21-8050
No. ____________

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Brad A. Dunn — PETITIONER
(Your Name)

vs.

5th Circuit — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brad A. Dunn #1988053
(Your Name)

Michael Unit, 2664 FM 2054
(Address)

Tennessee Colony, TX 75886
(City, State, Zip Code)

903-928-2311
(Phone Number)

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QUESTION(S) PRESENTED

1- Did the 5th Circuit err in it's denial of my C.O.A. on that I raised "Newly Raised Errors" and there fore wouldn't be considered and my other merits didn't deserve futher consideration.

2- Did the 5th Circuit err in it's denial of a timely motion for reconsideration which pointed to a mistake the court made on seven errors were not newly raised and where I raised them and also filed a Motion 60(b)(1) on mistake of the court, They chose to ignore there mistake and point out mine.

3- Do my other errors deserve futher consideration and violate my 5th, 6th, 14th U.S. Const. Amend rights

4- Was this court's decision and the lower courts being which the Federal Court (2254) is in the same town as the crime, to overlook several reversible U.S. Const. violations due to the high, high negative local and national media coverage to pass a new law that was being pushed in wake of my crime by several big politicians and after to President Trump himself who passed the law in all 50 states after it was passed in Texas, exert pressure from these big wigs involved to sweep me under the rug, overlook, done so directly or indirectly, a violation of my right to fair trial and appeal process

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:

United States District Court (District Judge Rodney Gilstrap)
(Magistrate Judge Roy S. Payne)

Marshall, TX 75670

RELATED CASES

TABLE OF AUTHORITIES CITED

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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 E 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.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was Feb. 23, 2022.

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

No [✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 31, 2022, and a copy of the order denying rehearing appears at Appendix B.

* Error 2 - I believe I did file timely from the day I received it

[ ] 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______.

* I filed for one, but couldn't wait any longer on the chance I wasn't granted one

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

U.S. Const. amend 5
U.S. Const. amend 6
U.S. Const. amend 14
Texas Const. art I
Texas Const. art II
Texas Const. art. 10
Fed. R. Crim. P. 24(c)(a)
Fed. R. Crim. P. 32(i)(14)(a (ii)(c)(3)(c)
Fed. R. Crim. P. 52(b)
Fed. R. Crim. P. 48(b)
Tex. R. Evid 403
T.C.C.P. art 2.01 (2014)
T.C.C.P. art 39.14 (h)(j)
T.C.C.P. art. 1.04, 1.15
T.C.C.P. art. 36.27
T.C.C.P. art 60.01
Corpus Delicti Rule
27 U.S.F.L. Rev. 385, 418 (1993)
Common Law § 2072 at 524

STATEMENT OF THE CASE

Trial Court and both of defendant's counsel acted in denying him a fair trial by fair effective trial counsel and appeal counsel. This case had garnished both local and national media and news coverage as well as a movement close to a million people to pass a new law for all, Kari's Law. Court and counsel acted so below a reasonable standard as not so much of error, but to sabotage, weaken my defense so that I was punished to the max. My errors on claim are supported by the record with references and are in fact more credible than my lawyers affidavit that does not have "any" references to the record where it supports his facts, in fact I've shown by the record that it contradicts what he says, But he, like the state is banking, that like so far, nobody is addressing the big issues I raised, sweeping me under the rug. Both the Magistrate Judge and District Judge looked over mitigating evidence, some of which is newly discovered and withheld, who are both by the way, also in Marshall accross the street from the trial court, this further explains there bias comments, denial of evidence and my appeal. Have shown several 100% reversible errors and yet, some, most have never been addressed, like I never wrote them. Evidence was withheld, swaped out, witnesses not called, so many key factors needed for a murder trial, I had hardly any of those factors provided. This was a joke, and a mockery for fair justice, even to the guilty, the poor. also as stated by me at trial, that she was alive when I left and by the state's witness Natalie who heard moaning and knocking on the bathroom wall/door, EMT single page report states no aid rendered, civil trial 2 Dr.'s state if aid had been rendred, she would have lived, Dr. Stash's autopsy report states no major vital arteries hit. Would that alone change the crime from murder, to say criminal negligence or aggrivated assault "causing serious bodily injury or death". The fact that the Judge allowed the alternates to set in deliberation after saying "it's normally not allowed, shows nobody had my interest at hand, when the publicity and negativity is that big, but the law is the law, if we allow them to break it to serve it, then what's the point.

REASONS FOR GRANTING THE PETITION

Error 1 - Did the 5th Circuit err in denying these 7 newly raised claims which are all in the top 10 reversible for Ineffective assistance of Counsel. Those being the following 1) failure to cross-examine and impeach prosecution witnesses, 2) Move for mistrial based on Prosecutorial Misconduct, 3) due process violated when trial court deprived him to conduct adequate voir-dire, 4) allowed introduction of prejudicial and inflamatory statements and evidence, 5) trial court failed to ensure jury notes where read aloud in open court, 6) erroneously instructed jury on Sudden Passion, 7- District Court Judge Bias. Shown below by #'s where raised.

