

No. _____

21 - 6230

IN THE

SUPREME COURT OF THE UNITED STATES
1 First Street, N. E. Washington, DC 20543

BILLY JOHN ROBERSON

PETITIONER

(Your Name)

vs.

ORIGINAL

CITY OF ROWLETT, TEXAS

— RESPONDENT(S)

On Billy John Roberson's Brief for Petition For An Extraordinary Writ of Presumption of Innocence; Beyond a Reasonable Doubt Under the Provision of Law Title 28 U.S.C. Section 1651 (A)(B) and Title 28 U.S.C Section 1292 (B) To the COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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

PETITION FOR AN EXTRAORDINARY WRIT OF PRESUMPTION OF
INNOCENCE; BEYOND A REASONABLE DOUBT

BILLY JOHN ROBERSON

FILED

NOV 08 2021

(Your Name)

OFFICE OF THE CLERK
SUPREME COURT, U.S.

2405 ELMHURST STREET

(Address)

ROWLETT, TX 75088

(City, State, Zip Code)

214-281-9176

(Phone Number)

RECEIVED

NOV 10 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

CHALLENGE QUESTION(S) PRESENTED

1. How could I receive an Guilty Verdict of aggravated assault with a deadly weapon at the time of this supposed incident, I, Billy John Roberson, did not own or have access to any firearm.
2. How could the Presiding Judge over the original trial did not step aside when there was an previous conflict.
3. I am questioning the procedures of the Code of Criminal Procedure, Title 1, Chapter 21 was not followed by the guidelines.
4. How could I be charged with a crime when I was not present in the area or around the victim when this supposedly transpired.
5. How could the Lower Courts not render an decision based upon using the Texas Penal Code 22.01 (assault) that key elements was not present during the investigation.
6. How could the Lower Courts not see the under the same code 22.01 of the Texas Penal code 22.02 (aggravated assault) was also not present in any element.
7. How could they render Punishment, under Title 3 Chapter 12 Under the Penal Code when certain Elements was not Present during the Trial.
8. Under the Punishment Phase what gives the rights to Strip my 2nd amendment Rights to bear arms, In the State of Texas, after I was wrongfully convicted and seeking an remedy and have not gotten into any legal trouble since.

LIST OF PARTIES

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

1x] 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:

ROWLETT, TEXAS POLICE DEPARTMENT
4000 Main Street, Rowlett, Texas 75088

WILLIAM BRODNAX-CHIEF OF POLICE
4000 Main Street, Rowlett, Texas 75088

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
PITTSBURGH & LAKE ERIE RR VS. RAILROAD ASSN NO 87-1589	

CHALLENGED STATUTES AND RULES

TEXAS PENAL CODE 22.01 AND 22.02
TEXAS PENAL CODE TITLE 3, CHAPTER 12
2ND AMENDMENT OF THE U.S. CONSTITUTION
CODE OF CRIMINAL PROCEDURE, TITLE 1, CHAPTER 21

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

**PETITION FOR WRIT OF PRESUMPTION OF INNOCENCE;
BEYOND A REASONABLE DOUBT**

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 _____ 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 _____ 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 _____ 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 _____ court appears at Appendix _____ to the petition and is

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

1.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case
Was JUNE 14, 2019

[] 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: _____, 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. §1254(1).

[] For cases from state courts:

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

[] 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

THIS WHOLE CASE EVOLVES AROUND AND QUESTIONS REASOBAL DOUTB AND OTHER FACTORS OF THE FOURTH AMENDMENT AND IT WAS NEVER TAKEN INTO CONSIDERATION OR FACTORED IN BEFORE THE ARREST IN SAID SUCH CASE THAT WAS MADE.

THE MAIN FACTOR UNDER THIS THAT ITS BASED UPON A LOT OF "HERE SAY" AND NEVER PRODUCED IN EVIDENCE AT NO POINT OF THE INVESTIGATION, TRIAL OR INDICTMENT THAT A DEADLY WEAPON WAS PRODUCED.

I, PETITIONER, BILLY J ROBERSON, UNDER THE TEXAS PENAL CODE SECTION 1.07(11)(A)(B) THAT DEFINES WHAT AN DEADLY WEAPON IS AND MEANS. IT DID NOT SHOW/PRODUCE EVIDENCE OF ANYTHING THAT (INCLICTING AN ITEM TO PRODUCE DEATH OR SERIOUS BODILY INJURY; OR ANYTHING OF THE MANNER OF ITS USE OR THE SUPPOSED INTENDED BODILY INJURY. THE STATES PROSECUTING ATTORNEY PRODUNED OR ENTERED INTO EVIDENCE NO SUCH ITEM.

SINCE THE STATE OF TEXAS REFUSES TO PRODUCE ANY DÉSCRIPTION AND/OR PICTURES THAT WAS SUPPOSED TO BE PRESENT AT TRIAL DELIBERATION OR THE SENTENCING PHASE. THE PETITIONER OF THIS CASE DID NOT EVEN POSSESS OR HAVE ACCESS TO ANY FIREARM(S) DURING SAID TIMEFRAME OR INCIDENT.

STATEMENT OF THE CASE

TRIAL COUNSEL FAILED TO MAKE A TIMELY OBJECTION OR FILE A PRETRIAL MOTION THUS ALLOWING THE FATALLY FLAWED INDICTMENT OF THE GRAND JURY WHICH SHOULD NOT OF VALIDATE ANY WRONG DOING AND SHOWS DEFICIENT INDICTMENT AND NOT GRANTING THE PETITIONERS 5TH AMENDMENT. PERSONAL THAT NO PERSON SHALL BE HELD TO ANSWER FOR A AGGRAVATED ASSAULT OR OTHER WISE INFAMOUS CRIME.

WHETHER THE COURTS INCORRECTLY DETERMINED THAT THE PETITIONER FAILED TO SHOW INEFFECTIVE ASSISTANCE OF WAS "CONTRARY TO" OR INVOLVED ANY REASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, WHERE HE CLEARLY MEET(S) THE TWO (2) PRONG STANDARD IN STRICKLAND.

