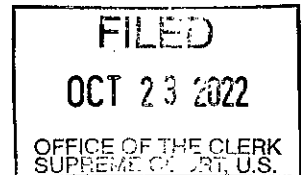


No. 22-6098

ORIGINAL

In The
Supreme Court Of The United States



Quartshezz Leonard Lewis
Petitioner

vs.

Texas
Respondent

On Petition For A Writ Of Certiorari

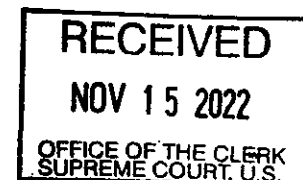
Texas Court Of Appeals
Last Court To Rule

Petition For Writ Of Certiorari

Quartshezz Leonard Lewis

1391 fm 3328 (Beta)

Tenn. Coloney. Tx. 75880



QUESTION(S) PRESENTED

- ①: Did the Texas Courts err in failing to rule on a material variance between the indictments allegation and the testimony at trial to which deprived petitioner his Constitutional right to proof beyond a reasonable doubt of each essential element and his Due process?
- ②: Did the Texas Court of appeals err in finding the jury Charge error "harmless" if the Charge relieved the State of its burden of proof beyond a reasonable doubt as to the elements that must be proven to constitute the crime. Thereby violating Due process Clause of the Fourteenth Amendment to the United States Constitution?

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:

RELATED CASES

State of Texas v. Quartshezz Leonard Lewis, Case No. 06-21-00021
CR

Quartshezz Leonard Lewis v. ~~State of Texas, COA No. 19F-0920-202~~
~~202nd District Court Bowie County, Texas~~
202nd District Court Bowie County, Texas

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	II
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	III-VI
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE WRIT	1
CONCLUSION.....	1-14

INDEX TO APPENDICES

APPENDIX A: The Court of Appeals Sixth Appellate District of Texas (Mem.op.)

APPENDIX B: Trial Court's Judgment of Conviction, and Appellate brief from
the 202nd District Court
Bowie County, Texas

APPENDIX C: Court of Criminal Appeals of Texas refusal of Petitioner's
Petition for Discretionary Review, Austin, Texas

APPENDIX D: Petitioner's Direct Appeal

APPENDIX E: Petitioner's Petition for Discretionary Review

APPENDIX F

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 _____ 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 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 _____ 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 _____.

☐ 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 3/4/22.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: 7/27/22, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

INDEX OF AUTHORITIES

Case Law

Carella v. California, 491 U.S. 263, 265, 109
S.Ct. 2419 (1998) (per curiam)

Castillo-Fuentes v. State, 707 S.W.2d. 559, 563
(Tex.Crim.App.(1986))

Coffin v. United States, 156 U.S. 432, 453, 15 (at 403)

Cupp v. Naughten, 414 U.S. 141, 38 L.Ed2d. 368, 94
S.Ct. 396 (1973)

Gollihar v. State, 46 S.W.3d. 243, 246
(Tex.Crim.App.2001)

Hatch v. State, 922 S.W.2d. 166, 171
(Tex.Crim.App.1996)

In re Winship, 397 U.S. 316, 25 L.Ed.2d. 368
90 S.Ct. 1068 (1970)

Smith v. Horn, 120 F.3d. 400 (3rd Cir.1997)

Smith v. State, 340 S.W.3d. (at 50)

STATUTES AND RULES:

Tex. Penal Code Prov. Section 21.02(b)

Tex.R.App.Proc.66.3(a)

Tex.r.App.Proc.66.3(b)

Tex.R.App.Proc.66.3(c)

Tex.R.App.Proc.66.3(f)

U.S.S.C. 10(b)

Fed.R.Evid.201

U.S.Const.Amdt.Fourteenth

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person the protection of the laws.

Pen. 21.02 Continuous Sexual Abuse of young Child or Children.

Texas Rules of Appellate Procedure
Tex. R. App. P. 44.2(a): Reversible Error in Criminal Cases. (a) Constitutional error. If the appellate record in a criminal case reveals constitutional error that is subject to harmless error review, the court of appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.