In my ~~2254~~ brief I raised issue #1 p.4, p.22. Raised #2 on p.3,4,17,22. Raised #3 p.16, raised #4 p.4,5,6,7,8,15,17,18,22, raised #5 on p.10, p.14, Raised #6 p.10,16, as to #7 I did not argue it in my brief for C.O.A, I only stated in my summary of the case that the Majistrate Judge and District Judge were bias in there opinions and denials of my motions and 2254, from Direct appeal to now, 1107 & 2254 error #3 is bias Judge, Court from trial. My reasoning for stating the District Judges were bias is because the Fed. Court is in the same town as my crime and because of all the publicity from the case that helped pass a law. See exibit A.

A reasonable Jurist could deter that I did raise these errors before and that they are indeed not newly raised and futhermore do deserve encouragement to proceed futher.

Error # 2 - Did the 5th Circuit err in denying me a timely filed motion for reconsideration. The 5th Circuit denied me my C.O.A. on Feb. 23, 2022, I received it at the prison mail-room by lay-in on March 3, 2022. You have 14 days to file motion for reconsideration. The 5th Circuit is stating my time from the issue date Feb 23, there is no way the day it issued, it made it from New Orleans to my side of Texas, which is about a 6 hour straight drive, I'm from the area. The 14 days is suppost to start when I receiaved it, which would then have made it timely filed, however still I filed it wrong as I provided exibits showing the courts error that those issues are not newly raised and the court made a mistake, not me. I then filed a Motion 60(b)1 for mistake of the court to try and show the court it's error and that they correct it on the newly raised errors and a timely filed motion for reconsideration as you can see in exibits B&D, they take no action on there mistake, only continue to point out mine, which wouldn't be an issue if they corrected there mistake, I only made a mistake in not knowing how to properly point out theres.

Error 3- Do my other claims of errors have merit and do deserve futher encouragement to proceed. See in RR6 p.13,15, the judge let the alternates set in on the deliberation with the jury, after saying this is normally not allowed and when asked to my lawyer, he said no objection, so I had 14 people in there, even if they were told not to participate, well we don't know, did they, it's pretty clear by thinke Fed. R. Crim. P 24(c), Justice O'Conner stated "decation from a legal rule is "error" unless the rule has- been weived "substantial rights" Prong of Rule 52(b). Justice O'Conner determined it doesn't affect substanted rights independant of prejudice im pact, but does violate the "Cardinal Principle" that the deliberation by private and secret, The question is, is it a violation of rule 24(c) "prejudicial respondents", either specifically or presumptively. She noted the following, that allowing the alternates to sit in on deliberation might prejudice the defendant in 2 ways, 1) alternates might have actually participated in deliberation, 2) alternates presence might have excited a "chilling" effect on regular jurors "plain error" is prejudicial, alternates could make "facial expressions, gestures of the like" could effect the decision of one or more jurors, even if instructed it infringes on jury's privacy and secrecy of the jury process. See RR4 p.103 attorney allowed evidence to be entered through another, an it was expert Dr.'s evidence. See RR4 p.170 witness states dumped 3 phones, only 2 phones shown at trial, one my Kyocera phone and my wife's I-Phone not at the scene, the LG phone at the scene sent to her by her boyfriend all but disappeard, the LG had a text vital to my defense, I'm filing a Motion 60(b)(3) in Fed. Dist. Court in the next 2 weeks, as not then, but I do now, know how the DA set the I-Phone as planted/swaped it out with the LG, he used some text in his favor from the I-Phone to bash my good character, as I have no history of violence or criminal activity. Also the text from these phones 6,000 # which the DA only shown

140 of them states exsbit 141-A. Now see RR4 p.199, 200 when
trying to mention the 3rd cell dump (LG) DA objects and says that
he and my lawyer agreed to suppress some of the cell phone dumps, my
lawyer agrees. So my attorney allows the DA to suppress evidence in my
favor and without a suppression hearing. There is plenty more, but I wish
not to re-argue only point out those top 7 so called newly raised, and some
other errors of IAC and to establish from the Judge to my lawyer, all acted
to deny me a fair trial due to the publicity and movement to pass Karis Law, 911.
Nowhere in my lawyers affadavit does it cite once where in the record
his facts are facts proven by the record. In fact I shown in my objection
to Majistrates R&R where in fact his affadavit facts contradict themselves and
I cited where in the record and CR it does, yet Majistrate, District Judge adopts
Majistrates Opinion and State Court and CCCA all deny me on that affadavit
as fact, that it's more credible than my facts as a criminal, yet my facts
are facts supported and shown by the record, CR and his don't. That makes
no sense at all to me. Marshall v. Cathel 428 F.3d 542, 565-71 (3rd Cir. 2005)
counsels failure to prepare for sentencing was ineffective assistance of counsel. Strickland 466
U.S. at 693, states only a "reasonable probability", not "substantially" as Majistrate
judge Sepsca and District judge adopts, that is a misinterpation of the rule.