WHETHER THE PETITIONER HAS PRESENT A COLORABLE SHOWING OF ACTUAL INNOCENCE THAT SERVES A GATEWAY THROUGH THE STATUE OF LIMITATIONS THUS, BARING LATE OF THE HABEAS CORPUS PETITION.

SECTION 706 OF THE ADMINISTRATIVE ACT UNDER 5 U.S.C. THAT THE AGENCY DID NOT COMPLY. THEY HAVE TO SHOW NECESSARY THE DECISION THAT IT IS REQUIRES TO REVIEW. ON SUCH CONDITIONS AS MAY BE REQUIRED AND THE EFFECTIVE DATE OF ACTION TAKEN BY IT.

REASONS FOR GRANTING THE PETITION

WE SHOULD BE GRANTED THIS PETITION BASED UPON

1. THAT THE PROSECUTION DID NOT PROVIDE NO PHYSICAL EVIDENCE OF A DEADLY WEAPON TO SUPPORT THE JURY VERDICT ON APRIL 28TH, 2005
2. THE TRIAL TRANSCRIPT UNCOVERS SHOWING THE CONVICTION WAS IN ERROR-WRITTEN TO THE POINT OF UNRELIABILITY, THE IMPERATIVE OF THAT INJUSTICE WAS DONE AND REQUIRES THE PROSECUTOR TO ADMIT THEY WERE WRONG,
3. ALL PREVIOUS DOCUMENTS AND COURT FILING HAS SHOWED NO PROOF OF THE OFFENSE OF AGGRAVATED ASSAULT WITH DEADLY WEAPON NEVER HAPPENED.
4. ALL PRIOR CASES AND PROOF AT ANY LEVEL THAT SHOULD OF CONVINCED THE JUDGE AND/OR JURY A REASONABLE DOUBT

WE ARE REQUESTING THIS SAID PETITION TO BE GRANTED ALSO BASED UPON 28 U.S.C. SECTION 2350(A)(B) AND 2349(A)(B) THAT SHOULD OF OVERTURN ALL LOWER COURTS DECISIONS AND DENIALS OF APPEAL

CHALLENGE CONCLUSION OF LAW

1. That the Mr. Billy John Roberson Request for An Extraordinary Writ of PRESUMPTION OF INNOCENCE; BEYOND A REASONABLE DOUBT to be granted the judgment of conviction for Billy John Roberson to be vacated and that the case be Remanded to the United States Court of Appeals for the Fifth Circuit under the Provision of Law: Title 28 United States Code Section 1292 (B).

2. Petitioner Mr. Billy John Roberson hereby requests that the Supreme Court of the United States Court's Justice Three Judge Panel's prepare and file Master Written Finding of Fact and Conclusion of Law as provided in law: Title 28 United States Code Section 2284 (A) (B) (1) (2) (3) And the Rule 52 (A) (1); Rule 58 (2)(3); Rule 12; Rule 56 (4) (5) (6) (B) (C) In the United States Court of Appeals; Seeks Relief From A Felony Judgement Imposing A Texas Penal Code Section 22.01 and Section 22.02 An Offense Charged with Aggravated Assault with a firearm(s) or deadly weapon. Petitioner Authorize Provision of Law: Title 5 United States Code Section 701-708, and request evidential hearing in 30 days.

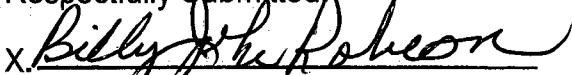
3. PETITIONER'S REQUEST OF FACT AND CONCLUSION OF LAW

1. Petitioner Billy John Roberson hereby requests that the U.S.A. Court of Appeals For The Fifth Circuit's Judge to prepare and file Findings of Fact and Conclusion of Law as provided in Title 5 United States Code Section 701-708, 28 U.S.C. Section 2253 (A) (B) (C) (1) (A) (B) (2)(3) and Cited in McQuigginas V. Perkins 133 S.Ct. 1924 (2013), the U.S. Supreme Court held that "Actual Innocence" and the Federal Rules: 52(A)(1); 58(2)(3)(4)(5)(6)(C) of Civil Procedure with Fifth Circuit Court of Appeals to overturn Texas' Judgement of conviction for Mr. Billy John Roberson, Case No. F0345525 in the 292nd Judicial District Court, Dallas, Texas.

4. Petitioner's Actual Innocence Beyond Reasonable Doubt based on, that the trial Judge Henry Wade, Dallas Assistant Criminal District Attorney: Mr. Keith Roberson has presented no physical evidence of a firearm(s) or deadly weapon against petitioner Billy John Roberson in the criminal prosecutions on April 28, 2005. To the AntiTerrorism Bill and Effective Death Penalty Act of AEDPA in the U.S. Court of Appeals Fifth Circuit.

The Petition For An Extraordinary Writ of PRESUMPTION OF INNOCENCE; BEYOND A REASONABLE DOUBT Should be Granted on the Grounds that the Trial Prosecution presented no physical evidence of a firearm(s) or deadly weapon against Petitioner Billy John Roberson in the Criminal prosecutions on April 28, 2005. To the AntiTerrorism Bill and Effective Death Penalty Act of AEDPA in the U.S. Court of Appeals Fifth Circuit.