Tex. R. App. P. 66.3(a): Reasons for Granting Review while neither controlling nor fully measuring the court of criminal appeals discretion, the following will be considered by the court in deciding whether to grant discretionary review: (a) whether a court of appeals decision conflicts with another court of appeals decision on the same issue; (f) whether a court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the court of criminal appeals power of supervision.

STATEMENT OF THE CASE

L. Lewis, was indicted March 5, 2020 on one count of continuous sexual abuse of a child, one count of aggravated sexual assault younger than 14 and one count indecency with a child by sexual contact, in cause No.19FD0920-202, motion Motion to amend indictment was filed March 19,2021, on March 20,2021, the trial court signed an order granting the amendment on March 30,2021, Lewis went to trial and was found guilty of continuous sexual abuse of a child and sentenced to sixty(60)years in the Texas Department of Criminal Justice Institutional Division.

LewisLewis filed his direct appeal September 1,2021 he was denied his direct appealMarch 4,2022. Lewis filed for an extension of time to file his Petition for Discetionary Review April 7,2022. The court granted the motion. ON July 27, 2022 lewis Petition for Discretionary review was refused. Lewis now brings this writ to the Supreme Court.

REASONS FOR GRANTING THE PETITION

Pursuant to the United States Supreme Court's "Rule 10(b)":

A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

ARGUMENT

Review is proper because the court of appeals' decision conflicts with an another Texas court of appeals' decision on the same issue, Tex.R.app.P.66.3(a).

Review is proper because the court of appeals' has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the lower courts as to call for an exercise of the United States Supreme Court's power of supervision. United States Supreme Court Rule 10(b).

The United States Supreme Court as Petitioner humbly prays grant this Writ and reverse the court of appeals' decision affirming Petitioner's conviction, set aside Petitioner's conviction and remand the case for a new

trial on guilt/innocence.

QUESTION ONE: Did the Texas Courts err in in failing to rule on a material variance between the indictments allegation and the testimony at trial to which deprived Petitioner his constitutional right to proof beyond a reasonable doubt of each essential element and his Due Process?

As Petitioner, brings attention to The Supreme Court on the court of appeals Memorandum Opinion hereafter, (mem.op.) as to the sufficiency of the evidence claim the court at 4 stated: "under section 21.02 of the Texas Penal Code, the state was required to establish beyond a reasonable doubt that between May 15, 2013, and continuing until on or about September 30, 2014, Lewis, (1) who was seventeen years of age (2) committed two or more acts of sexual abuse against A.B. a child younger than fourteen years of age, (3) during a period that was more than thirty days or more in duration. See Texas Penal Code 21.02(supp). The Predicate Offenses alleged against Petitioner that he committed (1) Aggravated Sexual Assault of a child when he intentionally or knowingly caused the penetration of A.B.'s sex organ with his finger when A.B. was younger than fourteen years of age and (2) indecency with a child by sexual contact, when with intent to arouse or gratify his sexual desire, Lewis engaged in sexual contact with A.B. by touching her genitals when she was YOUNGER THAN SEVENTEEN YEARS OF AGE."

The court goes on to say "Lewis concedes that the state presented evidence that "three events" occurred between May 2013 and September 2014." The court refers to footnote at P.5 of its mem.op. which states: "Lewis does not challenge the state's allegations that he was a child younger than fourteen years of age or older or that A.B. was a child younger than fourteen years of age at the time of the alleged offense."

Petitioner refers to this Court as supra, the court err's when it stated "Lewis concedes that the state presented evidence that "three events" occurred between May 2013 and September 2014."

That is not what Petitioner conceded to. Rather he conceded to the fact

that he was over 17 years of age and that A.B. was a child younger than 14 years of age at the time of the alleged offense.

