No. 22-7271

IN THE

SUPREME COURT OF THE UNITED STATES

Gregg Haden — PETITIONER
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5TH Cir C.O.A
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gregg Haden
(Your Name)

1391 F.M 3328 Beto Unit
(Address)

Tenn Colony T.X 75880
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) IS TEXAS PROCEDURE FAILING UNDER THE SCRUTINY OF THE Bullcoming STANDARD AND VIOLATING THE 6TH AMENDMENT THAT IS AWARDED TO STATES THROUGH THE 14TH AMENDMENT?

(2) DOES THE HARM ANALYSIS THAT TEXAS ATTACHES TO THE FORENSIC INTERVIEW'S CONFRONTATION CONTRADICT SUPREME COURT HOLDING IN U.S. V. Kizzee, VIOLATING HADEN'S 14TH AMENDMENT DUE PROCESS?

LIST OF PARTIES

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

[x] All parties do not appear in the caption of the case on the cover page. A list of all parties th the proceeding in the court whose judgment is the subject of this petition is as follows:

*Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, Respondent Appellee;

*Gregg Haden, TDCJ#02076909, Petitioner-Appellant
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*Stacey Brownlee, Trial Counsel For The State;
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*The Honorable Alfonzo Charles, Judge Of The 124th District Court in Gregg County, Texas, Presided Over State Court Trial and State Habeas Corpus Proceedings;
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*Stam Schwieger, Petition For Discretionary Review Petitioner-Appellant
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Robert L. Cole Jr., Counsel For Direct Appeal Petitioner-Appellant

RELATED CASES

*Haden v. State, No.06-16-00141-CR(Texarkana App.2017)

*Haden v. State No.PD-0622-17(Tex.Crim.App(2017)

*Haden v. State,No.44591-B-H-1(Tex.Crim.App.2019)

*Haden v. Davis Civil Action 2254 No.6:19-CV-566(2022)

Haden v. lumpkin,5th Cir. No:22-40493 5th(2022)

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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-16 to the petition and is

[ ] reported at 5TH CIR ; 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 A-16 to the petition and is

[ ] reported at 5TH CIR ; 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-8 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 TEXAS COURT OF CRIMINAL APP. court appears at Appendix A-8 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 NOV 11-2022.

[ ] 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 NOV 20, 2018. A copy of that decision appears at Appendix A-8.

[ ] 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).

Facts Of The Case As Adopted From The Sixth District Court Of Appeals

Angie began dating Haden in February 2003, when Angie's son, John was three years old. Angie and Haden married in 2007, and John seemed happy with their union (Appendix(B,2)).

Angie stated that Haden was an active participant in John's life often taking "John" hunting and fishing. Id (B,2). According to Angie, she said everything was fine from 2007 to 2011. But she knew she and Haden were having trouble with their marriage and unfortunately he began posting and responding to a sexual encounters with men. Haden on June 11, 2011, was arrested for online solicitation. (Appendix (c,9); Appendix (B,2). This caused things to change for the family. Id (B,2). Angie explained that John's attitude and mood changed and that he no longer wanted to participate in family activities. Appendix (B,2) Angie testified more over that John was regularly angry or frustrated with Haden and that would often times discipline "John" by making him sit at the kitchen table and write Bible verses, something that "John" disliked doing.

Jeremy Johnson, a youth paster at the family's church, testified that he had frequent interaction with "John" and his family. Id at B,2. On one occasion, however, "John" "came in and kind of had his head down a little bit," and then handed Johnson a letter. Id (B,2). After reading the letter, Johnson became concerned and contacted the senior pastor of the church, who told Johnson he needed to contact the Department of Family and Protective Services (The Department). Johnson did so. Id (B,2).

The letter "John" handed to Johnson stated: "Sexual abuse means forcing a young person to take part in any kind of sexual

activity. This may include kissing or touching genital's or breast. It may also include intercourse. Abuse might include asking a child to touch parts of his or her own body or showing children pornographic magazines or videos. "In the summer of 2011 (June) my dad got arrested for sexting, which he started four months before. He always showed me videos on the computer that I didn't like." (Appendix (B,2) (emphasis added).

Steven Bradly Stovall, Angie's brother, testified that after he heard the accusations against Haden regarding "John" he asked his son, "William", if Haden had ever been inappropriate with him. Steven explained, "Before we could get it out he just -His body just dropped a deer-in-the-headlight look. Just kind of a 'Oh my gosh, how do you know?'" "[I]t took less than a second for me to realize what the answer was to the question. So it was just kind of disbelief that it - that it had happened." William" prodded by his mother for a response, replied in the affirmative. (Appendix(B,3)).

Meanwhile Johnson immediately reported the incident to Child Protective Services. This is were there is a clear departure from the record of the trial and post-conviction and a pre-arraignment forensic interview as recorded by Cindy Dowler (Black) and held by Kelli Faussett.(Supplement 47894.02); Appendix (D,1-11). In this supplement (478940.2) labled case number: 12-05505 by officer 1293 (Dowler, Cynthia) 03/12/12 09:47am; The first couple of sentences say "I was notified 03/09/12 by CAC interviewer, Kelli Faussett, about a possible sexual assault of a male child." CPS set up interviews for the child that afternoon. (Appendix D(1), 1 of 11).