Respectfully Submitted



BILLY JOHN ROBERSON
2405 Elmhurst Street
Rowlett TX 75088

EFFECTIVE DATE: NOVEMBER 4TH 2021

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, DC

BILLY JOHN ROBERSON

PETITIONER

CITY OF ROWLETT, ET AL

DEFENDANT

ATTENTION: THE HONORABLE JUDGES OF THE U.S SUPREME COURT:

- John G. Roberts, Jr., Chief Justice of the United States, Clarence Thomas, Associate Justice, Ruth Bader Ginsburg, Associate Justice, Stephen G. Breyer, Associate Justice, Samuel A. Alito, Jr., Associate Justice, Sonia Sotomayor, Associate Justice, Elena Kagan, Associate Justice, Neil M. Gorsuch, Associate Justice,

FROM THE DENIAL OF THE CASE IN THE SUPREME COURT ORIGINAL CASE FROM
THE FIFTH CIRCUIT APPEALS COURT

BILLY ROBERSON'S BRIEF FOR PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Seeks Relief From A Felony Judgement Imposing A Texas Penal Code Section 22.01, Section 22.02, and Section 1.01 An Offense Charged with Aggravated Assault with a firearm(s) or deadly weapon. Petitioner Authorize Provision of Law: Title 5 United States Code Section 701-708, and request evidential hearing in 30 days. PETITIONER'S REQUEST OF FACT AND CONCLUSION OF LAW

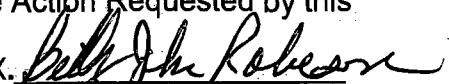
1. Petitioner Billy John Roberson hereby requests that the U.S.A. Court of Appeals For The Fifth Circuit's Judge to prepare and file Findings of Fact and Conclusion of Law as provided in Title 5 United States Code Section 701-708, 28 U.S.C. Section 2253 (A)(B)(C)(1)(A)(B)(2)(3)and Cited in McQuiginas V. Perkins 133 S. Ct.1924 (2013), the U.S. Supreme Court held that "Actual innocence" and the Federal Rules: 52(A)(1); 58(2)(3)(4)(5)(6)(C)of Civil Procedure with Fifth Circuit Court of Appeals to overturn Texas' Judgement of conviction for Mr. Billy John Roberson, Case No. F0345525 in the 292nd Judicial District Court, Dallas, Texas.

2.Petitioner's Actual Innocence Beyond Reasonable Doubt based on, that the trial Judge Henry Wade, Dallas Assistant Criminal District Attorney: Mr. Keith Roberson has presented no physical evidence of a firearm(s) or deadly weapon against petitioner Billy John Roberson in the criminal prosecutions on April 28, 2005. To the Anti-Terrorism Bill and Effective Death Penalty Act of AEDPA in the U.S. Supreme Court. Combined with Section 1, Section 2, and Section 3 (A) (B) (C) (D) of Code of Criminal Procedure. Immediate Action Requested by this presiding court which has jurisdiction.

EFFECTIVE DATE: NOVEMBER 2ND, 2021

1

BILLY ROBERSON'S PETITION FOR WRIT OF PRESUMPTION
OF INNOCENCE; BEYOND A REASONABLE DOUBT

X. 
BILLY JOHN ROBERSON
2405 Elmhurst Street
Rowlett, TX 75088
347-610-2500

BRIEF FOR JUDICIAL REVIEW BY THE U.S. SUPREME COURT JUDGES ONLY
TITLE 28 U.S.C SECTION 2284 (A) (B) (1) (2) (3) AND RULE 35(A) OF THE APPELLATE
PROCEDURE; TITLE 28 U.S.C. 2350(A)(B)

COMES NOW, BILLY JOHN ROBERSON, AS I AM COMPLIANCE WITH RULE 44 THAT STATES Rule 44. Rehearing. 1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. APPELLANT OF SAID ABOVE CASE, FILING THIS PETITION UNDER 28 UNITED STATES CODE SECTION 2284 (A) (B) (1) (2) (3) AND UTILIZING RULE 35(A) OF THE APPELLATE PROCEDURE. I, PETITION THIS COURT RELIEF OF CONVICTION AND SENTENCE ON CAUSE NUMBER F03-45525-V. DEFENDANT DISCHARGED SENTENCE ON APRIL 23, 2011 AND DEFENDANT WAS RELEASED ON APRIL 23, 2011 FROM TEXAS DEPARTMENT OF CORRECTION FOR THE CHARGE OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON BASED UPON NEW FOUND STATUES AND COURT PROCEDURES.

WHEREAS, I PETITIONED THE COURTS FOR AN REHEARING WITHIN 60 DAYS OF FILING OF SAID SUCH PETITION TO THE UNITED STATES SUPREME COURT, UTILIZING PROCEDURES AND POLICIES BASED UPON TITLE 28 U.S.C SECTION 2284 (A) (B) (1) (2) (3) AND RULE 35(A) OF THE APPELLATE PROCEDURE. AS WELL 45 TITLE 28 SECTION 2350 (A)(B)

THE DEFENDANT CHALLENGES THE GRAND JURY INDICTMENT AND THE MIS-INFORMATION THAT WAS PRESENTED TO THE JUDGE. NO PHYSICAL EVIDENCE WAS EVER PRESENT TO EVER RENDER A CONVICTION. NO DEADLY WEAPON WAS ENTERED INTO EVIDENCE. IT WAS NEVER PRESENTED TO THE GRAND JURY OR THE TRIAL JURY.

BASED UPON NEWLY FOUND DISCLOSURES AND PROCEDURES THE PROSECUTION FAILED TO SHOW DUE DILIGENCE AND NEVER ESTABLISHED CLEAR CUT EVIDENCE, I SHOULD HAVE BEEN FOUND NOT GUILTY OF SAID OFFENSE BASED UPON U.S.C. 2244(B) (2) (B). THIS IS A NEW CONSTITUTIONAL RULE OF THE UNITED STATES SUPREME COURT WHICH IS MADE RETROACTIVE TO CASES ON COLLATERAL REVIEW. SEE 28 U.S.C. 2244(B) (2) (A).

PER DOING RESEARCH USING I WAS CONVICTED WITHOUT ANY EVIDENCE BASED UPON THE FOLLOWING:

- "The prosecution must prove..." – In a criminal case, the prosecution has the burden of proof. Suppose both the defense and the prosecution go into the courtroom and say nothing – nothing at all. Who wins? The answer is clear: The defense. Since it is up to the prosecution to prove that the defendant committed the crime alleged, if the prosecution does not provide any proof (in the form of evidence), the case must be dismissed.

- "...beyond a reasonable doubt." – Not only must the prosecution introduce evidence of guilt, it must prove the defendant's guilt "beyond a reasonable doubt." If the prosecution presents *some* evidence, but not enough to clearly prove that the defendant committed the crime, the jury should find the defendant not guilty.