As the court continues at 5: "A.B. also described an incident at her aunts apartment when Lewis came to her bed, which she was sharing with her siblings, "pulled [her] tights down, then he opened her legs, and then he put the flashlight on there, and he touched [her] middle part, but not with the flashlight. " She said that "he just flashed on [her] middle part", and "was moving" his hand. According to A.B., while he was moving his hand he penetrated her "middle part" with his finger. During that incident, Petitioner was not wearing any clothes and A.B. she could see his "middle part". A.B. also said that the incident occurred sometime after the February 22, 2014, birth of a son to Petitioner.

Petitioner shows, supra the testimony said nothing before February 22, 2014, the indictment says May 15, 2013, this testimony does not support the allegation of, May 30, 2014 in the indictment.

There is a variance and the variance is material because the May 2013 date is descriptive of that which is legally essential to charge the crime. See Gollihar v. State, 46 S.W.3d 243, 246 (Tex. CRIM. App. 2001) "A 'variance' occurs when there is a discrepancy between the allegations in the charging instrument and the proof at trial. In a variance situation, the state has proven the defendant guilty of a crime, but has proven its commission in a manner that varies from the allegation in the charging instrument. At 247-48: The widely accepted rule ... is that a variance that is not prejudicial to the defendant's substantial rights is immaterial. At 249-250: Surplusage may often be responsible for a variance between the proceeding and the proof. The general rule regarding surplusage is that 'allegations which are not essential to constitute the offense, in which might be entirely omitted without effecting the charge against the defendant, without detriment to the indictment; and treated as surplusage and may be disregarded.

The exception to the general surplusage rule... may run counter to the fatal variance doctrine [and] provides that where an extra or unnecessary allegation is descriptive of that which is legally essential to charge a crime, the state must prove it as alleged though needlessly pleaded. At 256-57: [W]e hold that a hypothetically correct charge need not incorporate allegations that give rise to immaterial variances. [W]e affirm the fatal variance doctrine and overrule surplusage law and [its] acceptance... We adopt the materiality test applied by many other courts... [w]hen faced with the sufficiency of the evidence claim based upon the variance between the indictment and the proof, only a 'material' variance will render the evidence insufficient. Id.

Thus Petitioner, shows supra according to the court's holdings in Gollihar, Petitioner's conviction is infirm: due to a material variance between the indictment's allegation of May 2013 and testimony of February 22, 2014 as the on or about the first time of sexual abuse.

Petitioner believes this [alone] shows evidence insufficient, even so, continuing in the court of appeals mem.op. at 6: "... on occasion B.W. would work the night shift, which would begin at 10:00pm. and ended at 6:00am. On those nights B.W. would take A.B. and her siblings to stay at L.W.'s, B.W. also confirmed that between on or about May 15, 2013 and on or about September 30, 2014 she had worked over night at Colonial Lodge for a period greater than thirty days.

Petitioner shows the court of appeals error supra, in that the record indicates B.W. was not working at colonial Lodge in May 2013, but rather November 15, 2013 was when B.W. started working at Colonial Lodge. The court's mem.op. supra also reflects B.W. received her first paycheck in November 2013.

This shows inconsistencies with the testimony as to the time frame to establish continuous sexual abuse of a child. The only date established according to the court mem.op. at 6: " november 15, 2013" not May 15, 2013.

The court's mem.op. at 9: " In this case A.B. testified Lewis sexually abused her when she was staying at L.W.'s which occurred, on February 22, 2014.

The state also presented evidence that Lewis sexually abused A.B. at L.W.'s apartment sometime around Easter 2014, when A.B. was five years old and about to turn six. The evidence also showed that, in 2014, Easter occurred in the month of April 2014, moreover, Evens testified that Lewis stayed at L.W.'s apartment during 2014. Although A.B. was unable to state the specific date on which Lewis abused her, the testimony presented by the state, the early date being around February 22, 2014, after Lewis' son was born and the later date being around Easter in April 2014, was sufficient for the jury to have inferred that Lewis sexually abused A.B. on at least two occasions thirty or more days apart."

