Copy

No. 20-8240

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CARL EDMOND YANCY — PETITIONER
(Your Name)

vs.

STATE OF TEXAS "et al" LORIE DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARL EDMOND YANCY
(Your Name)

"Mac" Stringfellow Unit - 1200 FM 655
(Address)

Rosharon, Texas 77583
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. At Petitioner's trial why did my Lawyer not conduct a pre-trial investigation into my (Petitioner), CARL EDMOND YANCY'S Case?

2. Why did Petitioner's Lawyer not call any important facts witnesses, medical experts, DNA experts, sexual assault experts to question the scientific medical definition of the Complaintant's sexual assault examination as in, Pavel v. Hollins 261 F. 3d 210 or Lindstadt v. Kean 239 F. 2d 191. 12.?

3. If the definition given in Appellant's Brief, (R.R. Vol 3 at 80-84) pg 16, states that after a 2 hour examination revealed no trauma to Complaintant's Vigina, Hymen, Cervix, or Perineum, and this is the medical definition of a woman who is a virgin, then why is Petitioner still in prison for the none existant crime of inserting his penis into complaintant's vigina once or twice a week?

4. Petitioner ask this Honorable Court this very important question, wouldn't this make the complaintant not a virgin at the time of the 2 hour examination?

5. Why was the physician not called to testify instead of using selondhand testimony from Kerr? Appellant's Brief, (R.R. Vol 3 at 98) pg 3.

6. How is it that the examining physician and the Sexual Assault Nurse are at dissagreement as to whether a sexual assault took place? "A.B. (R.R. Vol 3 at 98) pg 4, physician's secondhand testimony. Claims sexual assault," "A.B. (R.R. Vol 3 at 104) pg 16, Sexual Assault Expert claims no sexual assault."

7. Doesn't this create a variance and how could Petitioner be convicted without evidence?

8. If Dalton v. State 898 S.W. 2d 424 (Tex. App-Fort Worth 1995), is true as to what happens to a woman who is a virgin when sexually assaulted, then how is it that complaintant's who is a virgin, Statements true? Appellant's Brief, (R.R. Vol 3 at 147) pg 6, and Appellant's Brief, (R.R. Vol 3 at 163+204) pg 16?

9. Are not these statement's an impossibility with a virgin?

10. If Petitioner has not sexually assaulted Complaintant, inserting his penis once or twice a week for years, then how is it that complaintant's sister saw Petitioner having sex with the virgin complaintant? Appellant's Brief, (R.R. Vol 3 at 64) pg 11.

11. If the sister told an untruth, perjuring herself to help the complaintant, wouldn't it stand to reason that she told an untruth about Appellant sexually assaulting her. A.B. (R.R. Vol 3 at 63) pg 11.

12. There however was DNA found that was not Petitioner's, So how is it Petitioner was convicted when Phillips the States DNA Expert state's the DNA did not Match Petitioner's DNA? Appellant's Brief, (R.R. Vol 3 at 117) pg 5.

13. Going to the heart of the matter. Appellant would ask this Honorable Court this. If Petitioner Committed no crime of inserting his penis into complaintant's vigina once or twice a week for years, because Complaintant is medically and physically a virgin, then why has Petitioner not been released from prison to go home to his family?

14. Why wasn't the violation of Petitioner's Constitutional Amendment Right 4, 5, 6, 8 and 14, not addressed in any of the State Court's judgments?

15. Would this Honorable Court in it's wisdom please determine and award fairly to Petitioner, aside from monitary amount for false imprisonment from State, the Restitution for Callateral Damages/Injuries to Petitioner's life? Petitioner would consider the amount Ordered by this Honorable Court, because it's time to move on don't you think?

QUESTION(S) PRESENTED

16. Why does my case keep getting sent back without the case being heard by the Courts and the major grounds addressed along with the DNA issue.

17. And doesn't; Minix v. Gonzales 162 S.W. 3d. 635 (Tex. App-Houston [14th Dist.] 2005) HN.3, Pending Key 34 (3.5). "A Pro Se Inmate's Petition should be viewed with liberality and patience, and is not held to the stringent standards applied to formal pleadings Drafted by Attorney's. Hughes v. Rowe 449 U.S. 5, 9-10 + N.7, 101 S.Ct. 173, 66 L.Ed. 2d. 163 (1980) (citing Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed. 2d. 652 (1972), Block v. Jackson, 82 S.W. 3d. 44, 51 (Tex. App. Tyler 2002, NO. pet.), Aguilor v. Stone, 68 S.W. 3d, 1, 1-2 (Tex. App-Houston [1st Dist.] 1997, NO. pet.) FN.1 see also Vacca v. Farrington 85 S.W. 3d. 441 (Tex. App-Texarkana 2002), apply to this petitioner's case as well. So Why does it seem not to be being applied to my case, and my case addressed by this Honorable Court, or the lower Courts. What have I done except, fight for my freedom which belongs not just to me, but to every American with true justice for all. Was not America built on this principle.

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:

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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 A to the petition and is

[ ] reported at _____; 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 B to the petition and is

[ ] reported at _____; 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 C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Southern District of Texas Houston Division court appears at Appendix B2 to the petition and is

[ ] reported at _____; 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 July 24, 2014 (Appendix A2).

[ ] 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: September 15 2014, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___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 November 12/2020 A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT - the amendment to the U.S. Constitution, part of the Bill of Rights, that establishes certian protections for citizens from actions of the government by providing, (1) that a person shall not be required to answer for a capital or other informavs crime unless an indictment or presentment first issued by grand jury. (see. Peters v. State 652 S.W.2d 460, 461 (Tex App-Houston [1st Dist.] 1983 pet. ref'd) (2). that no person will be placed in double jeopardy. Accusation Appellant's Brief. (R.R. Vol 4 at 63) pg 11. (3). that no person may be required to testify against himself. (4). that neither life, liberty nor property may be taken without Due Process of law, and, (5). that private property may not be taken for public use, without payment of compensation. (Appendix G. 5th Amendment violation listed in Grounds of Arguement and Authorities pages 2, 5, 7, 9, 11, ■.

SIXTH AMENDMENT - the amendment to the U.S. Constitution that entitles the accused in a criminal trial the right to speedy trial by impartial jury, to be informed of the charges against him or her, to be confronted with witnesses against him or her. (See. Pavel v. Hollins 261, F. 3d 210) "(my case)" and to have effective assistance of counsel. "(didn't happen in my trial)" see. Lindstadt v. Kean 239 F. 2d. 191. 12. Through selective incorporation, each of these rights has been applied to the States under the Due Process Clause of the Fourteenth Amendment. Appendix G, 6th Amendment violation listed in Grounds of Arguement and Authorities, pages 2, 5, 7, 9, 11, ■.

EIGTH AMENDMENT - one of the Bill of Rights passed in 1791 prohibited cruel and unusual punishment and excessive bails and fines. The ban against cruel and unusual punishment has been applied against a State's imposition of a penalty for the status of being addicted to the use of narcotics, 370 U.S. 660, 666 - However the amendment does limit the kinds of punishment that can be imposed, proscribes punishment grossly disproportionate to the severity of the crime, and imposses substantive limits on what can be made criminal and punished as such 430 U.S. 651, 667. Appendix G, 8th Amendment listed in grounds of Arguement and Authorities pages 2, 5, 7, 9, 11, ■.

FOURTH AMENDMENT - the Constitutional Amendment guaranteeing the right of person to be secure in there houses and property from unreasonable search and seizure and consisting of the following elements: (1). the issuance of a warrant upon Oath of affirmation; (2), upon probable cause, as determined by neutral and detached magistrate; and (3). particularly describing the place to be searched and the items or person to be seized. (The person seized was Appellant under false accusation without evidence and the DNA matching someone eles, under the charging document) Appendix G, 4th Amendment violation listed in grounds of Arguement and Authorities pages. 2, 5, 7, 9, 11, ■.