THE DEGREE OF PROOF NECESSARY TO CONVICT A PERSON IN THIS CASE WAS BILLY JOHN ROBERSON. IF THE COURTS WAS TO STAND ON WAS IS DEFINED IN THE TEXAS PENAL CODE SECTION 22.01(A) (S) IS DESCRIBED AS BEYOND REASONABLE DOUBT. IN OUR SYSTEM OF JUSTICE ALL PERSUMED TO BE INNOCENT UNTIL SUCH TIME AS EACH ELEMENT OF SAID OFFENSE: AGGRAVATED ASSAULT WITH A DEADLY WEAPON IS PROVEN BEYOND REASOBAL E DOUBT IN THE MINDS OF THE PERSON OR PERSONS WHO MUST DECIDE THE GUILT OR INNOCENCE OF THE ACCUSED, IN THIS CASE WOULD BE BILLY JOHN ROBERSON. THE FACT STILL REMAINS THAT I, BILLY JOHN ROBERSON, WAS ARRESTED, CONFINED AND INDICTED ON THE CHARGE WITH SAID OFFENSE AND IT DID NOT GIVE RISE TO THE INTERFERENCE OF GUILT AT THE TRIAL. MY SIXTH AMENDMENT WAS VIOLATED.

THE STATE HAS A RESPONSIBILTY TO ENTER INTO ALL EVIDENCAL FACTS, CIRCUMSTATNCES AND CORROBORATING (SUPPORTING) DATA TO CONVICE THE TRIERS OF THE FACT THAT THE ACTOR (SUSPECT) DID COMMIT THE SAID OFFENSE BEYOND A RESONABLE DOUBT. IN EFFECT, THE TRIAL BY JURY MUST HAVE AN ABIDING CONVICTION OF BELIEF TO N ABIDNG CONVICTION OF BELIEF TO A MORAL CERTAINTY THAT THE SUSPECT DID, IN FACT COMMIT THE ALLEGED OFFENSE BASED UPON EVIDENCE ENTERED IN THE CASE NO F03-45525 IN THE GRAND JURY AND TRIAL JURY.

I STILL CHALLENGE THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT MY CONVICTION. WHEN THIS SUPPOSELY INCIDENT TOOK PLACE. AS INDICATED IN PRIOR APPEALS AND IF THIS HONORABLE COURTS GRANTS AN ORAL ARGUMENT THAT I CAN SHOW PROOF THAT I WASN'T EVEN AROUND THE ALLEGED VICTIM WHEN THIS WAS SUPPOSED TRANSPRIRED. THE VICTIM WAS STAYING WITH MY MOTHER (THE VICTIMS BIOLOGICAL GRANDMOTHERS RESIDENCE) AT 2405 ELM HURST STREET, ROWLETT, TEXAS. I WAS RESIDING TEMPORARY WITH MY BIOLOGICAL BROTHER LOCATED AT: 713 WESTOVER, LANCASTER, TX.

THERE IS NO POSSIBLE WAY THAT I COULD HAVE DONE THE ALLEGED CRIME IF I WASN'T EVEN AROUND.

I DID NOT OWN A FIREARM DURING THIS TIME FRAME NOR DID I NEVER HAVE ONE ACCESSIBLE TO ME.

THERE IS NO PHYSICAL EVIDNECE OF A DEADLY WEAPON OR A FIREARM TO SUPPORT THE JURY VERDICT.

IN CONCLUSION, THE APPELLANT WAS WRONGFULLY CONVICTED OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON. (TEX PENAL CODE 22.01(A) (2). ON THE ORIGINAL CASE F0345525 THE DISTRICT COURTS THAT THE EVIDENCE THAT WAS PRESENTED WAS LEGALLY INSUFFICIENT

TO ESTABLISH THE DEADLY WEAPON ELEMENT OF SAID OFFENSE. WHEREAS, IN CASE STUDY OF HERNANDEZ VS THE STATE OF TEXAS (NO PD-1049-16) THEY OVERTURNED/DOWNGRADED THE CHARGE WHICH PARALLELS MY CASE AND SAID AS MUCH WHY MY CASE SHOULD ALSO BE OVERTURNED.

I PRAY FOR RELIEF BY THE CONVICTION BE OVERTURNED, AS WELL AS EXPUNGED FROM MY RECORD BY THIS SAID COURT AND THAT THE MONETARY PREVIOUSLY REQUESTED BE GRANTED.

STATEMENT OF FACTS AND ADDITIONAL EVIDENCE TO CONSIDER

ISSUE #1

I HAVE DONE EXTENSIVE RESEARCH ON HOW TEXAS HAS MALICIOUSLY CONDUCTED INVESTIGATIONS AND FALSIFIED DOCUMENTATION, KNOWINGLY THAT THEY HAD NO EVIDENCE FOR CRIMINAL PROSECUTION VIOLATING THE 6TH AMENDMENT OF THE VERY CONSTITUTION THAT THE AGENCY IS TO SUPPOSE TO BASE THEIR CASE UPON AS WELL AS THE COURT SYSTEMS HAVE FAILED TO HAVE THE BALANCE OF JUSTICE.

HOW CAN ANY COURTS IN THE LAND WITHHOLD EVIDENCE OR CHOOSE TO OVERLOOK AND NOT GIVE CERTAIN PEOPLE THE OPPORTUNITY TO BE REHEARD TO BRING UP VALID POINTS OF EVIDENCE.

HERE IS DOCUMENTATION OF SAID CLAIM:

I HAVE INCLUDED THE WEBSITE LINK INCLUDING AUTHOR AND PUBLISHED DATE TO SUPPORT MY ARGUMENT TO THE HIGHEST COURT OF THE LAND AS THE FOLLOWING, TO SUPPORT MY BASIS AND ARGUMENT THAT SHOWS THAT I WAS RAILROADED FROM THE GET GO. IT JUST NOW HAS BEEN BROUGHT INTO LIGHT.