See RR4 p.24, RR6 p.17, 18, 44, 47 and Jury Charge CR p.187-191, where by
preponderance of the evidence or burden of proof is shifted soley to the defendant,
the stat relieves it's burden of proof by beyond reasonable doubt all through
the trial and in the jury charge. Francis v. Franklin 471 U.S. 307, 325 (1985)
jury instruction shifting burden of proof or intent element to defendant unconstitutional
See U.S. v. Del Toro-Barboza 673 F.3d 1136, 1146 (9th Cir. 2012) claim reviewed for
plain error because defendant did not object at trial to jury instruction
is ineffective assistance of appeal counsel.

The Second error in my appeal is ineffective assistance of appeal counsel,
a different court appointed lawyer, who just so happened to just move to Marshall
to be an appeal attorney for the State and lucky me, I was his first client.
when I came to prison, he never spoke to me again, ignored several letters on how
the appeal was going, I wanted to argue this, did he have any questions. For almost
9 months he ignores me, then files an Anders Brief with no errors and a motion
to withdraw as my lawyer. Which then I received a notice to file my
Direct Appeal Pro-Se in 30 days and got 2-30 day extensions, giving me

just 90 days to read a huge transcript and learn what law and rules I can to file it. Yet see in CR p. 197, 217, 239, 240) he files a motion for new trial, as he's suppost to do, however-see #3 on his reasonings why I should get a new trial, he said I did not receive a fair verdict because of prejudicial careless or ignorant jury. He is a former judge from Jacksonville, TX yet he misses the alternates allowed in the jury room, the over abundance of photos shown to prejudice and inflame the jury, the judge tampering with jury selection, the sweeping or planting of evidence not at the crime scene, a suppression of that evidence without a suppression hearing, impeading a witness who's testimony was very damaging, the constant bashing from the DA's and lies when text, he had acces to show those lies, he couldn't find one error out of these or dozens others in my 6 errors on appeal I found. Thus he denied me the right to a fair appeal my first time. He did so because of the highly negative publicity in this trial and his new job in Marshall. See Delgado v. Lewis 223 F.3d 976, 980-82 (9th Cir. 2010). See Exitts v. Lucey 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) as the Supreme Court indicated that a criminal defendant's right to effective assistance of counsel on his first appeal as the right stems from the fact that when state chooses to create appellate courts, appellate review becomes an integral part of the ... system for finally adjudicating the guilt or innocence of a defendant. The Sixth Court of Appeals said my brief was frivolous, parts of the record missing, that I filed errors no law, law no errors, 13 pages of my feelings about the trial, shows that in the 90 days I was allowed to file, I could not learn enough to do so and thus my appeal attorney denied me a right to file a first time appeal. See U.S. v. Poindexter 492 F. 3d 263, 267-73 (4th Cir. 2007) appeal counsel assumed failure to file timely notice of appeal after being unequivocally instructed to do so was ineffective assistance of counsel because effectively stripped defendant of right to appeal. See Haines v. Kerner 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972) pro-se plaintiffs should not be dismissed for failure to state a claim upon which relief could be granted if it appears he may be able to offer proof of his claim. See Ramchair v. Conway 601 F.3d 66, 72-7 (2nd Cir. 2010) counsel's failure on appeal to raise argument of mistrial was ineffective assistance of counsel because argument had good chance of winning as defendant's right to fair trial was clearly violated of 6th & 14th U.S. Const. Amend

The third error on my appeal is bias judge, trial court and jury that I raised in Direct appeal, PDR, 11.07, 2254 & 5th. See the jury notes CR p.181-184 of jury notes sent to court during jury's deliberation on guilty or not guilty by "Sudden Passion", the reporters record fails to show notes were read in open court for the defendant to approve or object to, which is a statute under T.C.C.P. § 36.27. See RR6 p.16,22 cites only indictment read. Jury asked to see pic of knife and of knife in the victims neck, this is prejudicial and inflamatory and should have been objected to if I, my attorney knew of it. Isn't the jury support to convict me the facts of the crime, not the gruesome photos after the crime in my case. See RR6 p.45-46, start and finish of deliberation. CR p.184 jury ask court who get's fine, his response is don't worry about that, only facts of the case. One if we had know, we would have wanted to respond the state, not the victims family, Two, assuming they assumed the family did, they gave me $10,000 fine, max, which shows they were bias. See Villarreal v. State 855 SW.3d 725, 728-29(2009) at. I.F. applicable law para, cities: when trial court responds substantively to a jury question during the deliberation, that communication essentially amounts to an additional or supplemental jury instruction. See Villarreal at IV. see notes 1,2,3 cite to Art. 36.27 of T.C.C.P. that all jury notes must be read in open court for defendant to approve, respond or object to, unless waived. They were not read, I did not waive, nor my attorney, also a violation to my rights to a fair trial and due process of 5th 14th U.S. Const. Amend. See King v. State 953 SW.2d 266, 271(1997). See CR p.12, case #13-0963 and #13-0942, were Judge was the Judge a year before my trial at a custody trials for my kids. The judge denies me any access to my kids until there 18, upon several request to attend the hearings and trial which the judge never responds to, thus denying me as I asked the jailers to take me and they said only if Judge allows it. He was privileged to a lot of made up facts of that day by my father-in-law and thus