Petitioner thus, refers this Court back to the court of appeals' mem.op. at 4: "the state was required to establish beyond a reasonable doubt that between May 15, 2013..."; the court of appeals states these are the dates but then supra the court of appeals at the end of its review deviates from the requirement and says that the state met its burden by showing the "testimony presented by the state- the early date being around February 22, 2014." Id.

Petitioner shows the court supra talks of February 2014, and April 2014. The indictment pleads May, 15, 2013 to September 30, 2014.

Thus, the court of appeals itself shows in its review a material variance of which is proof of insufficient evidence. Id.

Accordingly Petitioner, shows this Court [supra] the United States Supreme Court has a meritorious platform for which to grant and rule on this important Federal question U.S.S.C. Rule 10(b).

Question Two: Did the Texas court of appeals err in finding the jury charge error "harmless" if the charge relieved the State of its burden of proof beyond a reasonable doubt as to the elements that must be proven to constitute the crime. Thereby violating Due Process Clause of the Fourteenth Amendment to the United States Constitution?

The court of appeals decision is one that Petitioner believes conflicts with other court of appeals, Court of Criminal Appeals and the Supreme Court of the

United States Constitution, pursuant Tex.R.App.P.66.3(a)(b)(c)(f). U.S.S.C.10(b).

Petitioner ask this Court, If the jury charge relieves the state of its burden of proof beyond a reasonable doubt of the required elements to constitute the offense[does] this violate Petitioner's Due Process rights in the most [Fundamental] way?

Petitioner shows the Court, in the Supreme Court of the United States the Court held in, In re Winship, 397 U.S. 316, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970) at 1071: The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation. The "demand for a higher degree for persuasion in the criminal cases was, recurrently expressed from ancient times, [though] its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as a measure of persuasion by which the prosecution must convince the trier of fact of all the essential elements of of guilt." McDermicks, Evidence §321 (1954). At 1072: The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is the prime instrument for reducing the risk for convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock "exomatic and elementary" principle whose "inforcement lies at the foundation of the administration of our criminal law." Coffin v. United States, 156 U.S. 432, 453 15 S.Ct. at 403. In the 3rd Circuit in 1997 stood on the holding in, In re Winship in a petition dealing with a jury charge that as here in Petitioner's claim the state was relieved its burden of proof of the required elements to constitute the offense. Smith v. Horn, 120 F.3d 400 (3rd Cir. 1997) At 415: However, once the state has defined the elements of the offense, the Federal Constitution imposes restraints upon the state's authority to convict the person of that offense. It is well settled that "the Due Process Clause [14th Amdt.] protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d. 368 (1970): [omitted], a jury instruction

that omits or materially misdescribes an essential element of an offense as defined by the state relieves the state of its obligation to prove facts constituting every element of the offense beyond a reasonable doubt, thereby, violating the defendant's due process rights. See Carella v. California, 491 U.S. 263, 265, 109 S.Ct. 2419 (1989) (per curiam).

I
In the court of appeals mem.op. at 10, the court stated under Heading "(2) the claimed jury-charged error was not essentially egregiously harmful." "Lewis also maintains that the jury charge was erroneous because it did not require two acts of sexual abuse to have occurred at least a thirty-day period."

Petitioner shows, this is the required element that must be proven, it violates Petitioner's due process of the required elements being found beyond a reasonable doubt.

Petitioner shows the court of appeals mem.op. at 11:... In this case, the application paragraph in the jury instruction provided " Now bearing in mind the foregoing instructions, if you believe from the evidence beyond a reasonable doubt, the defendant, Quantezz Lewis, did then and there, during a period that was 30 or more in duration to wit: May 15, 2013[,] and continuing until on or about September 30, 2014, in Bowie county, Texas, committed two or more acts of sexual abuse [A.B.] (a pseudonym), a child younger than 14 years old namely, aggravated sexual assault of a child, the defendant did then and there intentionally or knowingly cause the penetration of the sex organ of [A.B.] (a pseudonym), a child who was then and there younger than 14 years of age, by the defendant's finger; indecency with a child by sexual contact. with intent to arouse or gratify the sexual desire of the defendant, engage in sexual contact with [A.B.] (a pseudonym) by touching the genitals of [A.B.] (a pseudonym) a child who was then and there younger than 17 years of age, there you will find the defendant guilty of the offense of continuous sexual abuse of a child as charged in the indictment. At 12: "according to Lewis, because the application paragraph did not expressly require two or more acts of sexual abuse to have occurred over at least a thirty day, the jury charge contained error. Contrary to Lewis's contention, the jury