<https://towardchange.wordpress.com/2015/04/10/dozens-of-cps-caseworkers-caught-lying-falsifying-documents/>

Dozens of CPS caseworkers caught lying, falsifying documents

Misconduct cases, while rare, indicative of intense workloads and pressure to close cases

- CPS officials say such violations are rare, but they have no way to track them.
- Wrongdoing can stem from intense pressure to close cases quickly.
- CPS discipline for misconduct can be inconsistent.

By Andrea Bali and Eric Dexheimer / Published January 13, 2015

Austin American-Statesman

facebook.com/statesman

In 2009, Texas' Legislature ordered Child Protective Services to publicly record every abuse- and neglect-related death in the state - but those reports have not been thoroughly analyzed to help identify patterns to prevent future deaths until now.

Investigating investigators

Allegations of wrongdoing come to the agency in a number of ways. Officials can receive complaints from prosecutors, defense attorneys, teachers or parents. CPS supervisors also have discovered misdeeds through mistakes in travel reimbursement forms, which raised questions about whether caseworkers actually saw the children.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ISSUE #2 PRESENTED

RAISED AND PRESENTED ISSUES IN THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS CASE EVOLVES AROUND AND QUESTIONS REASONABLE DOUBT AND OTHER FACTORS OF THE FOURTH AMENDMENT AND IT WAS NEVER TAKEN INTO CONSIDERATION OR FACTORED IN BEFORE THE ARREST SHOULD OF EVEN BEEN MADE.

THE MAIN FACTOR UNDER THAT IS BASED UPON A LOT OF HERE SAY AND NEVER BROUGHT IN SUFFICIENT EVIDENCE TO RENDER A GUILTY VERSION. IN MY SAID CASE NO "DEADLY WEAPON" WAS EVEN ENTERED INTO EVIDENCE.

I PETITIONER, BILLY ROBERSON, UNDER THE TEXAS PENAL CODE SECTION 1.07(11)(A)(B) THAT DEFINES WHAT AN DEADLY WEAPON IS AND MEANS. NO SUCH EVIDENCE WAS SHOWN IN THE TRIAL.

STATEMENT OF THE CASE

ISSUE #3 PRESENTED

TRIAL COUNSEL FAILED TO MAKE A TIMELY OBJECTION OR FILE A PRETRIAL MOTION THUS ALLOWING THE FATALLY FLAWED INDICTMENT OF THE FRAND JURY WHICH SHOULD NOT VALIDATE ANY WRONG DOING AND SHOWS DEFICIENT INDICTMENT AND NOT GRANTING THE PETITIONERS 5TH AMENDMENT PROTECTION. NO PERSON SHALL BE HELD TO ANSWER FOR AN AGRRAVATED ASSAULTOR OTHER INFAMOUS CRIME.

WHETHER THE COUTS INCORRECTLY DETERMINDED THAT THE PETITIONER FAILED TO SHOW INEFFECTED ASSISTANCE OF WAS "CONTRARY TO" OR INVOLVED WITH SAID SUCH.

WHETHER THE PETITIONER WAS PRESENT A COLORABLE SHOWING OF ACTUA INNOCENCE THAT SERVES A GATEWAY THROUGH THE STATUE OF LIMITAIONS THUS BEARING LATE THE HABEAUS CORPUS PETITION.

SECTION 706 OF THE ADMINISTRATIVE ACT UNDER 5 U.S.C. THATTHE AGENCY DID NOT COMPLY. THEY HAVE TO SHOW NECESSARY THE DECISION THAT IS REQUIRED TO REVIEW .ON SUCH CONDITIONS AS MAY BE REQUIRED ANDEFFECTIVE DATE OF ACTION TAKEN BY IT.

REASONS FOR GRANTING THE RIGHT OF REVIEW PETITION

5 U.S.C SECTION 701-708

ISSUE #4 PRESENTED

WE SHOULD BE GRANTED THIS REVIEW BASED UPON

1. THAT THE PROSECTION DID NOT PROVIDE NO PHYSICAL EVIDENCE OF A DEADLY WEAPON TO SUPPORT SIAD VERDICT (APRIL 28TH 2005)
2. THE TRAIL TRANSCRIPT SHOWS FLAWS AND FALIFIED INFORMATION THAT PROVED THATTHE BALANCE OF JUSTICE WAS NOT PRESENT.
3. ALL PREVIOUS DICUMENTS AND COURT FILINGS HAS SHOWED NO PROOF OF THE OFFENSE OF AGGRAVATED ASSAULT WITH DEADLY WEAPON EVER HAPPENED.
4. ALL PRIOR CASES AND PROOF AT ANY LEVELSHOULD BE CONVICED THE JUDGE AND JURY BEYOND REASONABLE DOUBT THAT AN NOT GUILT VERDICT SHOULD HAVE BEEN RENDERED.

WE ARE REQUESTING THIS SAID REVIEW BE GRANTED UPON 28 U.S.C SECTION 2350(A)(B) THAT SHOULD BE OVERTURNED ALL LOWER COURTS DECISION.

QUESTION(S) PRESENTED

ISSUE #5 PRESENTED

1. HOW COULD I REVIEW A GUILTY VERDICT OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON OF THIS SUPPOSED INCIDENT, WHEN I DID NOT OWN OR HAVE ACCESS TO ANY FIREARM.
2. HOW COULD PRESIDING JUDGE OVER THE ORIGINAL TRIAL DID NOT STEP ASIDE WHEN THERE WAS A PREVIOUS CONFLICT.
3. I AM QUESTIONING THE PROCEDURES OF CRIMINAL COURT PROCEDURE, TITILE 1, CHAPTER 21 WA NOT FOLLOWED BY THE GUIDELINE.
4. HOW COULD I BE CHARGED WITH A CRIME WHEN I WAS NOT PRESENT IN THE AREA OR AROUND THE VICTIM WHEN THIS SUPPOSELY TRANSPRIRED.
5. HOW COULD THE LOWER COURTS NOT SEE UNDER THE SAME CODE 22.01 OF THE TEXAS PENAL CODE 22.02 (AGGRAVATED ASSAULT) WAS NOT ALSO PRESENT IN ANY ELEMENT.
6. HOW COULD THEY RENDER PUNISHMENT UNDER TITILE 3 CHAPTER 12 UNDER THE PENAL CODE WHEN CERTAIN ELEMENTS WAS NOT PRESENT DURING THE TRAIL.
7. HOW COULD THEY RENDER PUNISHMENT UNDER TITILE 3 CHAPTER 12 UNDER THE PENAL CODE WHEN CERTAIN ELEMENTS WAS NOT PRESENT DURING THE TRIAL.

