents,contract employees to interview and accomplish, what the police could have lawfully accomplished themself's, but did not. In sum,law enforcement,State prosecutor,used CPS, CAC employees/contractors as appointed agents.

This reviewing court must examine the record concerning the interview's,action's,and preception,of "What is the primary reason's for the interview's,and it's question's and response of the alleged victim ? It is to gather evidence/testimony/ recordings,of whether a crime was committed against this indivd-ual,and/or another. So,it can be used for criminal prosecution.

The answer is "YES" to both questions,perhaps,not all,but certainly a large majority,then not. Are used in assisting the States prosecutor's office to lead to a person's arrest and conviction. In sum, did the interviewer/interpreter believe that she was acting as a representive of law enforement ? "YES". One witness/contract employee of the State Attorney General's Office,S.A.N.E. Nurse Anglin,R.N.,is certified by the State Attorney Generl's office to conduct "Sexual Assault Examinations" She is an agent of the State under the color of law. She is given, authority by the highest law enforcement office to act "As a Nurse Examinor,for the office's of Child Protection Services Child Advocacy Centers to conduct Sexual Assault Examination,

on Childern whom have made an outcry of sexual abuse.
The State has an obligation to turn over Discovery/Brady material,

In, Adam v. State, 180 S.W.3d 341(Tex. App.-Corpus Christi2005).

There are"Two types of State agents"under the color of law,by any definition,"State Agent(s),are also contracted by the Attorney Generl's office to conduct specific acts on their behalf,making them State agent's. See,Wilkerson v. State,173 S.W.3d 530(Tex. Crim.App. 2005),Authority arises through acts of participation and acquistion by the prinicipal law enforcement which clothes the agents indica of authority. See,National Bank,N.A. v. Northland, 922 S.W.2d 950,953-53(Tex.1996)(percurian); South Title Ins. Co. v. Duling,522 S.W.2d 425,428(Tex.1977).

If there is some evidence(No criminal charge could be brought forth otherwise)that the law enforcement acted in some manner to cloak the third person with authority to interrogate an alleged victim on their behalf and response,therefore communicate to all parties of law enforcement,would any reasonable person believe, this interview was not made by an agent of law enforcement of the State ? "NO".

REVERSIBLE ERROR DISCOVERY:

The State has a Constitutional duty under the United States and Texas Constitution,to disclose evidence favorable to this accused. See,Micheal Morton Act(S.B. 1161),Brady v. Maryland,373 U.S. 88(1963). Although the Micheal Morton act(S.B.1161) was not in effect till January 1,2014,since it's incertion(Brady v.Maryland, 1963) article 39.14 of Code of Criminal Procedure of Texas,has regulated discovery in Criminal cases,some more prominent,from the past which involved prosecution who were not forth coming with exculpatory evidence.
Micheal Morton a most prominent example,thus formed S.B.1161,which was favorable,when used effectively.to make a difference between conviction and acquittal,thus to show reversible error,accused must show that:

1. The State failed to disclose evidence(A prior video tape);
2.The State withheld evidence in favor of the accused;
3. Evidence withheld was evidence/material with a favorable probability that had evidence(interpretation of video,had it been viewed the jury out come would have been different).
See,Thomas v. State,841 S.W.2d 399,403(Tex.Crim.App1999); Pena v. State, 353 S.W.3d 797,809(Tex.Crim.App.2011).

ABUSE OF DISCRETION:

Owens v. State, 381 S.W.3d 696,2012 Tex.App. Lexis 7922.
Trial Court abused it's discretion by not finding a particular witness(Dr. Pena)Phychistrist as the proper outcry witness under T.C.C.P. Ann. art. 38.072 § 2(A), rather than Marisol(complainant's aunt) CPS investigator,school counsel.
The record indicates that the alleged complainant did not,make an outcry to any one else,during her initial interview,except

for Dr. Pena. "He is not listed,as the primary outcry witness"?

The State is required to provide exculpatory information to the accused in a timely fashion and manner.
The Due Process and Equal protection clause of the Fifth and Fourteenth Amendment of the United States Constitution are violated when the State's agent's do not disclose the Brady and Micheal Morton material to the accused that creates a probability sufficient enough to undermine the confidence of the trial outcome.
In,Thomas v.State,841 S.W.2d 404;Pena v. State,353 S.W.3d 797(381 S.W.3d 701)(Tex.Crim.App.2011)states: "Evidence withheld by State prosecutors possible Brady material,should there be a reasonable probability that had this evidence been disclosed the outcome of this proceeding would have resulted in acquittal a not guilty verdict. See,Wyatt v. State,23 S.W.3d 18,27(Tex.Crim.APP.2000) (quoting United States v. Bagley,473 U.S.667,105 S.Ct.3375(1985).

PRAYER

Wherefore all premises considered applicant request this Honorable Court of Appeals to reverse and remand for a new trial,that his Habeas Corpus petition may hereby be GRANTED,So help me GOD.

UNSWORN DECLARATION

I,EX Parte Julio Torres Palomo,T.D.C.J. # 1923341, hereby declare that I am currently incarcerated at the William G. Mc Connell Unit 3001 S. Emily Drive,Beeville,Texas 78102.

I further declare under the penalty of perjury of this State the foregoing Statement's are true and correct to the best of my knowledge and ability. So help me GOD.

Executed on this 10 date,of October 2020.