charge did in fact, require the jury to find Lewis guilty of continuous sexual abuse of a child if ~~during~~ a period of 30 or more days in duration, to wit: May 15, 2013 and....September 30,2014," he committed two or more acts of sexual abuse against A.B.. In other words, ~~the~~ instructions in the jury charge was very similar to the language that Lewis maintains should have been contained in it. Nevertheless we find that the charge contained error."

IN Smith the Houston 1st court of appeals found that the trial court jury charge was erroneous because it allowed the jury to find Smith guilty if two or more acts of sexual abuse occurred during a specific period that was longer than thirty days, regardless of whether the acts occurred at least thirty days apart Smith, 340 S.W. 3d. at 50. in that case, application paragraph stated: "Now, if you find from the evidence beyond a reasonable doubt that on or about the 1st day of December 2007. through the 1st day of September 2008, which said time period being a period that was 30 days or more in duration,, in Brazoria County, Texas, the defendant Jessie James Smith committed two or more acts of sexual abuse against [the victim], said acts of ~~abuse having been~~ violations of one or more of the following:[two acts of aggravated sexual assault are described], then you will find the defendant guilty of the offense of continuous sexual abuse of a child, as alleged in count 1 of the indictment. Id. Finding error in charge, the appellate court explained; the precise phrasing in the application paragraph does not specifically require a finding that the last act of sexual abuse occurred [30 or more days] after the day of the first act. Rather allows a finding of guilt if two acts of sexual abuse occurred "on or about the 1st day of December 2007 through the 1st day of (AT 13) September 2008 which said time period being a period that was 30 days or more in duration." This instruction lacks clarity in that, read literally it allows the jury to find the appellant guilty so long as two or more acts of sexual abuse occurred between December 2007 and September 2008, regardless of whether the acts occurred at least 30 days apart. Id. The same reasoning applies in this case. Here the application paragraph contains "error because it confuses the statutory required thirty-day period for continuous

sexual abuse with the 'on or about' periods alleged with respect to commission of the predicate offense."

Petitioner shows, this confusion "caused" in applying thirty or more days period is continuous. If the jury was confused then their rational is confused thus making the verdict rendered unconstitutional.

The court of appeals goes on to apply its theory as to how the "jury" could have (continuing at 13) "easily read the instructions as directing of finding L Lewis guilty if(1)there were thirty or more days between the dates in the indictment that is, May 15,2013 and September,30,2014, and(2) during that time,=Lewis sexually abused A.B. on two or more occasions.

In Turner, the Amarillo court of appeals addresses a similar charge issue in a continuous sexual abuse of a child case. There the jury instruction stated, in relevant part, Now bearing in mind the foregoing instructions. If you ~~unanim~~ unanimously believe from the evidence beyond a reasonable doubt, that defendant David Blane Turner, on or about June 1,2013 through August 1,2013... during a p period that was30 days or more in duration... intentionally or knowingly commit[ted] two or more acts of sexual abuse against [victim]. Then the jury s should find Turner guilty. Id at 462(emphásis added). The state argued that the application paragraph was not erroneous because it tracked the statutory requirements of the offense of continuous sexual abuse of a child. requirements of the offense of continuous sexual abuse of a child. The Turner court was not convinced. Finding error in the charge, the court stated, unfortunately, the state's argument relies to heavily upon the assumption that the statute itself is an example of clarity. Broken down into component parts, the application paragraph used in this case does nothing more than the application ai 14: paragraph in Jimenez, by requiring that (1) a period of thirty days or more (2) the defendant intentionally or knowingly committed two or more acts of sexual abuse. While someone with understanding of the statute might agree that this provision is clear, the expressed language used does not make it clear that the first and last acts must occure thirty or more days apart. Like Jimenez, becauser

the application paragraph here suggest to the jury that thirty-days requirement was met if it found applicant committed two or more acts during a period of thirty days or more it was erroneous. Id. at 462-63. Same is true here. Consequently, we find application paragraph contained an erroneous instruction."