I believed with all the negative publicity going on with the media and abbott coming to little Ole' Marshall, TX, he formed a bias opinion, the Sixth Court of appeals says we can't see or find where Judge represented you before trial, funny, I never stated that, and I provided the CR documents with case #'s and Judges signature, yet you couldn't find anything. This shows I'm being swept under the rug. See Murray v. Scott 253 F.3d 1308, 1313 (11th Cir. 2001) bias shown because judge was judge in earlier related case and had knowledge of disputed facts in present case. See RR4 p.102 and RR7 all exibits, judge allowed over abundance of evidence to be entered into record and shown to jury, to cause prejudiced, inflame, malice and misleading to the jury. The judge allowed the st to show over 150 pics, I believe he said around 190 to the jury on a 50 inch flat screen on a cart directly in front of the jury box with the lights very dim. There was 21 stabs, yet they showed 5-6 photos of each stab close up, far away, with a ruler, different angles, in color, of her body (naked) and other crime scene photos. My lawyer objects to this at first at Dr. Stash's deposition as over abundance of evidence, then to the slide show he re-objects, the judge denies both times, however the second objection, the one at trial, he just says re-objects, so jury doesn't know where objecting to over abundance of evidence, so they could determine not 21 stabs, 8 cuts, but 100's of stabs and cuts. This is a violation of Tex. R. Evid. 403, a photo has some probative value, however a court may consider under 403 if the photo or photos is substantially outweighed by it's tendency to inflame, including 1) the # of exhibits offered 2) their repugnance 3) their detail 4) their size, 5) whether they are black and white or in color 6) whether there taken at close range 7) whether the body is clothed or naked, 8) the availability of other means of proof and 9) other circumstances relating to an individual case, well did I not plead guilty to stabbing her, so why show that, I think I more than meet, but pass all 9 points. See Hayes v. State 85 S.W. 3d 809, 815 (Tex. Crim.

.App. 2002) a photograph is neither cumulative nor lacking in significance simply because it corroborates other kinds of evidence, also Chamberlin v. State 998 S.W.2d 230, 237 (Tex. Crim. App. 1999). See RR4 p. 192, 193, the DA keeps objecting to my lawyers questioning of an expert detective on how he charged me with murder or sudden passion, the judge sustains it, then finally "tells" him how to set his objection in, "what". and also in RR4 p. 194, 195, 197. See Mitchell v. U.S. 526 U.S. 314, 326 (1999) 5th Amend. right applied at sentencing hearing even after guilty plea because threat of future prosecution or adverse impact on defendants sentencing. See U.S. v. Tury 52 F. 3d 207 (9th Cir. 1995) the ninth circuit found that the cumulative effect of error deprived the defendant of a fair trial, the case was not IAC, but rather trial courts actions hindered the defendants defense See also RR6 p. 11, I was not allowed or was anyone else asked "would they like to speak on my behalf, before jury deliberated, See Fed. R. Crim. P 32(i)(4)(A)(ii) prior to Dec. 1 2002) rule 32(c)(3)(c) see Green v. U.S. 365 U.S. 301, 304-05 (1961) Rule 32 requires court to afford defendant not merely defendant's counsel, opportunity to speak on behalf before imposing of sentence. See U.S. v. Gonzales-Melendez 594 F. 3d 28, 38 (1st. Cir. 2010) Rule 32 required resentencing when court did not invite defendant or anyone else to speak on his behalf, at sentencing, See RR3 p. 51, 52, 54, 56, 57, says #310 she can't be fair and impartial, she knows the victims mom, judge coerces her into changing her statement that she can, lawyer objects and overruled. Juror #242. See CR p. 178 juror #190 Opal Smith went to church with Mom, we tried to cut her, she was left in, I had to use, waste a strike to cut her. See RR3 p. 37, 38, 43, judge let potential jurors decide their impartiality regarding trial publicity, also what one would call jury tampering by telling venire person "Thalinquest", who are closer to my age, a man, maybe could possible see my facts about what happened, "that it's a murder trial son, I can't say when we'll be done and excused him, but then tells two older men, who might not can see my side as they would be Grandfather ages and more bias, that if you can stick around, we'll be done by Friday. Wow, did he know them, were they previous jurists, that's so called "stacking the Deck" to me. See also CR p. 41-43, 46, 47, 77 where individual voir dire was denied to determine jurys likelihood that they have been influenced by the pre-trial, publicity and mid-trial. See RR3 p. 8-17 where my lawyer asked for more time to review questionaree), which I never saw, so we could read and digest there answers, since we could not do individual voir dire, were denied. Yet at a pre-trial hearing there was an argument between Judge, DA and my lawyer on why did we waste money and send out 800 of these things if were not gonna use them. See U.S. v. Beckner 69 F.3d 1290, 1293-94 (5th Cir. 1995) reversable error because court allowed jurors to determine there own impartiality regarding pre-trial publicity, See U.S. v. Decker 69 F.3d 1290, 1293 (5th Cir. 1995) reversable error because judge failed to conduct adequate voir dire regarding jurors exposure to pre-trial publicity because courts inquiry insufficient to discover potential juror bias.