FOURTEENTH AMENDMENT - the Due Process Clause of the Fourteenth Amendment guarantees that all persons born in any State of the United States are citizens of that State and of the United States and are guaranteed the privileges and immunities due citizens of the United States and to Due Process and equal Protection of the laws. The Due Process Clause of the Fourteenth Amendment has been the vihicle for applying nearly all of the specific guarantees in the first ten amendments to State action by selectively incarporating these rights into this amendment. Tribe, American Constitutional law § 11-7 (3d. ed. 2000). Appendix G. 14th Amendment violation listed in grounds of Arguement and Authorities. pages. 2, 5, 7, 9, 11.

STATEMENT OF THE CASE

On are about March 29, 2009 the complaintant and her sister found out that the Appellant was relocating the family to San Antonio, Texas because Appellant needed help raising two daughters after their mother, Appellant's wife was hit by a car and killed instantly. After losing his wife, Appellant moved from the family Home in Houston to Webster Texas with the help of his mother and sisters. The youngest daughter was caught sneaking her boyfriend into the apartment, she though that Appellant had gone to work. Appellant's Brief. (R.R. Vol 3 at 190) pg 8, and (R.R. Vol 3 at 95) pg. 8. On March 31, 2009. Appellant CARL EDMOND YANCY was accused of Aggrevated Sexual Assault of a Child. The complaintant and her sister made these accusations, because they did not want to move and leave their friends and school. Appellant's Brief (R.R. Vol 3 at 176) pg 7. The complaintant was taken to the hospital to be examined on April 1, 2009.

On April 1, 2010, Appellant turned himself in and was arrested for sexual assault of a Child. In 2012 a DNA Analysis proved Appellant was not the contributor to the DNA found on the various swabs and the panties and the DNA did not match Appellant's DNA. (R.R. Vol 3 at 112-113 + 117) pg 5. The Sexual Assault Nurse Examiner stated that the examining Physicign made the diagnosis of Sexual assault against the advice of the Sexual Assault Expert Nurse's findings that no sexual assault took place, again that no evidence of sexual assault was found. Appellant's Brief (R.R. Vol 3 at 99) and (R.R. Vol 3 at 80-84) pg 16. that States there was no trauma to the Complaintant's Vigina, hymen, Cervix, or perineum (Translation) in medical terminology Complaintant was still a virgin at the time of the 2 hour examination. This alone clears Appellant of any sexual assault Charge. How could the Appellant insert his penis once or twice a week without the results of Dalton v. State 898 S.W. 2d 424 (Tex. App - Fort Worth 1995), see also Elizondo 947 S.W. 2d 202 (Tex Cr App 1997)

Along with the complaintant's statement who was a virgin stating Appellant inserted his penis into her virgina once or twice a week for years and Complaintant also testified Appellant had sex with her Doggy Style, this could not happen. State's own Expert witness testified in the medical terminology that complaintant was still a virgin upon examination. Appellant's Brief. (R.R. Vol 3 at 163 + 204) pg 16. Also Complaintant's sister testified that she saw Appellant having sex with the Complaintant who was a virgin. The sister also testified after perjuring herself to help her sister, also stating that Appellant had been sexually assaulting her which were both untruth statements and testimony. Now after a 2 hour examination by State's Expert Sexual Assault Nurse Examiner. She states She found no trauma to Complaintant's vigina, hymen cervix, or perineum. Appellant's Brief, (R.R. Vol 3 at 80-84) pg. 16, complaintant testified that Appellant had sexually assaulted her only 24 hours before the examination. This makes Appellant innocent. see Elizondo 947 S.W. 202 (Tex. Cr. App. 1996).

Appellant begs the Court this question, if Appellant's Brief (R.R. Vol 3 at 80-84) pg 16, is the scientific medical terminology and definition of a woman who is a virgin. How could Appellant insert his penis once or twice a week for what, years? How can complaintant have been a virgin at the examination? When examined closely it stands to reason none of the complaintant's testimony is truthful, and is an untruth by both complaintant's. The sexual assault never happened and, yet Appellant was found guilty on Febvary 25, 2013 and sentenced to 45 years. While in 2012 a DNA analysis proved Appellant's innocence. Appellant's Counsel filed no motion for New Trial, called no Medical Experts in Appellant's defence and called no facts witness. These cumulative errors violated Appellant's Constitutional Right to Due Process and Fair Trial as guaranteed by Amendments 4, 5, 6, 8 and 14 to the United States Constitution. This case has been a grave miscarriage of justice and it would be manifestly unjust to allow this conviction to stand in light of the overwhelming evidence. see Elizondo 947 S.W. 2d 202 (Tex. Cr. App. 1996). Appellant seeks to be exonerated and Released from prison, Appellant name taken off Sex offender website and to have his Records Expunged the Appellant would have been able to do this had he not been accused falsely. Appendix H is petitioner's Request for Expunction of Records and Order of Expunction. Appendix G, DNA ANALYSIS

RESPECTFULLY SUBMITTED
Carl Edmond Yancy

Executed on this 20 day of November 2020
Resubmitted on this 27 day of May 2021. (42)

REASONS FOR GRANTING THE PETITION

On or about April 1, 2010, Appellant turned himself in to the Harris County Sheriff's Office and was arrested on the charge of Aggrevated Sexual Assault of a Child and in 2012 a DNA analysis proved Appellant was not a contributor to the DNA that was found. Appellant's Brief, (R.R.Vol 3 at 117) pg.5. The complainant's made the allegations to the State, of being sexually assaulted "Therefore if the State makes a claim and unnecessary allegations discriptive of the Identity of the offence/charge, the State must establish such allegations by evidence. See Peters v. State 652 SW 2d 460, 461 (Tex. App-Houston [1st DIST] 1983 pet. ref'd. At trial favorable evidence was withheld and the State failed to bring this to light and to the jury's attention, also the fact they did find DNA and that, that DNA belong to someone eles. And also failed to State to whom the DNA belong too, with the possible probability of it being the boyfriend. Appellant's Brief. (R.R.Vol 3 at 190) pg.8.

The Sexual Assault Nurse Examiner. stated that the examining physician made the diagnosis of Sexual assault. (R.R.Vol 3 at 98) pg 3. Yet the Sexual Assault Nurse stated she found no evidence of sexual assault or that the complaintant had, had sexual intercourse. (R.R.Vol 3 at 104) pg.6. The 2 hour examination reveal no trauma to the Complaintant's Vigina, Hymen, Cervix, or Perineum. Appellant's Brief. (R.R.Vol 3 at 80-84) pg.16. This Statement alone clears Appellant because it is the medical terminology and definition of a woman who has not had sex, a virgin. The virgin Complaintant testified that Appellant inserted his penis into her vigina once or twice a week (R.R.Vol 3 at 147) pg 6, and that Appellant had sexually assaulted her Doggy Style. (R.R.Vol 3 at 163+204) pg.6. The Sexual Assault Nurse testified she performed a head to toe examination, including a detailed anal and genital examination, (R.R.Vol 3 at 58-59) pg.3. She testified no semen or foreign hairs were found (R.R.Vol 3 at 104) pg.4 and conceded she found no evidence the Complaintant had been sexually assaulted. Appellant's Brief. (R.R.Vol 3 at 99) pg.4.