Petitioner standing ~~is~~ pursuant, In re Winship, supra "The reasonable doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions, resting on factual error." Id. at 1072. See also supra: Smith, 120 F.3d. 400 (3rd Cir. 1997) At 415: ... the jury instruction that omits or materially misdescribes an essential element of an offense as defined by state law relieves the state of its obligation to prove facts constituting every element of the offense beyond a reasonable doubt, thereby violating defendant's federal due process right. See, Carella v. California, 491 U.S. 263, 265, 109 S.Ct. 1419 (1989) (per curiam).

Accordingly, Petitioner's (14th Amdt.) rights have been violated under the Due Process Clause, [therefore] at this juncture the appeal court according to this well-established law was required to reverse Petitioner's conviction, instead the court continues to conduct its review on whether the afore mentioned erroneous instruction was egregious; at 14: "We apply the egregious harm standard where in reversal is required only if the charge error was so egregious and created such harm that the defendant has not had a fair and impartial trial." The court citing Taylor "errors which result in egregious harm are those that effect the very basis of the case, deprive the defendant of a valuable right, vitally effects defensive theory, or make a case for conviction clearly and, At 15: significantly [more] persuasive. Id (citing Taylor, 332 S.W.3d at 498)."

Petitioner, again shows his erroneous instruction rises to meet the demanding standard it spun on a fact material to the very element of the offense the court goes on to find that the harm to Petitioner was erroneous ; (AT 15:...) egregious harm is a demanding standard. "And such a determination must be done on a case-by-case basis." Id (citing Hatch v. State, 992 S.W. 2d. 166, 171 (Tex.Crim.App.1996),

overruled on other grounds by Castillo-Fuentes v. State, 707 S.W.2d. 559 563 (Tex.Crim.App. (1986)).

In his brief Petitioner contends that: [t]he abstract portion of the charge correctly defines the offense of continuous sexual abuse of a child, The defendant's closing argument addresses the thirty day period, Thus, all these factors weigh against a finding the error in the charge was egregious. However, there is no evidence to support the factual issue in the erroneous portion of the charge. As such, the charge resulted in egregious harm."

Petitioner, shows that is moot that the addressed the thirty day period in closing argument, Petitioner addressing it has nothing to do with the jury instruction error. Jury instruction error review is focused on the component's of the instruction and nothing said at closing has any relevance to charge errors.

Now the court of appeals is going to suddenly switch its egregious error review over to reviewing it in the light of Petitioner's sufficiency claims and witnesses testimony as to the 30 days or more. This portion of the court's opinion is out-of-place, due to the court finishing its jury charge error review with a sufficiency review. At 15: "In that was Lewis seemingly re-asserts his sufficiency claim. As we discussed previously, A.B. and her mother attested to two days around which the abuse occurred, that is around Lewis' son's birth on February 22, 2014 and around Easter in April 2014. That testimony supported the jury's conclusion that the last act of sexual abuse occurred thirty or more days after the first act. See, Smith, 340 S.W.3d. at 48."