My forth error on appeal is Prosecutrial Misconduct. See (RR3 p. 82, 92, 94, see RR4 p. 24, see RR6 p. 17, 18, 44, 47 and jury charge CR p. 180, 189, 190, 191) where the burden of proof of propondrance of the evidence was shifted solely to the defendant and State relieved them of beyond reasonable doubt, a violation of the 5th Amend. and due process that requires prosecution to prove every element of the crime with which the defendant is charged. The governments failure to meet its burden of proof results in the defenses acquittal, the defendant must also be acquitted if the court determines that the court defines reasonable doubt in a way that impermissibly eases the burden of proof. State can't hide behind he plead guilty because there are 2 elements of murder in the charge. See Winship 397 U.S. 358, 364 (1970), see U.S. v. Obrien 130 S.Ct. 2169, 2174 (2010) in distinguishing between elements of a crime that must be charged in an indictment and proved to a jury beyond reasonable doubt and sentencing factors that can be proved to a judge at sentencing by a propondarance of the evidence. The Winship "beyond reasonable doubt" standard applies in both state and federal proceedings. See Sullivan v. La. 508 U.S. 275, 278 (1993) the standard protects the interests - any shifting of the burden of persuasion must withstand constitutional scrutiny. See Apperendi v. N.J. 530 U.S. 466, 588-92 (2000), thus, a state not distinguishing between similar offenses, that have different maximum penalties without requiring the prosecution to prove beyond a reasonable doubt that the facts that distinguish the two offenses. See id. Now in the next case which was reversed and remanded for a similar error in 2017, was in the same town, same court, judge, DA and her lawyer was my lawyer, in fact almost same crime, she shot her husband dead. I've never stated there the same, but I said "errie similar" as I bought her Brief from State Law Library, and her lawyer who was mine, said she shot her ~~boyfrie~~, husband because he was possesed by the devil and she wanted to save his Soul, The same for me in my opening statement he said I was possesed by a demon and that I wanted to go with that. Yet here he does it again she pled guilty.

Now in this case Kirkland v. State (No. 06-17-00055-CR, Tex. App. [6th Dist.] Texarkana, 2017), they said this was unprecidented as the same DA for her trial and my trial, Coke Soleman, in her jury charge he said she had to prove beyond reasonable doubt, thus almost giving her no chance for a defense, in mine I said by relieving the State to prove beyond a reasonable doubt throughout trial and the jury charge, he inadvertainly enhanced my "proponderance of evidence" to like "beyond reasonable doubt", thus placing an enheightened burden on my defense. Her case argues this well and I will show the same argument. The appellate court relied on a two step standard in acessing jury charge error in Abdnor v. State 871 S.W. 2d 723, 731 (Tex. Cr. App. 1994) Initially, we determine whether error and then "determine whether sufficient harm resulted from the error to require reversal Id at 731-32, see Almanza v. State 686 S.W. 2d 157, 171 (Tex. Cr. App. 1984). The level of harm that must be shown as having resulted from the erroneous jury instruction depends on whether the appellant properly objected to error. Abdnor 871 S.W. 2d at 732, when a proper objection is made at trial, a reversal is required if there is "some harm" calculated to injure the rights of the defendant. Id. as in this case, however, when the defendant fails to object to the charge, we will not reserve the jury-charge error "unless" the record shows "egregious harm" to the defendant. See Ngo v. State 175 S.W. 3d 738, 743-44 (Tex. Crim. App. 2008), Almanza 686 S.W. 2d at 171, see also Boones v. State 170 S.W. 3d 653, 660 (Tex. App. Texarkana 2005, no pet). The Court of Criminal appeals futher stated that the larger frame for our determination is set by the fact that Kirkland (like me) had entered a plea of guilty to the murder and had placed the fate on the jury's assessment of her punishment, (The same thing I said my lawyer coerced me into pleading guilty and doing that 1hr before trial). While the State painted the victim as positively as possible and Kirkland as negatively as possible, just as in the case at hand with me.