Now if there was no trauma to the Complaintant's Vigina, Hymen, Cervix or Perineum and this is the medical definition of a woman (the Complaintant) who is a virgin. How has Appellant sexually assaulted her Compare now Dalton v. State 898 SW. 2d 424 (Tex. App.- Fort Worth 1995), to these statements in testimony, Appellant was convicted on the expect witness testimony which in fact proved Appellant's innocence, and yet only suggested at Appellant's guilt." When testimony gives rise to no more than a surmise or suspision as to the existance of fact sought to be proved, there is legal contemplation no evidence. See City of Houston v. Cash 483 SW. 2d 513 ref'd. n.r.e. The facts that Appellant was convicted on, were different than the fact the charge were based, while the trial Counsel's failure to investigate also played an important role in helping that conviction. The favorable evidence which was withheld and not brought to light, as to the DNA and medical explenation of terminology was not presented clearly at trial. The prosecutor should have known of the favorable evidence. See Darden Wainwright 477 U.S 168 (1986); Burnett Runches Ltd. v. Cono Petroleum inc. 289 S.W. 3d 862 "Knowledge of law inforcement is imputed to prosecutor even if prosecutor himself did not know of the evidence. See Kyles 514 U.S. at 438-440; Ex parte Adams 768 SW. 2d 292), on the governments behalf in the case including the police see. Kyles 514 U.S. at 437, 438; Ex parte Adams 768 SW. 2d 291-292). Elizondo 947 SW. 2d 202 (Tex. Ct. App. 1996)

Trial Counsel performed no pre-trial investigation, filed no Motion for New Trial. "There is a presumption that at trial, Counsel at Motion for New Trial is effective. see, Jack v. State 64, SW. 3d 694 (Tex. App-Houston [1st] 2002). As to ineffective assistance of Counsel. See Pavel v. Hollins 261 F. 3d. 210. (4). Failure to prepare a defence. (b) Failure to call important facts witness, (c). Failure to call expert medical examiners to rebut State's witness testimony Failure to call DNA experts, call no Medical Expert Sexual Assault Examiner to determine the definition of the Complaintant's examinatton. (R.R.Vol 3 at 80-84) pg 16, and what it ment as far as sex went. See also Lindstadt v. Keane 239 F. 2d 191, 12. These cumulative error should have exonerated Appellant and Appellant should not and would not have spent the lost nine years in prison for a crime Appellant never committed in the first place. The suppressed evidence which was hid in the medical terminology which no one seem to understand least of all Appellant, also the DNA to whom it belong. "Evidence that impeaches the credibility of a government witness whose testimony may well be determinative of [the defendant's] guilt or innocence" is Brady material that the prosecution may not suppress. See Giglio v. United States 405 U.S. 150. 92 S.Ct. 763, 766 31. Ed. 2d 104 (1972) (quoting Napue v. ILLINOIS, 360 U.S. 264. 79 S.Ct. 1173-1177, 31. 2d. 1217 (1959). U.S. v. Martinez-Mercado 888 F. 2d 1484, 1488 (5th Cir 1989). It true that the errors at trial put Appellant in prison falsely accused, but it was the lack of knowledge of medical terminology that help keep Appellant here. Had it not been for my sister who is an LVN Nurse Military retired when asked Appellant was told the terminology says that the complaintant was a virgin. I was stunned, Im a man whose been married five times and have three sisters and did not know

different parts of a womans body. Now the testimony that injuries are rarely found stated, by State expert Sexual Assault Nurse. A.B.(R.R.Vol 3 at 94) pg.4. But this could only be with a woman who wasn't a virgin as for a virgin, Compare Dalton v. State 898 S.W.2d 424 (Tex App-Fort Worth 1995) It would stand to reason that since Complaintant was still a virgin, then the painful results from the alleged sexual assault would have been traumatic and if Complaintant was still a virgin then the Sister's testimony is also an untruth, A.B. (R.R.Vol 3 at 63-64), pg 11. This could not have taken place with a virgin. This Conviction violated Appellant's Constitutional Right to Due Process and Fair Trial as guaranteed by Amendments 4, 5, 6, 8 and 14 to the United States Constitution. This Case has been a grave miscarriage of justice and it would be manifestly unjust to let this Conviction stand in light of the overwhelming evidence. The Appellant now seeks; Relief Sought: To Be Exonerated, his Record Expunged, Restitution to be made for Incarceration and Injuries/Collateral Damages and to Be Released from Prison.

GRANTED: _____ Denied: _____

Appellant now restates his Sworn Oath and Word received by Supreme Court Clerk on the 25 day of July, 2018. See Appendix I.

I, CARL EDMOND YANCY, hereby give my Oath and my Word to GOD that upon release, I will not talk to anyone Concerning the past Case, nor will I discuss it with family members, and I also give my Oath and my Word not to discuss any parts of the case with radio Stations or TV News Reporters. I further assert and give my Oath and my Word not to discuss any parts of the Case of my incarceration at TDCJ to any Social Media Outlets on the internet or elsewhere. I give my Oath and my Word to only use Social Media for Research of Business purposes or intertainment. It is time to put the past in the past and leave it there. The Appellant will not Contact the Complaintant's by any means, including Social **CONCLUSION**
Media. To This I Solemnly Swear, So Help Me GOD.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carl Edmond Yancy

Date: November 20, 2020

Executed-Resubmitted on this 27 day of May, 2021.

While Appellant is no lawyer Appellant would ask this Honorable Court to decide on the amount of restitution for Colateral damages and injuries to Appellant's life aside from the amount of restitution from the State for years of being incarcerated falsely for nine years without them really seeing my Case. Incarceration of an innocent person violates Due Process. see. Elizodo 947 S.W. 2d 202 (Tex. Cr. App. 1996). While this part is not a professionally drafted documnt in and of itself, Appellant would ask this Honorable Court in it's Wisdom, to award fairly a reasonable amount in restitution, the Appellant would except Courts decision. See Minix v. Gonzales, 162 S.W. 3d 635 (Tex. App-Houston [14th Dist.] 2005) HN.3, Pending Key 34 (3.5). "A Pro Se Inmates Petition Should be viewed with liberality and patience and is not held to the stringent Standards applied to formal pleadings Drafted by Attorney's" Hughes v. Rowe, 449 U.S. 5, 9-10 & N.7, 101 S.Ct. 173, 66 L.Ed. 2d. 163 (1980) (Citing Haines v. Kerner, 404 U.S. 519-21, 92 S.Ct. 594, 30 L.Ed. 2d. 652 (1972), Black v. Jackson, 82 S.W. 3d 44, 51 (Tex. App. Tyler 2002, NO. pet), Aguiler v. Stone, 68, S.W. 3d 1, 1-2 (Tex. App-Houston [1st Dist] 1997, NO. pet) FN.1 see. also Yacca v. Farrington, 85 S.W. 3d 441 (Tex. App. Texarkana 2002). (It's now been twelve years incarcerated). And it appears to this Court that restitution for Collateral damages or and Should be awarded in the amount of $ _____ not including restitution form the State to included Petitioner's Immediate release from prison. Executed 20 day of November 2020. Now submitted this ___ day of _____ 2021. (6). Granted _____ Denied: _____

SUPPORTING ARGUMENTS AND AUTHORITIES

On or about March 29, 2009 the Complaintant's found out that the Appellant was planning to move the family to San Antonio, Texas because Appellant needed help raising two young daughters, after Appellant's wife was hit by a car and killed instantly. Appellant had come home and Cought the youngest daughter (the Complaintant) trying to sneak her then boyfriend into the apartment, however, Appellant was assured by his daughter that she had never had sex and was therefore still a virgin. This would in the future prove to be true, only proved the hard way by the loss of Appellant's freedom. To stop the move to San Antonio the two Complaintants accused Appellant of sexually assaulting them. Appellant was jailed and even with the evidence to prove Appellant's innocence, Appellant was convicted and sentenced to 45 years in the Texas Department of Criminal Justice. And now Appellant would show the truth that was hidden in the medical terminology that Appellant at that time could not understand untill years later, after being informed by Appellant's sister.

Even now there has been no evidence to support a Crime or conviction, only allegations and use of perjured testimony, ineffective assistance of Counsel, favorable evidence that was suppressed, a variance caused by Conflicting testimony by States own Expert Witnesses, all this and no evidence and still Appellant was Convicted. "Therefore if the State makes a Claim and unnecessary allegations discriptive of the Identity of the offence/Charge, the State must establish such allegations by evidence. see Peters v. State 652 S.W. 2d 460, 461 (Tex. App-Houston [1st Dist] 1983 pet. ref'd. The Appellant has suffered harm and Collateral damages from being incarcerated by false testimony by Complaintant and Complaintant's sister who both perjured themselves, becouse no sexual assault had taken place. The accusation was driven by their desire not to be uprooted and moved to a new City. Appellant began saving money which included not paying the current rent so Appellant could use the money for the move. This is when the Complaintant made her decission to run away.