POINTS TO POINT OUT UNDER SECTION 702 THE RIGHT OF REVIEW
THE ADMINISTRATIVE PROCEDURE PROCEDURE ACT 5 USC 701-708
UNDER SECTION 702 OF SAID LAW APPLIES TO SAID PROCEEDING.

STATEMENT OF JURISDICTION

UNITED STATES SUPREME COURT HAS JURISDICTION AND VENUE PURSUANT SECTION

U.S. Code § 1251, 5 U.S.C SECTION 701-708

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

LIST OF PARTIES

**THIS IS THE LIST OF PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGEMENT IS
THE SUBJECT OF THIS PETITION:**

ROWLETT TEXAS POLICE DEPARTMENT

4000 MAIN STREET, ROWLETT, TX 75088

WILLIAM BRODNAX CHIEF OF POLICE

4000 MAIN STREET, ROWLETT, TX 75088

SUMMARY OF ARGUMENT

We are basing our Review utilizing the following case law, *Johnson v State* as well as *Hernandez v State*.

The issue in this case was whether a variance between the specific deadly weapon pled in the aggravated assault with a deadly weapon indictment and the one proved at trial is material or immaterial. The Court of Criminal Appeals held that the variance between the pleading and proof in this case was immaterial under *Johnson v. State*.

In *Hernandez v. State*, Hernandez was charged with aggravated assault with a deadly weapon. During an argument, Hernandez repeatedly struck Molien with his hands in her head/face region, and at one point, Hernandez used one hand to choke Molien while simultaneously pouring water from a jug down her throat. The indictment charged that Hernandez assaulted Molien with a deadly weapon when he caused bodily injury to her by striking her head or body with his hands while using a deadly weapon, water, during the commission of the assault. On appeal, Hernandez challenged the conviction arguing that the State's evidence was legally insufficient to show that the deadly weapon, water, was used as he was striking Molien. The Court of Appeals agreed with Hernandez and reformed the conviction to reflect a simple assault and remanded for a new punishment hearing. This court reversed concluding that the variance was immaterial under *Johnson*.

This Court previously held in *Johnson* that a variance was immaterial because the specific aggravated assault charge at issue was a result-of-conduct offense. In *Johnson*, this Court explained the two categories of variances: 1) when the State's proof deviates from the statutory theory of the offense as alleged in the indictment, which is a material variance; and 2) a non-statutory allegation that is descriptive of the offense in some way, which can be a material or immaterial variance.

Here, the Court focused on the second category of variance and determined that the variance between the pleading and proof in this case was immaterial. The Court held that although Hernandez caused Molien to suffer bodily injury with his hands, not by striking her, but by choking her, that did not make the aggravated assault proved at trial different than the aggravated assault pled in the indictment. Further, the indictment did not specify the precise injury that would be shown by the evidence.

The concurrence held there was no variance at all because the entire encounter constituted one continuous assaultive transaction.