Petitioner, argues these dates are not the same dates that the jury was referred to in the charge which instructed them on May 2013 through September 30, 2014. continuing at 15: "It is true that A.B.'s testimony lacked some specificity. Yet, considering that she was around six years old at the time of the abuse and twelve years old at the time of trial, her testimony and her mother's similar testimony recounted a consistent narrative. The jury was free to give their testimony more weight and probative value and it might have given it had they

testimony differed. Also in his closing argument, Lewis explained to the jury in simple, direct, and correct terms what was meant by the thirty-day requirement: He stated, because one of the elements in this case is that any act whether it be aggravated, sexual assault of a child, has to be two or more acts that occur in a period over 30 days in duration, and you, that, I mean, literally that is an element. It has to happen over a period of more than 30 days. If it happens 29-days in a roll and stops, that's not continuous sexual abuse of a child. It may be 29 counts of aggravated sexual assault, but it's not the main charge in the case. That is important because it's an element [of continuous sexual abuse of a child]. Lewis statement made it clear to the jury that the two acts of sexual abuse had to have been separated by at least thirty days. According to Lewis, anything less would not have satisfied one of the required elements of the offense of continuous sexual abuse of a child.

Considering those factors, we cannot say that the error in the application paragraph of the jury charge resulting in egregious harm to Lewis. Accordingly, we overrule this point of error."

This ruling does not comport with what the court's opinion supra nor does it comport with Federal holdings. See; Cupp v. Naughten, 414 U.S. 141, 38 L.Ed.2d 368, 94 S.Ct. 396(1973) At 146: Before a Federal Court may overturn a conviction from a state trial in which [the disputed] instruction was used, it must be established not merely that the instruction is undesirable, erroneous, or even 'universally condemned', but that it violated the [14th] Amendment." Accordingly Petitioner has shown supra his [14th] Amendment rights were violated. Thus showing the court of appeals erred in its opinion, Petitioner believes this Writ of Certiorari has merit and prays this Court to grant right the many constitutional amendments that may well continue to be violated without the Supreme Courts exercise of its powers of supervision. U.S.S.C. 10(b).

Petitioner concludes with a quote from a Louis L'amor novel Petitioner recommends named "The man called noon" pg202 which states "you cannot submit to

evil without allowing evil to grow. Each time the good are defeated or each time they yeild, they only cause the forces of evil to grow stronger. Greed feeds greed and crime grows with sucess. Our giving up what is ours merely to to escape trouble would only create greater trouble for someone else."

Everything that is outside Constitutional laws and holdings is like a field whose boundaries are blurred and ill defined, where confusion and ambiguity rein The very complexity of the terminology does not help simplify matters: there are no common definitions, and we find many contradictory problems under the same label.

Petitioner would beg reserving to the Supreme Court not only cases of extreme constitutional violation, in accordance with old norms of Justice, but to give This Court jurisdiction over all instances of misapplication of laws and rulings redistributing justice back to all its American people.

Petitioner prays for an Evidentiary Hearing in that Petitioner did not fail to develop facts in state court where factual basis for evidentiary hearing would bring every fact of the record to This Court. See Williams v. Taylor, 529 U.S. 420, 437 (2000).

Petitioner also ask This Court to take Judicial notice under Texas and Federal Rules of Evidence 201 that all facts contained with-in the four corners of this Writ to be true and correct.

Conclusion

Premises considered, Petitioner supra has shown the Supreme Court according to facts contained in the record, i.e. the Sixth court of appeals mem.op., how the court erred and those errors violated his Fourteenth Amendment Due Process Clause to the United States Constitution, due to the fact shown supra a "material Variance" in the proof at trial and how it is plead in the indictment making insufficient evidence. Id. Furthermore the jury charge contained an error that relieved the state of its burden of proof of the very element that is required to constitute the crime, due to the charge being void of this factual requirement that would require the jury to find that fact to show the offense was committed violated Petitioner's rights pursuant the Fourteenth Amendment Due Process Clause to the United States Constitution.

Concluding the court of appeals erred and those error constitute this court's granting this Writ of Certiorari.

Prayer

Petitioner, pray the Court except the facts in this Petition as the facts pertaining to Petitioner's denial of his Direct appeal and except Petitioner's Conclusions of Law herein as the proper conclusion of law to those facts unless reflected by the record otherwise.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jonathan Lewis

Date: October 23, 2022