Appellant's Brief, (R.R. Vol 3 at 190) pg 8, the boyfriend was brought to the apartment without permission; (R.R. Vol 3 at 176) pg 7, explains their running away was not a Coincidence, as was testified too; Appellant's Brief, (R.R. Vol 3 at 208) pg 7, States the reason that the accusation of Sexual assault was made. Kerr testified that after a 2 hour examination there was no trauma to the Complaintant's vigina, hymen, Cervix, or perineum. (R.R. Vol 3 at 80-84) pg 16; No physical evidence that Complaintant had been sexually assaulted, (R.R. Vol 3 at 104) pg 16, Kerr also made the statement that physical injuries are rarely found, this Statement was only used to bolster a Case without any evidence, Compare this statement to Dalton v. State 898 S.W. 2d 424 (Tex. App-Fort Worth 1995).

There is however evidence no Crime was Committed by Appellant. see (R.R. Vol 3 at 80-84) pg 16, which States the medical definition for a woman who is a virgin, so it stands to reason that, (R.R. Vol 3 at 147) pg 6, Stating he inserted his penis into the Complaintant's vigina, once or twice a week, or Appellant's Brief, (R.R. Vol 3 at 63+64) pg 11, Stating that Complaintant's Sister Say; She Saw Appellant having sex with the Complaintant, who at the time of the 2 hour examination, a virgin.

The sister also stated that Appellant had sexually assaulted her also. These testimonies and statements were perjuries made up by the complaintants. These sexual assaults could not have happened at anytime, as stated by State's own Expert Sexual Assault Nurse Examiner. This Convicted Appellant and violated Appellant's Constitutional Right to Due Process and Fair Trial as guaranteed by Amendments 4, 5, 6, 8 and 14 to the United States Constitution. see Elizado 447 S.W. 2d 202 (Tex. Cr. App. 1996). The case has been a grave miscarriage of justice and it would be manifestly unjust to let this conviction stand in light of the overwhelming evidence. Relief Sought: To Be Exonerated, Taken off Sex Offender Website, Restitution made for Incarceration and Injuries/Collateral Damages, and to Be Released from Prison.

Granted: _____ Denied: _____

VARIANCE - Appellant was Convicted as stated clearly of fact's different that those facts on which the Charge were based, using second hand testimony. Kerr - stated that the physician made the claime of sexual assault against the evidence of no sexual assault, Appellant's Brief, (R.R.Vol 3 at 98) pg 4. (Compare against, A.B. (R.R.Vol 3 at 99) pg 4. Kerr found no evidence of sexual assault. She - Kerr also admitted the only evidence of a sexual assault was the complaintant's testimony. A.B. (R.R.Vol 3 at 105) pg 4. "A variance occurs whenever there is a discrepence between the indictment and proof affected at trial." The indictment states, Aggrevated Sexual Assault of Child Under 14 years of Age. Yet the State's two Expert Medical Examiners have conflicting diagnosis, the physician claiming sexual assault in, A.B. (R.R.Vol 3 at 98) pg 4. While Kerr's diagnosis was that the complaintant was still a virgin, stated in, A.B. (R.R.Vol 3 at 80-84) pg 16, stating there was no trauma to Complaintant's Vigina, Hymen, Cervix, or Perineum and no one, not the judge or Petitioner's defence counsel seem to know this was the medical terminology and definition of a woman who is a virgin, and who had not had sex as stated by the Complaintant.

The Complaintant has made the allegation to the State of sexual assault. "Therefore if the State makes a claim and unnecessary allegations discriptive of the Identity of the Offence/Charge, the State must establish such allegations by evidence, see. Peters v. State 652 S.W. 2d 460, 461 (Tex. App - Houston [1st Dist.] 1983) pet. ref'd. The State's own wirnesses created a variance in Appellant's trial. see, Byrd v. State 336 S.W. 2d 242 (Tex. Cr. App. 2011). At trial favorable evidence was withheld and this failed to bring to light, to the jury and judge's attention, the fact that they did indeed find DNA, and that the DNA found belong to someone eles, and the State also failed to state whose DNA was found, with the possible probability of the DNA being the boyfriends. The State should have known of the favorable evidence. see, Darden Wainwright 477 U.S. 168 (1986); Burnett Runches. Ltd. v. Cono Petroleum inc. 289 S.W. 3d 862. With the evidence collected that proved Appellant's innocence the Appellant's Attorney should have put up a better defence. "Knowledge of law enforcement agencies is imputed to prosecutors, even if the prosecutor himself did not know of the evidence. See, Kyles 514 U.S. at 438-440; Ex parte Adams 768 S.W. 2d 292), on the governments behalf in the case including the police. See, Kyles 514 U.S. at 437, 438; Ex parte Adams 768 S.W. 2d 291-292. The conflict of the diagnosis between the State's own Expert Witnesses in the accessment of Complaintant's

mination. Kerr's testimony that the physician made the diagnosis of sexual assault is impeached by Kerr's testimony that no sexual assault took place, A.B. (R.R.Vol 3 at 99) pg 4, no trauma to vigina. A.B. (R.R.Vol 3 at 80-84) pg 16. And no evidence of a sexual assault or sexual intercourse as stated by complaintant in, A.B. (R.R.Vol 3 at 147) pg 6, only 24 hours after stating she had been sexually assaulted by Appellant. A.B. (R.R.Vol 3 at 104) pg 16.

Appellant has repeat question just for the Honorable Court of Justices. If Appellant had inserted his penis once or twice a week. A.B. (R.R.Vol 3 at 147) pg 6, and having doggy style sex with the complaintant for years, would this make her (the complaintant) not a virgin? see, Dalton v. State 898 S.W. 2d. 424 (Tex. App.-Fort Worth 1995). "Evidence that impeaches the credibility of a government witness whose testimony when given "may well be determinative of [the defendant's] guilt or innocence," is Brady material that the prosecutor may not suppress. See, Giglio v. United States 405 U.S. 150, 92 S. Ct. 763, 766 31. Ed. 2d. 104 (1976), (quoting Napue v. ILLINOIS 360 U.S. 264 79 S. Ct. 1173-1177 31. Ed. 2d. 1217 (1959). U.S. v. Martinez-Moreado 888 F. 2d 1484, 1488 (5th Cr. 1989). When State's own witness testified to conflicting testimony, it caused a variance which also clears Appellant. The DNA findings which was excluded and not properly presented to the judge, the jury, the Appellant and the Appellant's counsel as to whose DNA was found on the complaintant's if not the Appellant's, with the possible probability of it being the boyfriends. "Engregious harm exist when the defendant's rights are injured to the point that he was denied a fair and impartial trial, when the error," (1) went to the very heart of the case; (2) denied the defendant a valuable right; or (3). vitally effects his defence theory. see Sanson v. State 291 S.W. 3d. 113, 128 (Tex. App-Houston [14th Dist] 2008), pet. ref'd. "The No Harm Analysis is Utilized", Bagley error could not be treated as harmless, since a reasonable probability exist that had the evidence been disclosed to the defence, the result of the proceding could have been different, necessarily must have had substantial and injurious effect of enfluence in determining the jury's virdict. see Kyles 514 U.S. at 435, 115 S. Ct. 1555.

The evidence of Appellant's innocence and the errors at trial went to the heart of the case, and is that the medical terminology and discription of the complaintant's examination hid the fact from those who did not know that the medical definition described a woman who was a virgin. Therefore the Appellant could not have had sex with the complaintant the way the complaintant testified too. As follows: A.B. (R.R.Vol 3 at 147) pg 6, Appellant inserted his penis into complaintant's virgina once or twice a week for years, or A.B. (R.R.Vol 3 at 163 + 204) pg 16, Appellant had doggy style sex with the complaintant "a virgin". The vital information proved Appellant's innocence. The conviction and errors at trial and sentencing did vitally effect Appellant's defence theory, which also violated Appellant's Constitutional Right to Due Process and Fair Trial. Not having all the correct information, the name and owner of the DNA, the definition of the medical description and definition of the terminology used to describe complaintant's examination, proper Counsel and defense, the Appellant has spent Nine Years incarcerated fulsely, Compare Appellant Brief, (R.R.Vol 3 at 94) pg 4, with Dalton v. State 898 S.W. 2d 424 (Tex. App-FortWorth 1995). So it stands to reason that if complaintant was still a virgin then the sister's testimony is also an untruth, A.B. (R.R.Vol 4 at 64) pg 11, states she saw Appellant having sex with her sister, the complaintant who was at the time of examination still a virgin. This could not have taken place and the Conviction violated Appellant's

Constitutional Right to Due Process and Fair Trial as guaranteed by Amendments 4, 5, 6, 8 and 14 to the United States Constitution. This case has been a grave miscarriage of justice and it would be manifestly unjust to let this conviction stand in light of the overwhelming evidence. see Elizado 947 S.W.2d 202 (Tex. Cr. App. 1996). Relief Sought: To Be Exonerated, Taken off Sex Offender Website, Restitution made for Incarceration, Restitution for Injuries/Collateral Damages and To Be Released from Prison.