ARGUMENT AND AUTHORITES

Dismissed at Jury Trial after Rule 11 incompetency Motion Granted | Felony Aggravated Assault Dangerous (with Gun) & Felony Endangerment Dangerous | State v. Mr. M (<https://dmcantor.com/case-victories/40232>) LA PAZ COUNTY SUPERIOR COURT (CASE NO. CR2016-00276) (DMC NO.) Dismissed | Felony Aggravated Assault, Assault, Disorderly Conduct, Threats, Criminal Damage & Prevention of Use of a Telephone | State v. Mr. C (<https://dmcantor.com/case-victories/40784>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. PF2015-130229) (DMC NO. 14542) Dismissed, then Motion to Clear Arrest Record Granted | Felony Aggravated Assault on a Police Officer State v. Mr. D (DMC No. 10724) (<https://dmcantor.com/case-victories/state-v-mr-d-dmc-no-10724>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2012-109505) Dismissed / Reduced | (4 Counts) Felony Aggravated Assault Dangerous & (1 Count) Felony Second Degree Murder Dangerous State v. Mr. B (DMC No. 4121) (<https://dmcantor.com/case-victories/state-v-mr-b-dmc-no-4121>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. 2012-017982) Dismissed | (2 Counts) Felony Aggravated Assault & (1 Count) Resisting Arrest | State v. Mr. A (<https://dmcantor.com/case-victories/24574>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2009-134894) (DMC NO. 9676) Dismissed | (2 Counts) Felony Aggravated Assault Dangerous (with Gun & Knife) | State v. Mr. G (<https://dmcantor.com/case-victories/23663>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2006-140724) (DMC NO. 8171) Dismissed | Felony Aggravated Assault (Dangerous, with Shotgun), Felony Disorderly Conduct (Dangerous) and Disorderly Conduct | State v. Ms. B (<https://dmcantor.com/case-victories/38020>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. PF2016-113819) (DMC NO. 13536) Dismissed | Felony Aggravated Assault, Felony Disorderly Conduct & Felony Resisting Arrest State v. Mr. D (DMC No. 3947) (<https://dmcantor.com/case-victories/dismissed-aggravated-assault-disorderly-conduct-resisting-arrest>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. 2002-094134CR) (<https://dmcantor.com/>) Call Us 24/7 602-307-0808 (tel:602-307-0808) Two Renaissance Square 40 N Central Ave, Ste 2300, Phoenix, AZ 85004
(<https://www.google.com/maps/dir//40+N+Central+Ave+%232300,+Phoenix,+AZ+85004/@33.4488627,-112.0754473,18.56z/data=!4m8!4m7!1m0!1m5!1m1!1s0x872b12217de3575f:0xda5d27c5a040>)
112.0746637!2d33.4489811) Search Our Website Felony Aggravated Assault Dismissals 30 You are here:
Floome (<https://dmcantor.com>) » Case Victories (<https://dmcantor.com/category/case-victories>) » 500 Assault / Violent Crime Victories (<https://dmcantor.com/category/case-victories/assault-violent-crimes>) » 54 Felony Aggravated Assault Dismissals CLICK HERE FOR FREE CONSULTATION 10/18/2019 Felony Aggravated Assault Case Dismissed in Arizona <https://dmcantor.com/category/case-victories/assault-violent-crimes/felony-aggravated-assault-dismissals> 2/7 Dismissed | (2 Counts) Felony Aggravated Assault; Felony Resisting Arrest; Disorderly Conduct; Assault & Criminal Damage | State v. Mr. P (<https://dmcantor.com/case-victories/27877>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2011-030483) (DMC NO. 11832) Dismissed | Felony Aggravated Assault Dangerous (with Shotgun) State v. Mr. C (DMC No.) (<https://dmcantor.com/case-victories/dismissed-aggravated-assault-with-a-shotgun-state-v-mrc>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. 1999004298CR) Dismissed | Felony Aggravated Assault Dangerous (with Gun) State v. Mr. P (DMC No. 9572) (<https://dmcantor.com/case-victories/state-v-mr-p-dmc-no-9572>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2009-158764) Dismissed | Felony Aggravated Assault Dangerous (with a Gun) & Felony Misconduct Involving Weapon (Prohibited Possessor) | State v. Mr. W (<https://drncantor.com/case-victories/21072>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2009-103741) (DMC NO. 8729) Dismissed and Routed to City Court for Misdemeanor | Felony Aggravated Assault on a Police Officer, Felony Resisting Arrest & Failure to Obey a Police Officer | State v. Mr. S (<https://dmcantor.com/case-victories/23107>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. PF2006-163121001) (DMC NO. 6838) Dismissed at Jury Trial | Felony Child Abuse & Felony Aggravated Assault on a Child State v. Ms. J (DMC No. 12366) (<https://dmcantor.com/case-victories/state-v-ms-j-dmc-no-12366>) PINAL COUNTY SUPERIOR COURT (CASE NO. CR2013-00944) Dismissed / Not Charged | Felony Aggravated Assault (with Gun) & Hit and Run

state v. Mr. V (DMC No. 10336) (<https://drncantor.com/case-victories/state-v-mr-v-dmc-no-10336>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CA2009-055168) Dismissed | Felony Aggravated Assault (with Gun) State v. Mr. H (DMC No. 1780) (<https://dmcantor.com/case-victories/dismissed-aggravated-assault-with-a-gun-state-vmr-h>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. 200000378CR) Dismissed | Felony Aggravated Assault Dangerous (with Gun) State v. Mr. H (DMC No. 5082) (<https://dmcantor.com/case-victories/state-v-mr-h-dmc-no-5082>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2004-127583) Dismissed per Diversion | Felony Aggravated Assault & Felony Possession of Marijuana | State v. Mr. F (<https://dmcantor.com/case-victories/23093>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2006-169142) (DMC NO. 6833) Dismissed | Felony Aggravated Assault on a Police Officer State v. Ms. E (DMC No. 4325) (<https://dmcantor.com/case-victories/state-v-ms-e-dmc-no-4325>) MARICOPA COUNTY BOOKING (CASE NO. A914876) Dismissed | Felony Aggravated Assault Dangerous (with Weapon) State v. Mr. H (DMC No.) (<https://dmcantor.com/case-victories/dismissed-aggravated-assault-with-a-weapon>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. 200111038786CR) Dismissed (Upon Completion of Classes) | Felony Aggravated Assault – State v. Mr. B (<https://dmcantor.com/case-victories/40008>) APACFIE JUNCTION JUSTICE COURT (CASE NO. DV2016-0363) (DMC NO. 14409) Dismissed | Felony Aggravated Assault Dangerous (with Knife) State v. Mr. M. (DMC No. 5764) (<https://dmcantor.com/case-victories/state-v-mr-m-dmc-no-5764>) CLICK HERE FOR FREE CONSULTATION 10/18/2019 Felony Aggravated Assault Case Dismissed in Arizona <https://dmcantor.com/category/case-victories/assault-violent-crimes/felony-aggravated-assault-dismissals> 3/7 MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2005-117150) Dismissed | Felony Aggravated Assault (Broken Arm / Surgery) State v. Mr. M (DMC No. 6328) (<https://dmcantor.com/case-victories/state-v-mr-m-dmc-no-6328>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2006-00677) Dismissed | Felony Aggravated Assault (Broken Hand / Surgery) State v. Mr. B (DMC No. 10323) (<https://dmcantor.com/case-victories/state-v-mr-b-dmc-no-10323>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2011-154342) Dismissed | Felony Aggravated Assault (Broken Nose) | State v. Mr. S (<https://dmcantor.com/case-victories/38599>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2013-423001) (DMC NO. 13926) Dismissed | Felony Aggravated Assault Dangerous (with Knife) State v. Ms. K (Case No. A712296CR)(DMC No.) (<https://dmcantor.com/case-victories/dismissed-aggravated-assault-with-a-knife>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. A712296CR) Dismissed | Felony Aggravated Assault Dangerous (with Gun) State v. Ms. B (DMC No.) (<https://dmcantor.com/case-victories/dismissed-aggravated-assault-with-a-gun-state-v-ms-b>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. 8577032CR) Conviction Reversed PCR (Rule 32) (15 Year Prison Sentence) | Felony Aggravated Assault (Dangerous) Resulting in Blindness in Eye State v. Mr. C (DMC No. 7772) (<https://dmcantor.com/case-victories/state-v-mr-c-dmc-no-7772>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2004-018577) Dismissed / Reduced to Probation (Class 6 Open/Misdemeanor) and 12 Days of Jail (time served) | Felony Aggravated Assault & Felony Child Abuse State v. Mr. P (DMC No. 7742) (<https://drncantor.com/case-victories/state-v-mr-p-dmc-no-7742>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2007-153961) Dismissed/Reduced to Probation (Class 6 Open/Misdemeanor) with 30 Days Jail | Felony Aggravated Assault Dangerous (with Gun) & Felony Disorderly Conduct Dangerous (with Gun) | State v. Mr. W (<https://dmcantor.com/case-victories/23457>) MARICOPA COUNTY SUPERIOR COURT (CASE NO. CR2012-157903) (DMC NO. 11395) REAL CLIENT TESTIMONIALS Read All Our Reviews (<https://best-phoenix-law-firm-reviews/>) SCHEDULE YOUR FREE ONE-ON-ONE CONSULTATION TODAY Your Name: * | Your Phone: (*) 5.0 Stookey . Sep 10, 2019 I chose DM Cantor to represent me for a recent case and I was pleased with the outcome of the case. DM Cantor did far more work... more First & Last XXX-XXX-XXXX CLICK HERE FOR FREE CONSULTATION 10/18/2019 Felony Aggravated Assault Case Dismissed in Arizona <https://dmcantor.com/category/case-victories/assault-violent-crimes/felony-aggravated-assault-dismissals>