Moreover, this court found no evidence that the jury actually considered her temporary insanity defense due to voluntary intoxication in assessing Kirklands sentence - in fact assessing her exactly the forty years the State requested in both its opening and closing argument - (in mine the State asked for 99 and got it) - we conclude that the jury did not consider any lesser sentence as a result, also in my case

Kirkland plead guilty to the charge of murder and sought to mitigate the jury's assessment of punishment by presenting evidence that she suffered from mental health issues, substance abuse problems, or a combination of both and that, on the evening of the incident, those deficits played a vital role in her actions." To require Kirkland to prove these assertions beyond a reasonable doubt effectively eviserated her mitigation evidence if the jury determined that she had not satisfied the erroneous burden of proof. (By the State relieving there burden of proof in mine, wouldn't that enhance my burden and eviserated my mitigation evidence as well). We therefore find that the complained-of-instruction deprived Kirkland "of a valuable right, or vitally affected a defensive theory", thereby causing her egregious harm". See Almanza, 686 S.W.2d at 172, this error was sustained.

This Court reversed the judgment of the trial court and remanded the proceedings for a new trial on punishment. Also wish to point out on her appeal in the Sixth Court on Direct appeal, she had an attorney to help her file a good appeal, I didn't. Also this Court said since we reversed on this decision, we will not address her PM claim, which had similar errors to mine.

Also in Blue the Texas Court of Criminal appeals held that neither party bears the burden of proof relating to mitigation evidence during the punishment phase of the proceeding. Blue v. State 125 S.W. 3d 491, 501 (Tex. Crim. App. 2004) In instances where mitigating evidence is presented, all that is constitutionally required is a vehicle by which the jury is able to consider and give effect to the mitigating evidence relevant to a defendants background, Character, or circumstances of the crime." Barnes v. State 876 S.W. 2d 316, 329 (Tex. Crim. App. 1994)

See RR6 p. 19-22, 36, 37, 40-41) of closing arguments by DA and Assistant DA were prejudicial, inflamatory, opinions and lies. See RR3 p. 83-86 and see in RR5 p. 13, 15, 29-32, 89, 90-92, 101, 102, 106, 108-115, 119, 120, 123-126, 128-139, 136, 146, video of my daughter not played, favorable evidence of my wife's affair on it, the DA bashing my good character, using my previous misdemeanor assault charge to bash my good character witnesses, and lie that to make me commit the crime, which is the only charge I have almost 11 years before and I only pushed my ex-wife, that's it. See in RR4 p. 139, 140, 169, 170, 177 of text withheld from me and jury, only let jury see excerpts of 6000+ text, 140 text they could see, see where witness says there was 3 cell dumps made, DA says that he and my lawyer agreed to a stipulation of those dumps, another witness says there are only 2 dumps, my lawyer agrees, so they both agree to supress evidence without my knowledge or suppression hearing, so the LG phone gave to my wife to use from her boyfriend, disappears, an I-Phone of my wife's not at the scene is planted/swaped and made to look legit in the record, which would be forging a document. (I now know how it was done and will be shortly filing a 60(b)(3) on fraud under T.C.C.P. §37.09, 37.10, 71.02 and on the judge for jury tampering). Plus around 5,860+ text withheld from the jury and me, which I've gotten some of them, which would be also considered "Newly Discovered Evidence" since a lot are in my favor and show there was an affair, no pre-meditation, my wife the agressor & her boyfriend, that the DA was lying that her boyfriend was just a friend helping her through a divorce, which the ADA reminded last, the jury in her closing argument. Even my wifes family "bitching" at her to get a job and quit staying out all hours of the night, yet she tells the jury that I'm a a bad dad and husband for doing that. The LG phone that vanished, had a text on it, I saw the day of, was vital to my sudden passion claim, as the DA told them I wasn't entitled to it, that I may not went in that bathroom to kill her, but I went into do harm, and therefore I wasn't of cool-relflection, don't give it to him, he's not even close. Yet the text on that LG and the other phones, show I was, her stepsister texted her on the LG while we were talking in the bathroom and said is everything allright, hurry I need my car (my wife was borrowing) and is Brad tripping out. My wife texted were cool just talking, she showed me as I thought it was her boy friend. See specifically RR5 p.102, no facts. See RR4 p.33 DA explaining how Todd Liston (alleged boyfriend) was involved in the break up. Yet see one of the exibits DA entered but did not show the jury or me, 141-D showing she was having an affair, the DA was very sly indeed, See also RR4 p.221, 224 and RR5 p.83, 117 the DA shows cell-phone video taken by my co-worker while I was driving and talking on the phone with my wife and with Todd, I knew nothing of this, it was devistating as you hear me threaten Todd and cuss him and my wife, yet you don't hear what there saying, the text however show, right before the video's, Todd tells me to sleep with his wife, my wife text me what are you saying to him don't threaten him or you can't see the kids tommorrow, then we argue on the phones, unknown to me I'm being recorded and unknown until there shown to the jury, I sent these text in with my 11.07 and some with my 2254, I have no more copies. I have tried to get these from my attorney, all 3 phones, the courts through Discovery motions, asking, motions twice in 2254 to compell, all denied. In my 59(e) motion to alter or amend exhibit 6, judgment, the District Judge says it doesn't matter what the text would prove, your crime was to egregious. Wow, Judge and Jury, that facts of my defense, my truth, don't matter, when where also said to be lies from the DA. See CR p.206, 208, the DA had access to Todd, his info. See CR p.124 my lawyer states his info, address and number, unknown. Yet we show a suprise video of me arguing with him on my phone, which had his name and number stored in it, and I told my lawyer so. Yet Todd was not called to trial, nor in the court room, I know, I looked. I wonder why. See Brady v. Maryland 373 U.S. 83 (1983) The suppression of evidence favorable to an accused is itself sufficient to amount to a denial of due process. The Majistrate judge says I'm not entitled to a Brady claim because I pled guilty, well would that make my guilty plea, not voluntarily and knowingly, since I wasn't admonished that pleading guilty hurts you on appeal and would deny you any information that was suppressed, withheld, planted, hidden, in your favor. Would make it unknowingly entered, I did argue involuntary guilty plea, but not in here, I wish to have only a new sentencing trial at the least or a plea deal I can better handle than 99 years, see also Stricker v. Greene 527 U.S. 263, 281-91, 119 S.Ct. 1936, 144 L. Ed. 286 (1996) See Johnson v. U.S. 2011 District [LEXIS 33094] The prosecution may not withhold from a criminal defendant evidence that is materially favorable to the defendant, that, had the evidence been disclosed to the defense, the results of the proceedings would have been different. See Tex. Code. Crim. Proc. § 2.01 (2014) Duties of a District Attorney, they shall not suppress facts or secret witnesses capable of establishing the "innocence" of accused, See Tex. Crim. Proc. Code 60.01, the, ~~the~~ neccessity of investigation .. purpose, proper investigation will also aid counsel in determining if the state has conducted an adequate investigation and if so whether failure to do so has prejudiced the defendant.. The investigation of a criminal case may be divided into the following general categories of investigation activities, (1) collecting physical evidence (2) interviewing witnesses (3) photo and videos, (4) performing research in public and private records, (5) survellance.