Granted: _____ Denied: _____

EVIDENCE INSUFFICIENT - Appellant's Conviction was obtained as a result of evidence that was insufficient to prove Appellant's guilt beyond a reasonable doubt. Favorable evidence was withheld, and without all the evidence being presented the Appellant could not prove his innocence. Likewise there was not enough evidence to support a conviction and a violation of Due Process accured. Appellant's Brief, (R.R.Vol 3 at 104) pg 16, states that no semen or foreign hairs were found. A.B. (R.R.Vol 3 at 99) pg 4, states that no physical evidence of a sexual assault was found; Appellant's Brief, (R.R.Vol 3 at 117) pg 5, states that the DNA that was found did not match Appellant's DNA. Appellant Brief (R.R.Vol 3 at 80-84) pg 16, states there was no trauma to Complaintant's vigina, hymen, cervix, or perineum. Appellant finally asked his sister about this little medical statement after eight years in prison to that date, and Nine years to this date, and still fighting for my freedom. My sister is a retired millitary nurse and the Appellant was told this statement was the medical terminology and definition of a woman who has not had sex "a virgin". Needless to say Appellant was speachless, because Appellant has three sisters, has been married five times; so I cannot blame my ninth grade education for not knowing the parts of a womans body, well medical terminology wise anyway. Proof of Appellant's innocence has been there this whole time buried in the wording of the complaintant's discriptive diagnosis. see Sandoval (409 S.W.3d. 290), State presented no Corabacating evidence, 20. C.E's testimony was improperly bolstered; A.B. (R.R.Vol 3 at 94) pg 4, states injuries are rarely found, this stated about a virgin. see Dalton v. State 898 S.W.2d 404 (Tex. App - Fort Worth 1995). This also impeaches Keri's secondhand testimony at, A.B. (R.R.Vol 3 at 98) pg 4. Which states the physician made the diagnosis of sexual assault. They both examined the complaintant at the same time with conflicting results creating a variance at trial. The State withheld part of the truth of the DNA analysis and evidence was made unclear to the Appellant's Counsel, the judge, and jury during the conviction and sentencing phase. see Ex parte Perales 215 S.W. 2d 418, 419 (Tex. Cr. App. 2007). Counsel and State failed Appellant in his Due Process Right. Matthew v. Eldridge 424 U.S. 319 (1976). "Evidence is favorable when disclosed and used effectively, it may make the difference between conviction and aquittal. see Bagley 473 U.S. at 676; Ex parte Mitchell 853 S.W. 2d 1, 4 (Tex. Cr. App. 1993). Appellant was convicted on expert witness testimony which in fact proved Appellant's innocence, and yet only suggested at Appellant's guilt. "When testimony gives rise to no more than a surmise or suspision as to the evidence of fact sought to be provided, their is legal contemplation no evidence. City of Houston v. Cash 483 S.W. 2d 513 ref'd. n.r.e. [T]he duty encompasses impeachment evidence as well as exculpatory evidence. See Strickler v. Greene 527 U.S. 263, 280 (1999), (citing United States v. Bagley 473 U.S. at 682, 105 S.Ct. 3383. Id., 473 U.S. at 655, by not stating the evidence clearly it hid facts that would

and will in all possible probabilities aquit Appellant. As to the impeachment evidence and key to the whole sexual assault allegation is this: That there is no evidence that a crime or sexual assault was committed by Appellant. A.B. (R.R.Vol 3 at 80-84) pg 16, is the medical definition of a woman who is a virgin. The testimonies of the complaintant's sexual assault were allegations based on untruths and falsehoods. The State has made allegations of sexual assault were no sexual assault took place with only the accusation of the complaintant's testimony and no evidence. Therefore is the State makes a claim and unnecessary allegations discriptive of the Identity of the Offence/Charge, the State must establish such allegations by evidence. see Peters v. State 652 S.W.2d 460, 461 (Tex. App. - Houston [1st Dist.] 1983) pet. ref'd. The statement in A.B. (R.R.Vol 3 at 94) pg 4, states that injuries are rarely found. see Dalton v. State 898 S.W.2d 424 (Tex. App - Fort Worth 1995).

Evidence is as follows: (1). A.B. (R.R.Vol 3 at 147) pg 16, States Appellant inserted his penis once or twice a week. (2). A.B. (R.R.Vol 3 at 80-84) pg 16, States Complaintant has not had sex and in fact she is a virgin. (3). A.B. (R.R.Vol 3 at 163+204) pg 16, States that Appellant had doggy style sex with the still virgin Complaintant. (4). Now Compare the statement in A.B. (R.R.Vol 3 at 94) pg 4, injuries are rarely found with Dalton v. State 898 S.W.2d 424 (Tex. App. - Fort Worth 1995). It was and is a violation of Due Process to incarcerate an innocent person. see Elizandro 947 S.W.2d 202 (Tex. Cr. App 1996). This case has been a grave miscarriage of justice and it would be manifestly unjust to let this conviction stand in light of the overwhelming evidence. Appellant's Case violated Appellant's Constitutional Right to Due Process and Fair Trial as guaranteed by Amendment's 4, 5, 6, 8 and 14 to the United States Constitution. Relief Sought: To Be Exonerated, Taken off the Sex Offender Website, Restitution made for Incurceration and Injuries/Calloteral Damages and To Be Released from Prison.

Granted: _____ Denied: _____

INEFFECTIVE ASSISTANCE OF COUNSEL: "(Failure to Investigate)." The favorable evidence which was withheld would show that Counsel failed to investigate as trial records will clearly show. see Pavel v. Hollins 161 F.3d 210 (4). Failure to prepare a defence. (6). Failure to call important facts witness. (C). Failure to call expert medical exominers to rebut State's Expert Witness concerning the DNA that was found and to whom it belong too. A.B. (R.R.Vol 3 at 117) pg 5, or to question the State's Expert Sexual Assault Examiner as to the medical terminology used in her discription of the complaintant's exam, and as to what it ment as far as sexual intercourse went. Ineffective Assistance of Counsel. see Lindstadt v. Kean 239 F.2d 191. 12. Criminal Law 641, 13. (2.1, 6). 15. Habeas Corpus (Key) 482; (2). Counsel conducted no pre-trial investigation, call no witnesses in defence of Appellant, called no medical experts. See Dunham 650 S.W.2d 825, 827 (Tex. Cr. App. 1983). Appellant's Brief, (R.R.Vol 3 at 69) pg 3, the physician made the diagnosis of sexual assault and this is impeached by State's Expert Witness in, A.B. (R.R.Vol 3 at 80-84) pg 16, stating there was no trauma to the vigina, hymen, cervix, or perineum - translation in laymen terms, complaintant was a virgin. However in Appellant's Brief (R.R.Vol 3 at 94) pg 4, States physical injuries are rarely found, this statement only bolstered the State's case of no evidence, since Kerr testifies for the State. see Dalton v. State 898 S.W.2d 242 (Tex. App - Fort Worth 1995), this is as to what happens to a virgins body when sexually assaulted. Keep in mind that, A.B. (R.R.Vol 3 at 80-84) pg 16, is the medical

terminology and definition of a woman who has never had sex or is a virgin. So if the Complaintant is by State's own Expert Sexual Assault Nurse Examiner's testimony in medical terms is still a virgin, then again it stands to reason that, A.B.(R.R.Vol 3 at 147)pg6, Stating Appellant inserted his penis once or twice a week, or A.B.(R.R.Vol 3 at 63)pg11, Stating the Complaintant's sister says she saw Appellant having sex with Complaintant, are untruths.