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CHALLENGE CONCLUSION BASED UPON ACTUAL CASE FINDING(S)

The issue in *Wilson* is identical to the case before us. Appellant was charged in the indictment with intentionally and knowingly causing bodily injury to Anita Gaitlin by shooting her and by using and exhibiting a deadly weapon during the commission of the assault. This constitutes aggravated assault under Texas Penal Code Section 22.02(a)(2) which states:

- (a) A person commits an offense if the person commits assault as defined in Section 22.01 and the person:
- (2) uses or exhibits a deadly weapon during the commission of the assault.

Section 22.01 refers to assault and states:

- (a) A person commits an offense if the person:
- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;

So, the statute allows conviction of aggravated assault if the person recklessly caused bodily injury to another and used or exhibited a deadly weapon during the assault. However, this was not charged in the indictment. The indictment charged appellant only with intentionally and knowingly causing bodily injury to another and using or exhibiting a deadly weapon during the assault. Thus, while the jury instructions authorized conviction of an offense that is allowed under the statute, it was not an offense for which appellant was indicted.

The cases relied on by the Court of Appeals can be distinguished from the case before us. In *Little*, this Court recognized the difference between *Wilson* and *Rocha*. We noted that in *Wilson*, the defendant was convicted of the charged offense. Because the jury was instructed on a lesser culpable mental state than those alleged in the indictment, we found error. In *Rocha*, however, we held that it was not error to submit a charge authorizing conviction of the lesser included offense upon a finding of the lower culpable mental state of recklessness. *Little*, 659 S.W.2d at 426. Thus, the difference between the two cases is that *Wilson* deals with the charged offense while *Rocha* deals with a lesser included offense. Because *Little* dealt with a lesser included offense, *Rocha* controlled in that situation. *Zuliani* also covers a lesser included offense because the injury to a child statute provides different punishment ranges for each culpable mental state. Therefore, although the indictment charged the defendant with intentionally and knowingly causing serious bodily injury to a child, the jury instructions allowed the jury to find him guilty of the lesser included offense of recklessly causing serious bodily injury to a child. This lowered the offense from a first degree felony, as charged in the indictment, to a third degree felony. *Zuliani*, 903 S.W.2d at 816.

The State argued that the Court of Appeals did not err by relying on *Rocha* and *Zuliani* because the current case could also be treated as a lesser included offense. However, because neither party requested a lesser included offense jury instruction and the lesser included offense issue was not raised at trial, we will not decide this case based on an issue that was not presented to the trial court or preserved for appeal. The failure to request a lesser included offense instruction in the jury charge precludes the State's use of Articles 37.08 and 37.09(3) to now bring in the culpable mental state of recklessness that was not alleged in the indictment. Article 37.09 determines whether an offense is a lesser included offense. It states in part that an offense is a lesser included offense if it differs from the offense charged only in the respect that a less culpable mental state suffices to establish its commission. This must be read in conjunction with Article 37.08 which says: "In a prosecution for an offense with lesser included offenses, the jury may find the defendant not guilty of the greater offense, but guilty of any lesser included offense." Thus, a conviction for a lesser included offense requires not only a lesser included offense instruction to the jury, but also an acquittal for the charged offense, neither of which are present in this case. Because this issue was not presented to the trial court as a lesser included offense, *Rocha* was incorrectly relied upon by the Court of Appeals. Instead, the reasoning in *Wilson* applies to the case before us.

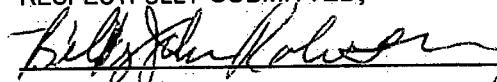
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Similarly, the State's failure to allege recklessness in the indictment and subsequent failure to allege the act or acts relied upon to constitute recklessness preclude the inclusion of recklessness in the jury charge. Under Article 21.15,

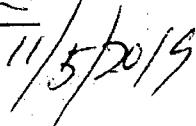
Whenever recklessness or criminal negligence enters into or is a part or element of any offense, or it is charged that the accused acted recklessly or with criminal negligence in the commission of an offense, the complaint, information, or indictment in order to be sufficient in any such case must allege, with reasonable certainty, the act or acts relied upon to constitute recklessness or criminal negligence, and in no event shall it be sufficient to allege merely that the accused, in committing the offense, acted recklessly or with criminal negligence.

This petition of review should be granted. There are 8 Supreme Court Justices, so therefore I would like them to give their Judicial Opinions not of Court Clerks. Not all of them have to be in agreement with my case, likewise after THEIR REVIEW I believe they would take in consideration to hear and rule in my favor.

RESPECTFULLY SUBMITTED,



BILLY JOHN ROBERSON-PETITIONER



DATED ON OCTOBER 8, 2019

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