Respectfully,

Julio T. Palomo

Julio T. Palomo
1923341
Mc Connell Unit
3001 S. Emily Drive
Beeville,Texas 78102

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REASONS FOR GRANTING WRIT

TO THIS HONORABLE COURT:

I,JULIO TORRES PALOMO, pro-se plaintiff,come now before this Honorable Court,as a simple layman,who has been dealt a mis-carriage of Justice,as the evidence has and will show... The evidence that has been brought before this convicting court,was truly no evidence at all...

It was believed by a jury of my alleged peers,what the State (Texas) had brought forth,that I allegely,"Continuously Sexually Assaulted my girls".
I certainly beg to differ,as the State's leading witness "Sexual Assault Nurse Examiner, Ms.Anglin,RN.,certified by the State of Texas,had performed the examinations and found "NO POSITIVE RESULTS" in and of her examinations and testified to this effect.

I was told from the beginning that I was innocent until proven guilty with the evidence presented by the State.
State's witness Nurse Anglin,RN.,testified that she found "NO EVIDENCE TO SUBSTANTIATE THE STATE'S CLAIM,OF ANY SORT OF SEXUAL ASSAULT ?

I understand by Texas law that the jury is the fact finders and free to believe anything and everything presented by the State or nothing at all,and it seems that they were mislead by the State prosecution,in a miscarriage of Justice.

I am a Mexican National,who like other's came to this country in attempt to make a living for my family and self. It is my misfortune I am very disliked by my in-laws,so much so...they are willing to lie and accuse me of being inappropriate with my girl's. That due to such hate and perjudice...my girl's were forced to fulfill these lies against me,by their aunt Marisol.

The record reflects the first outcry witness is the Psychiatrist Dr.Pena,but the State had brought the girl's aunt Marisol to be the first outcry witness. Dr.Pena was not brought forth to testify.

I am most certain that I need not go into detail as to how this Nurse Examiner is suppose to do her job or be an expert,as it is the court's obligation and duty to conduct a hearing as to whether she and other's,whom profess to be expert's,are indeed expert's, in and of their field of expertise and who is not...?

I pray this Honorable Court,shall Grant me relief and overturn my case back to the original trial court,and remand my case.
So help me God....

Respecfully,

Julio T. Palomo

JURISDICTION

[X] For cases from FEDERAL COURTS:
The date on which the United States Court of Appeals decided my case was 14th day of September 2017.

[x] Petition for rehaearing was timely filed in my case.
[x] A timely petition for rehearing was denied by The United States Court of Appeals on the following date: 1 September 2017.

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

[x] For cases from **STATE COURTS:**

The date on which the highest state court decided my case was 15th day of January 2016.
A copy of that decision appears in Appendix.

[x] A timely petition for rehearing was therefore denied on the following date: 12-30-15,and a copy of the order denying rehearing appears in Appendix.

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

Juliet Palomo #1923341

OPINION

The United States Supreme Court cautioned that"It is not the Appellant Court,function to determine guilt ot innocence." 66 S.Ct. 1247.
The Supreme Court stated: "We are not concerned here whether, there was sufficient evidence on which petitioner could have been convicted without the evidence complained about."
The question is whether there was a reasonable possibility that the evidence adduced in trial,or the lack of it...Id. 84 S.Ct. 231

In,Jackson v. Virgina,99 S.Ct. 2781(1979).

A challenge of a State conviction brought under Habeas Corpus statute may require the federal Court to entertain a State prisoner's claim that he is being held in State custody in violation of the United States Constitution or the laws of this State.

The Texas Supreme Court,has defined "Medical Diagnoses" as an analysis as a cause of nature of a patient's condition.

The Texas Supreme Court,Board of Nursing,defines "Nursing Diagnoses,as "A Nurse shall make Nursing Diagnoses;which serve as the base of stratey of care,which is to accurately and completely report and document the client's status,including sign's and sympton's and responses,to collabrate with the client's health." 22Tex. Admin.Code § 217,11(2),(b),(4),and (2),(2001).

In,Motilla v. State,38 S.W.3d 826(Tex.App. Hous.-14th dist.2001; 78 S.W.3d 355(Tex.Crim.App.2002).
This Court determined appellant's issues were meritous and it must conduct "Harm Analysis" under the Rules of Appellant Procdure,Rule 44.2(a).

In,Clewis v. State,922 S.W.2d 129,130.

This court is Constitutionally empowered to review the judgment of this court to determine factual sufficiency of the evidence used to establish the element's of the offense.

The Corpus Christi Court of Appeal's,978 S.W.2d 703) reversed and remanded findings of insufficient evidence..
The Appellant Court has a Constitutional authority to conduct a factual sufficiency review,from the evidence which is factually unsufficient,that is so weak to be clearly wrong and manifestly unjust. That the only recourse is of improper application of the factual sufficency review,which lead to reversal of this court of Appeals decision and remand back to trial court for a new trial.

Julio T. Paloma
192334

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Julio T. Palomo

Julio Palomo
1923341
Mc Connell Unit
3001 S.Emily Drive
Beeville,Texas
78102

Date: October 10, 2020
AGAIN: JANUARY 10, 2021

I,JULIO T. PALOMO,HEREBY CERTIFY/DECLARE UNDER THE PENALTY OF PERJURY THAT I HAVE MADE SUCH CORRECTIONS THAT HAVE BEEN REQUESTED OF ME BY THE CLERK'S OFFICE OF UNITED STATES SUPREME COURT,TO THE BEST OF MY ABILITY AND KNOWLEDGE,SO HELP ME GOD...

Julio T. Palomo
#1923341

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