These things could not and did not happen and this information could have been uncovered through a pre-trial investigation. "The Standard of Review;" The Court of Criminal Appeals will hold that Counsel's assistance was effective if it appears from the entire record that the defendant did not recieve effective assistance. Counsel failed in, Pavel v. Hollins 261 F. 3d. 210, also see Cude v. State 588 S.W.2d 895 (Tex. Cr. App. 1979)." Evidence that impeaches the credibility of a government witness whose testimony may well be determinative of [the defendant's] guilt or innocence" is Brady material that the prosecutor may not suppress. See Giglio v. United States 405 US. 150, 92 S. Ct. 763, 766 31. Ed. 2d 104 (1976), (quoting Napue v. ILLINOIS 360 U.S. 264, 79 S. Ct. 1173 = 1177. 31. Ed. 2d. 1217 (1959), U.S. v. Martinez-Mercado 888 F. 2d 1484, 1488 (5th Cir. 1989)" A reasonable probability. Id., 473 U.S. 683 S. Ct. 3383 (Opinion of White Jr.). This extends to Appellate Counsel. The Texas Court's have granted relief, granted on claims of ineffective assistance of Counsel in the following circumstances, Counsel failed to represent properly the grounds, or conform to common Appellate rules on 23 of 27 alleged errors, and on habeas failed to satifactorily explain his failure to do so. See Dietzman 790 S.W. 2d 305-306-307 (Tex. Cr. App. 1990). There were however many errors at trial, Sentencing and at Appeal." Although no one instance Counsel's performance as a whole may compel such a holding. See Ex parte Welburn 785 S.W. 2d 391, 396 (Tex. Cr. App. 1990), (Keller, P.J.) desenting to the granting of relief and noting that Appellant fail to object at sentencing procedures at trial and forfieted his right to complain under Hull v. State 67 S.W. 3d 715 (Tex. Cr. App. 2009), but because the Appellant had claimed ineffective assistance of Trial and Appellate Counsel, his claim could be addressed.

Had either Counsels performed a proper investigation, brought in medical experts, and a DNA expert, they would hove Clarified that in Appellant's Brief. (R.R.Vol 3 at 80-84) pg16, was the medical terminology and definition of a woman who is a virgin. Appellant would not have been found guilty and instead aquitted. ("When defineient performance at punishment phase is an issue), the Appellant "must prove that, but for Counsel's errors the sentencing jury would have reached a more favorable penalty-phase virdict, see Ex parte Cash 178 3d. 816, 818 (Tex. App. 2005) (en blanc). Benson v. State 244 S.W. 3d 485, 491 (Tex. App.-Houston [1st] 2005). Trial failed to file a Motion for New Trial, did not properly investigate, called no medical experts of fact witnesses at all in defence of Appellant. "There is a presumption that at trial, Counsel at Motion for New Trial is effective." see Jack v. State 64 S.W. 3d 694 (Tex. App.-Houston [1st] 2002). In the Memorandum Opinion pg16, dated July 24, 2014 at Mistrial,[2] Clearly shows and states Counsel failed to file a Motion for New Trial. Appellate Counsel utterly failed Appellant while Trial Counsel's failure were at Trial and punishment phase. In Turner v. Duncan 159 F. 3d. 449, Id., at 457. "When an attorney has made a series of errors that prevent the proper presentation of a defence." It is appropriate to consider the whole cumulative impact of errors in accessing prejudice. Id., at 457 (citing Harris v. Wood 64 F. 2d. 1438-39 (9th Cir. 1998). Now again in the medical expert's stated secondhand testimony

by Kerr, who examined the same complaintant at the same time as the physician, Yet both had conflicting diagnosis. A.R. (R.R.Vol 3 at 98) pg.4, physician mode the diagnosis of this statement is that complaintant was a virgin. Complaintant repeatedly stated that Appellant had sexually assaulted her, Appellant's Brief, (R.R.Vol 3 at 147) pg6, states that Appellant inserted his penis into her vigina once or twice a week and (R.R.Vol 3 at 163 + 204) pg. 16, since complaintant was still a virgin and complaintant had never had sexual intercourse as was stated in A.B. (R.R.Vol 3 at 104) pg.16, which means complaintant's testimony was and is an untruth. A.B. (R.R.Vol 3 at 94) pg4, saying injuries are rarely found. That is because this statement was only used to bolster the case of no evidence, compare this statement with Dalton v. State 898 S.W. 2d 424 (Tex. App- Fort Worth 1995). It is a violation of Due Process to incarcerate an innocent person. see Elizada 947 S.W. 2d 202 (Tex. Cr. App. 1996). This case has been a grave miscarriage of justice and it would be manifestly unjust to let this conviction stand in light of the overwhelming evidence. Relief Sought: To Be Exonerated, Taken off Sex Offender Website, Restitution made for Incorceration, and Injuries/Collateral Damages, To Be Released from Prison. This case violated Appellant's Constitutional Right to Due Process and Fair Trial as guaranteed by Amendments 4,5,6,8 and 14 to the United States Constitution.

Granted: _____ Denied: _____

CUMULATIVE ERROR- The Prosecution failed to present the Appellant's jury and the Court with favorable evidence that would in all possible probability have aquitted the Appellant. see. Ex parte Perales 215 S.W. 2d 418, 419 (Tex. Cr. App. 2007). The evidence withheld was to whom the DNA belong that was found with the possible probability of it being the boyfriends. see Taylor v. ILLINOIS 484 U.S. 400 (1988); Holmes v. Sicor 126 S. Ct. 1727 (2006); Kyles v. Whitley 514 U.S. 419 (1995). The DNA was not stressed as a point of interest by trial counsel, in light of it's importance to Appellant's guilt or innocence. "Evidence is favorable if when disclosed and Used effectively may make the difference between Conviction and aquittal, see Bagley 473 U.S. at 676; Ex parte Mitchell 853 S.W. 2d. 1, 4 (Tex. Cr. App. 1993). "[T]he duty incompasses impeachment evidence as well as exculpatory evidence." see Strickler v. Greene 527 U.S. 263, 280 (1999). (citing United States v. Bagley 473 U.S. at 682, 105 S. Ct. 3383. Appellant's Brief, (R.R.Vol 3 at 117) pg5, states that DNA was found and that the Appellant was excluded as a source of the DNA and in fact it belong to someone eles. Yet the test results sent Appellant does not state to whom the DNA belong. see Jackson v. Vaginia 443 U.S. 307 (1999).

Had this evidence been presented properly to the jury, the possible probability existed that the outcome of the trial and sentencing would have been an aquittal. see Kyles 514 U.S. 433-434; Bagley 473 U.S. 682; Ex parte Adams 768 S.W. 2d. 281, 291 (Tex. Cr. App. 1989). The Trial Counsel failed to mount an agressive attack on the Prosecutor's Charge and failed to call important fact witness at all for the defence and in fact did nothing to try and prove Appellant's was innocent. see Pavel v. Hollins 261 F. 3d 210 (4). Criminal Law 641.13 (2.1,6). 4. (a) Failure to prepare any defence at all. (b). Failure to call facts witnesses (c). Failure to call medical experts of any kind. Ineffective Assistance of Counsel. see Lindstadt v. Kean 239 F. 2d. 191.12 Criminal Law 641.13 (2.1,6). 15. Habeas Corpus 482. (2); While

Appellant's trial counsel failed to investigate the Appellant's case, Appellate Counsel also failed to procede properly with an investigation, see Bell v. Cronic 535 U.S. 685-695-96. (2002) (citing United States v. Cronic 466 US. 648, 659-662 (1984). The fact that both trial and Appellate counsels failed Appellant by violating Appellant's right to Due Process. Appellate Counsel failed to present properly the grounds and did not conform to common Appellate rules. see Dietzman 790 S.W.2d 305-306-307 (Tex. Cr. App. 1990). Trial counsel failed to file a Motion for New Trial, stated in States Memorandum Opinion pg 16, date July 24, 2014, of Mistrial.[2] see Jack v. State 64 S.W. 3d 694 (Tex. App.- Houston [[1st] 2002). The suppressed evidence was hidden in the medical terminology. Appellant's Brief, (R.R. Vol 3 at 80-84) pg 16, Stating there was no trauma to complaintant's vigina, hymen, cervix, or perineum. The translation, the complaintant was a virgin, so the Appellant could not have inserted his penis once or twice a week as in A.B. (R.R. Vol 3 at 147) pg 16, nor could Appellant completed. A.B. (R.R. Vol 3 at 163 & 204) pg 16, Stated Appellant having doggy style sex with her the "complaintant virgin". This did not and could not have happened and is an untruth since the complaintant was a virgin at the time of the allegations.