While in my little cage in the backroom, during breaks, lunch, etc, I asked the ~~[illegible]~~ Pro. DA about the text and video's not shown, he said he doesn't have to, that I can ask my lawyer to do that. Under Tex. Code. Crim. Proc. § art. 39.14 (h) (j) state the following:

(h) - Notwithstanding any other provision of this article, the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the State that tends to reduce the punishment for the charged offense.

Well that statue says I'm entitled to the evidence, period, not a Brady claim denial for pleading guilty, but plain and simple, give it to me. The next part of that procedure says I'm still entitled to it, yet no court will give it to me.

(K) If at any time before, during or after trial the state discovers any additional documents, items, or information required to be disclosed under (h), the State shall properly disclose of the document, item, or information to the defendant of the court.

My fifth error was Confrontation Claus, which I've pointed out in here in other errors. I will not argue it futher to burden this court.

My final error on appeal, my sixth, is involuntary guilty plea by coercion and a violation of the Corpus Delicti Rule. The judgment in Case no. 14-0029x at RR3 p.7, CR p. 208 at jury verdict. Guilty as entered of 3/5/2015 and plea to offense: Guilty as see at RR4 p. 22, 23, the court accepted defendants guilty plea to crime of murder in violation to having recieved into record evidence or witness testimony sufficient to have met requirement of States burden of Corpus Delicti Rule. The court in case of chief without any earlier presentation of evidence or witness testimony being read into Court's record that allege offense had in fact transpired to which defendant plead to. See Wigmore, Supra Note 2, §2071 at 511-16 (collecting cases) of 7, John H. Wigmore, Evidence in Trial at Common Law, §2072 at 524 (James H. Chadmore ed. 1978) as violation of due process of 5th, 14th U.S. Const. amend to defendants right to 3/4/2015, plea. The Corpus Delicti, as a condition of admitting an extra judicial confession, 27 U.S.F.L. Rev. 385, 418 (1993) as Thomas A. Muller cites rule without reason, See e.g. Muller, supra note at 405 (complaining that the rule "does not block" the admission of dubious confession if the prosecutor meets a low threshold of evidence supporting the occurance of the crime). Not done in Petitioners conviction? See Rocha v. State 16 S.W. 3d 1 (2000) (stating rule for Texas and finding Corpus Delicti of robbery satisfied by testimony of independent witness). See William v. State 958 S.W. 2d 186, 190 (1997) (corro to other evidence) commonly referred to as the "Corpus Delicti", id [.] This other said evidence need not be sufficient by itself to prove the offense, we have held that in ... murder cases, the Corpus Delicti requirement extends to both murder and underlying cases). Williams 958 S.W. 2d at 190 [.] violation of Tex. Const. Art I § 10, T.C.C.P. §1.04, 1.15 [.].

See also Exparte Westerman 570 U.S. 3d 731, 739 (Tex. Crim. App. 2019) (Yeary J. dissenting) (When Texas courts recognize that we have overstepped the constitutional mandate in our Texas Constitution and become legislators ourselves, we should acknowledge our fault, and step directly back to our place).