The Court however has recognized that a defendant's Due Process Right to Fair Trial prohibits the prosecutor from suppressing evidence that's favorable to the accused. see Brady 83. S. Ct at 1196-97. Evidence that impeaches the credibility of a government witness whose testimony "may well be determinative of [the defendant's] guilt or innocence," is Brady material that the prosecutor may not suppress. See Giglio v. United States 405 U.S. 150. 92 S.Ct. 763, 766 31 Ed. 2d. 104 (1976) (quoting Mereado 888 F. 2d 1484, 1488 (5th Cir. 1989). Appellant was convicted on evidence that actually proved Appellant's innocence, Yet only suggested at Appellant's guilt. "When testimony gives rise to no more than a surmise or suspicion as to facts sought to be proved there is legal contemplation no evidence. see. City of Houston v. Cash 483 S.W. 2d 513 ref'd, n.r.e. Appellant's Review of Errors in criminal cases usually involves a two step process; [court first determines that errors accured in trial and then determines whether errors calls for a reversal of conviction]." Rules. App. Pro, Rules 81 (b)., (1) Martinez v. State 901 S.W. 2d 655 (Tex App-Fort Worth 1995). 1. An error accured when favorable evidence was suppressed as to whom the DNA belong too, that was found. (R.R. Vol 3 at 117) pg 5. (2). When trial Counsel failed to file a Motion for New Trial. Memorandum Opinion dated July 24, 2014. pg 16, at Mistrial.[2] (3). When counsel for the State failed to inform the Appellant, Appellant's jury and the Court of what the Statement, discription, and definition of the States Expert witness who stated the results of complaintant's examination actually ment. How it really says that the complaintant was at the time of conviction of inserting his penis repeatedly over the years, still a virgin.

In Sandaval v. State 409 S.W. 3d 259, 279 (N.D. Tex. 2001). "There were errors were not harmful in and of themselves which we conclude they were, the combined effect of all the errors in the case (including the opinion testimony of Detective Carroso)," harmed Appellant, see Gamboa v. State 296 S.W. 3d 524, 585 (Tex. Cr. App. 2009). It is possible for a number of errors to cumulatively rise to the point were they become harmful [.]. (1) errors at trial)- Kerr in Appellant's Brief, (R.R. vol 3 at 104) pg 16, states she found no semen or foreign hairs belonging to Appellant. (2) use of medical terminology to suppress evidence. A.B, (R.R. Vol 3 at 80-84) pg 16, Stating no trauma to vigina and this is the definition of a woman who is a virgin. (3). Secondhand testimony of physicions diag-

nosis was of a sexual assault. A.B. (R.R.Vol 3 at 98) pg 4. (4). both expert witnesses examined the complaintant at the same time with the physician stating there was a sexual assault and Sexual Assault Nurse Expert stating there was no sexual assault. These diagnosis created a variance at trial. Appellant's Brief, (R.R.Vol 3 at 99) pg 4, States Kerr found no evidence of a sexual assault. (5). Trial Counsel failed to file a Motion for New Trial. (Memorandum Opinion of July 24, 2014 at Mistrial.[2]). There were many grounds that Appellant file earlier on, but has since settled on these four which delve into the heart of the case on all points. If there is no trauma to vigina, hymen, cervix, or perineum and this is the medical terminology and the definition of a woman who is a virgin, then this conviction violated Appellaat's Constitutional Right to Due Process and Fair Trial, no sexual assault took place.

Appellant's Brief, (R.R.Vol 3 at 94) pg 4, that injuries are rarely found when a virgin is sexually assaulted. A.B. (R.R.Vol 3 at 147) pg 6, the Appellant is said to have inserted his penis once or twice a week also, A.B. (R.R.Vol 3 at 163 & 204) pg 16, that Appellant had had doggy style sex for years with the virgin Complaintant. Compare these statement with Dalton v. State 898 S.W. 2d 424 (Tex. App.-Fort Worth 1995). "Therefore if the State makes unnecessary allegations discriptive of the Identity of the Offence/Charge", the State must establish such allegations by evidence. See Peters v. States 652 S.W. 2d 460, 461 (Tex. App-Houston [1st Dist] 1983) pet. ref'd. Now if all this testimony by complaintant's was an untruth and has been only used to stop a move to San Antonio, Texas. And if the complaintant was a virgin at the time of the 2 hour examination, it stands to reason that, A.B. (R.R.Vol 4 at 64) pg 11, stating the complaintant's sister says she saw Appellant having sex with the virgin Complaintant. The statement in Appellant's Brief. (R.R.Vol 3 at 63) pg 11, stating Appellant also sexually assaulted her. Neither of these statements are true and did not take place, and in fact they are untruths. These alleged sexual assaults could not and did not ever occur. Still the Appellant was convicted on facts different than those facts alleged in the Charge/Indictment. Incarceration of an innocent person violates Due Process. See Ex parte Elizado 947 S.W. 2d. 202 (Tex. Cr. App. 1996). This case has been a grave miscarriage of justice and it would be manifestly unjust to let this conviction stand in light of the overwhelming evidence. And this case violated Appellant's Constitutional Right to Due Process and Fair Trial as guaranteed by Amendments 4, 5, 6, 8 and 14 to the United States Constitution. Relief Sought: To Be Exonerated, Taken off Sex Offender Website, Restitution made for Incarcerution, also Restitution made for Injuries/Cullateral Damages and to Be Released from Prison.

Granted: _____ Denied: _____

While Appellant is no lowyer, or expert in preparing the documents the Appellant would ask this Honorable Court to see. Minix v. Gonzales, 162 S.W. 3d 635 (Tex. App-Houston [14th Dist] 2005) HN 3, Pending Key 34 (3.5). "A Pro Se Inmate's Petition should be view with liberality and patience and is not held to the stringent standards applied to formal pleadings Drafted by Attorney's. Hughes v. Rowe 449 U.S. 5, 9-10 & N.7, 101 S. Ct 173, 66 L. Ed. 2d. 163 (1980) (citing Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), Black v. Jackson 82 S.W. 3d 44, 51 (Tex. App. Tyler 2002, NO pet.), Avilor v. Stone 68 S.W. 3d 1, 1-2 (Tex. App-Houston [1st Dist] 1997. NO. pet).[FN1] see also Varra v. Farrington 85 S.W. 3d 441 (Tex. App-Texarkana 2002). Appellant would also ask this Honorable Court to

grant the Appellant the amount for Collateral Damages in Restitution aside from the Restitution from the State. Restitution is ordered by the Court in the amount of $\$$_____, not including Restitution from State.

Granted: _____ Denied: _____

Executed on this 20 day of November 2020

* Resubmitted and Executed on this ___ day of _____ 2021
with Petitioner's Original Writ of Certiorari/Motion Extension of Time
Received by Supreme Court on May 18, 2021

RESPECTFULLY SUBMITTED
Carl Edmond Yancy

CONCLUSION

On February 22, 2013 Appellant was Convicted of Aggrevated Sexual assault, this conviction without evidence to support the charge. The favorable evidence was obscured in the medical terminology, that no one seem to understand or pay attention to. If Appellant's Trial Counsel had performed a pre-trial investigation, it would have determined the definition of the medical terminology and informed the jury and the Court of the translation. And that the Complaintunt was in fact a virgin, just as Stated in Appellant's Brief. (R.R.Vol 3 at 80-84) pg.16 stating no trauma to vigina, hymen, cervix, or perineum. Again the translation is that the Complaintant was a virgin at the time of examination. If this is true, then, A.B. (R.R.Vol 3 at 147) pg.16 saying that Appellant inserted his penis into her vigina once or twice a week on Appellant's Brief. (R.R.Vol 3 at 163 & 204) pg.16, that Appellant had doggy style sex with Complaintant, could not have taken place with a virgin, see Dalton v. State 898 S.W. 2d 424 (Tex. App-Fort Worth 1995). And since the DNA found on the Complaintant's panties did not match Appellant's DNA, A.B. (R.R.Vol 3 at 117) pg.5, and this was the first (Key) to Appellant's aquittal, but it was also suppressed. (2). Counsel's ineffectiveness at not performing a pre-trial investigation into the facts of the case. (3) Counsel failed to file a Motion for New Trial or to prepare at all for trial. See Pavel v. Hollins 261, F. 3d 210 also Jack v. State 64 S.W. 3d 694 (Tex. App-Houston [1st] 2002). Reguarding Appellant's Brief. (R.R.Vol 3 at 80-84) pg.16, which states the medical definition of Complaintant's Examination. My sister being an LVN Nurse Retired Nurse Military, I asked her about the parts, of a womans body, which I should have done years ago. Your Honorable Justices, this is not a Conversation you get into with ones sister. Desperation however after eight years I finally asked about the parts of a womans vigina, hymen, cervix and perineum and of what the statement ment. I was informed that the medical terminology and definition used was that the Complaintont was a virgin. Imagine my suprize, shock and then anger. I'm a man who has three sisters and been married five times and did not know this, For the males, reading. Did you know this before reading this Brief?

Apparently neighter did my Counsel, the judge or the jury, who had women sitting in judgment of Appellant. So it stands to reason that the Appellant could not have sexually assaulted the Complaintant: Appellant's Brief. (R.R.Vol 3 at 176) pg.6, states Complaintant's were planning to run away from home, so that they would not have to move to San Antonio, Texas and leave there friends. So the filed false statements and had Appellant arrested and put in jail because it's the only way this would work without them being brought back. Getting the Appellant out of the way, by claiming Appellant sexually assaulted them when actually no sexual

assault took place. How many men are in this same or similar situation as were almost two sitting on the Supreme Court, GOD BLESS THEM. The statement in Appellant's Brief (R.R.Vol 3 at 94) pg.4, Stating injuries are rarely found was only used to bolster a case of no evidence, but it is impeached by Dalton v. State 898 S.W.2d 424 (Tex. App.-Fort Worth 1995). Incarceration of an innocent person violates Due Process. see Elizado 947. S.W. 2d. 202 (Tex. Cr. App 1996). This case has been a grave miscarriage of justice and it would be manifestly unjust to let this case stand in light of the overwhelming evidence, also this case violated Appellant's Constitutional Right to Due Process and Fair Trial as guaranteed by Amendments 4, 5, 6, 8, and 14 to the United States Constitution; Relief Sought: To Be Exonerated, Taken off the Sex Offender Website, Restitution made for Incarceration, Restitution made for Injuries/(La) lateral Damages and To Be Immediately Released from Prison.

Granted:_____ Denied:_____

While the Petitioner is no expert or lawyer in preparing such documents, Appellant also would ask this Honorable Court to see. Minix v. Gonzales 162 S.W. 3d 635 (Tex. App.-Houston [14th Dist.] 2005) HN.3, Pending Key 34 (3.5) "A Pro Se Inmate's Petition should be viewed with liberality and patience, and is not held to the stringent standards applied to formal pleadings Drafted by Attorney's. Hughes v. Rowe 449 U.S. 5, 9-10 + N.7, 101 S.Ct. 173, 66 L. Ed 2d 163 (1980) (citing Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L. Ed. 2d 652 (1972), Black v. Jackson, 82. S.W. 3d. 44, 51 (Tex. App. Tyler 2002, NO. pet), Aguilar v. Stone, 68 S.W. 3d 1, 1-2 (Tex. App-Houston [1st Dist.] 1997, NO. pet.) FN.1 see also, Vacco v. Farrington 85 S.W. 3d 441 (Tex. App-Texarkana 2002),

Appellant would ask this Honorable Court to grant the amount in Collateral Damages/ Injuries as Restitution. And it is hereby ordered by the Court in the amount and sum not to accede $_____. This not to include/Restitution from the State.

Granted:_____ Denied:_____

Executed by the Supreme Court on this ____ day of _____ 20__

* Resubmitted by Petitioner on this 27 day of May 2021. With Petitioner's Original Petition for Writ of Certiorari and Motion for Extension of Time Received by Supreme Court on May 18, 2021.

RESPECTFULLY SUBMITTED
Carl Edmond Yancy

PROOF OF SERVICE

I, CARL EDMOND YANCY, declare under penalty of perjury that the foregoing is true and Correct and that this Petitioner's Petition for Certiorari and Motions along with the Appendix. A-J was placed in the prison mailing system on the 20 day of November 2020. Pursuant to 28 U.S.C. § 1746. (This Petition is Resubmitted through the prison mailing system on this 27 day of May, 2021) Along with Petitioner's Original Writ of Certiorari Motion and Motion for Extension of Time.

RESPECTFULLY SUBMITTED
Carl Edmond Yancy

VARIFICATION

I, CARL EDMOND YANCY, declare under penalty of perjury that the foregoing writ of

Certiorari with Appendix A-J and order of Expunction is true and correct. Pursuant to 28 U.S.C § 1746.

Executed on the 20 day of November 2020.

* Resubmitted on this the ___ day of _____ 2021. With Petitioner's Original Writ of Certiorari Motions for Extension of Time. Received by Supreme Court on May 18, 2021

PRAYER

WHEREFORE, ALL PREMISES CONCIDERED, Appellant humbly request this Honorable Court to Suspend Rules 9.3 (b) of the Texas Rules of Appellant Procedure to allow Appellant to file Appellant Certiorari, Appendix A-J to include all things attached including Arguements and Authorities, with Petitioner's Request for Expunction of Records and Order of Expunction to allow Petitioner to reenter Society with a clear record to rebuild his life. This along with Petitioners Petition for Writ of Certiorari. Appellant prays this Honorable Court grant Appellant's request, and Suspend the Supreme Courts rules requiring the number of copies required as the Appellant is indigent

Executed on this 20 day of November 2020.

*Resubmitted with Petitioner's original Petition for Writ of Certiorari and Motion for the Extension of Time, Executed on this 27 day of May, 2021.

Received by Supreme Court on May 18, 2021

RESPECTFULLY SUBMITTED
Carl Edmond Yancy
#1847638 C14-1-15B

SWORN OATH

I, CARL EDMOND YANCY, hereby give my Oath and my Word to GOD, that upon my release from prison and return home, Petitioner will not talk to anyone concerning the past Case, nor will Petitioner discuss it with family members, and Petitioner also gives his Oath and his Word not to discuss the Case with any radio stations or TV news reporters. Petitioner further asserts and gives his Oath and his Word not to discuss any parts of the case, or my incarceration at TDCJ to any Social Media outlets on the internet, or eleswhere. Petitioner gives his Oath and his Word to only use Social Media for Research of business purposes or information to help rebuild a life torn apart by false accusations. It is time to put the past in the past, and leave it there. The Petitioner agrees not to contact the Complaintant's (Not a freakin problem) by any means including Social media. To This I SOLEMNLY SWEAR, SO HELP ME GOD. Now is the time to live and rebuild, so please give the order so that this petitioner can go home to start over with whatsoever Compensation the Court deems faire for Callateral Damages/Injuries, "not greedy". Can build on whats alloted to this Petitioner.

Executed this 20 day of November 2020

* Resubmitted with Petitioner's original Petitioner for Writ of Certiorari and Motion for Extension of Time, Executed on this 27 day of May 2021

Received by Supreme Court on May 18, 2021

RESPECTFULLY SUBMITTED
Carl Edmond Yancy