See CR p. 84-86, shows he only researched a change of venue, but never filed one, in fact upon my request to file one, he said he did and it was denied, a lie. I wanted to go anywhere but that town to try and find a fairly fair jury and trial. See CR p. 13 I pled "Not Guilty," my trial was rescheduled twice, also denying me a speedy trial, I have argued that, 15 months between arrest and trial and growing publicity and movement for new all Law See RR3. p. 10 mentions family is there, that's important as I was called up to the court an hour before I was suppost to be there. Upon entering the court room I see only my Father-In-Law and his wife, step-daughter and son-in-law in the audience. I'm confused, my lawyer then comes out of the deliberation room behind the jury box and says Brad, come back here with me, when I came in, he pulled out a chair and said have a seat, and then he slid a paper to me and said sign this. Upon reading it, it was a plea to Guilty for intentionally and knowingly killing my wife. I said I don't agree with this. I didn't pre-meditate it, I didn't intentionally kill her. He said I know, but this is the best route I think we plead guilty and throw ourselves to the mercy of the court. (Reminder, just like he did in Kirkland). This is my plan. I said rudely I don't know your plan because you haven't told me what it is. He got frustrated at that, he said "are you gonna sign it or not". I said it doesn't make sense to say I did intentionally and knowingly killed her, but please give me a lessor sentence for not intentionally and Knowingly under sudden passion, should have went for temporary insanity instead now that I think of it. Are you gonna sign it or not, so I did, I asked what is Hank doing here now, he said they came to see you plead guilty. What, they knew before me I said, he just smirked. I was made, coerced to plead guilty under dress, peer pressure, guilt and now I see at least as part of the whole court to deny me a fair trial, seeing as I can't get the Newly Discovered Evidence, (Text, MPD Report or # or EMT Full Report or # as to purchase them). I was tricked to further deny my Sudden Passion claim. Why I did do it, was it was crunch time, the day of trial, what else was I to do than defer to the "expert" advice of my counsel, whom at the time I didn't know the extent of just how far he was gonna throw me under the bus, you know possessed by a demon, no experts, damaging witnesses (called for me by the way my dad, jail ministry lady, my boss, cousin. Note, it was pointed out by DA I haven't spoke to my dad in 7 years, I told my lawyer this and to "not call him". The DA pointed this out as his only question to my dad, who told him, my lawyer did. They worked together to railroad me because of the publicity and movement for a new law, Kari's Law (911).

Error #4 - Was the Court's decisions (all of them) as well as all of the trial court (Judge, DA's, Counsel, Jury) influence to deny me a fair appeal, trial, counsel do to direct or inadvertently persuasion by the media, backlash and or the big wigs envolved in it. During those 15 months, Abbott came to see the DA, have lunch, and it was covered extensively by local and national. Headlines like "Monster Kills Wife" DA Cole Solomon and Gregg Abbott meet to discuss Kari's Law, Dunn's case, etc. Others get envolved before trial, Senator Cruz, Congressman Golmert, Cornyn, many other big players. Trump after the trial signed the Law into all 50 states that congress passed. See CR p12, 48, 49, 51-56, 59, 63, 67 is just a fraction of the coverage, google it yourself, Kari's Law. One month after my arrest only, allready 5,000+ had signed the petition started by my father in-law, by trial over 500,000. How could I receive a fair trial in a 40,000+ population town. Even on the what was it 2018 re-election, on the end of Abbott's and Cruz's re-election commercials, they state I helped pass Kari's Law. Fresh all through my appeal process, even a civil-trial 2017, 40+ million dollars awarded, my father-in-law sued the hotel, ~~and~~ a lot of Newly Discovered Evidence & Facts learned from that trial. There they (jury) found me 80% at fault and hotel 20% fault. also 2 Dr.s stated she would have lived had aid been rendered, yet EMT said they rendered no aid, 4 minutes after the 911 call for help. I now know otherwise, a later NDE if I have to go that route. I think it's clear by the preponderance of the evidence that all acted in denying me a fair trial, my counsel and the DA the most. The DA to serve his own interest, where else a country bumpkin DA get to hang out with such big wigs to further help his own career and portfolio. Do whatever it takes to win. My attorney, who lets face it, in the end still works for who "the State", not me, acted in his best interest.

A reasonable jurist could deter that all this was done and more stated in full briefs on appeal as well as deter that my merits do have merit and deserve encouragement for further proceedings and a writ of ceratori should be granted at the least and or a reverse for new sentencing trial and or a hearing to resolve facts, and or remand back to 5th Circuit to answer those errors not considered "as newly raised" and or grant also that motion for reconsideration was timely filed. Chandler v. Fla 449 U.S 560, 574 (1981) any highly publicized criminal trial presents risk of defendants right to fair trial. See also Daniels v. Woodford 428 F.3d 1181, 1211-12 (9th Cir. 2005) a violation of 5, 6, 14 U.S Const.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brad A. Dunn

Date: 5-19-22