The very next sentence verifies the courts with the evidence

only glazed upon in the trial or post conviction. "after the interview I was contacted again by Faussett who said this child made an outcry and his male cousin ["William"] was also at the CAC with his mother to report the same outcry. (Appendix (D, 1 of11). ..CPS was not aware of this victim until he and his mother arrived at the CAC with the first victim." (ID at D,1) Later down it stated "03/12/12 I phoned the CAC this morning about this case and asked if the 2nd victim made an outcry. Christina said he did. She then told me that the 2nd victim has a brother and sister who will be interviewed today at 3pm. (Id at D,1)

The next page and half of this supplement involved an investigation by Dowler (Black), about Haden's laptop and desktop on location of Angie, Haden, and her children "John" and "Bailey's" House on 03/12/12. (Appendix D,1). This investigation as shown by Dowler (Black's) own testimonial shows exclusive contect with the Haden family for questions involved with these computers and some other comnputers alleged to have been buried in the yard of the Haden's house. Appendix (D, 1-2).

Outside those investigations there was some general disposition questions about Haden's demeanor asked to Angie Haden but nothing in those portion of the supplement that was, even so, a few days after Kelli Faussett's outcry forensic exam. Appendix (D,1-11). Leads to Dowler (Black's) being the original outcry starting on page two of this statement was a summary, Dowler (Black) made on the video recorded interview of "John" and "William" outcries that was directed by the CAC interviewer Kelli Faussett. Appendix (D2-7).

After a thorough examination the fact in the record show's

no signs of Dowler (Black's) disapproval of Faussett's questioning. (Appendix (D)). Dowler (BLack) in the next portion of this supplement confirms more questions from the children involving those computers, a forementioned and dates that they were alleging to have watched porn with Haden. (Appendix (D,7)). This and a warrant for those computers are the only factors that evoke a second interview from Dowler (Black) toward "John" and "William" second contact. (Appendix (D, 7 of 11).

Dowler (Black's) line of questioning shown by Haden establishes Black's questioning against the 4-corners of this document intended purpose of questioning these children alleged outcries. (Appendix (D, 7-11)). This "new" information Black establishes is cumulative to the original outcry investigation performed by Faussett. (Appendix (D, 1-11)). This investigation by Faussett can be found in the framework of the complaint. Appendix (F, 1-2) and was the focal point of the trial and ultimately the conviction of Haden.

QUESTION ONE: Is Texas procedure failing under the scrutiny of the Bullcoming standard and violating the 6th Amendment that is awarded to states through the 14th Amendment?

"A distress signal to the Supreme Court"

The outcry as a believer of "We The People", through Haden as a proponet in the constitutional promise brings through a conviction by a fundamentally unfair trial proceeding and post conviction process to which brought about vauge interpretations. Haden shows through the record applied in his case, 3 different theories of applying a Texas procedure leaning on 3 different jurist, Attorney Hughey, States Attorney Brownlee, and the Judge. (Mag R&R p. 6-7; Appendix B-6-7). This, as Haden has argued, gave to much room for this clear misapplication that favored Haden's Trial Court in protection of the Court's "Pick of Choice" opposed to the Supreme Court's holding in Bullcoming. Rule 10(c) states:

> "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
> (c) a state court or a United States court of appeals has been decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

STANDARD OF REVIEW

The confrontation clause of the 6th Amendment (U.S. Const. Amend. VI), This right held applicable to the States through the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 403(1965). May prohibit the admission of hearsay evidence against a criminal defendant. See Williams v. Illinois, 567 U.S. 50, 7778(2012) (plurality opinion)(confrontation clause not violated by admission

of expert's testimony offered to describe expert's thought process and not to prove defendant's guilt.) When the defendant lacks the opportunity to cross-examine the out-of-court declarant. See Crawford v. Washington, 541 U.S. 36, 68(2004). However, the admission of out-of-court statements does not violate the confrontation clause if the declarant testifies at trial and is subject to cross-examination. See id., at 59 n. 9.

In Crawford v. Washington, the Supreme Court created a new standard to govern the admissibility of hearsay statements against criminal defendants under the confrontation clause. See Crawford, 541 U.S. at 68. The Court distinguished between "testimony" and "nontestimonial" hearsay evidence, holding that the admission of testimonal hearsay statements violates the Confrontation Clause except when the declarant is unavailable. See id. See also Mancusi v. Stubbs, 408 U.S. 204, 212(1972)(State must make good faith effort to compel witness's presence beyond merely showing witness was outside its jurisdiction.) and the defendant had a prior opportunity to cross-examine the declarant. See Crawford 591 U.S. at 61; See also Bullcoming v. New Mexico, 564 U.S. 647, 652, 659(2011)(Confrontation Clause violated by admission of testimonal evidence through different witness who did not create testimonal affidavit and without showing preparing analysis); See U.S. v. Kizzee, 877 F. 3d 650, 651 (5th Cir. 2017)(Confrontation Clause violated by admission of detective's trial statements that implicitly introduced witness's out-of-court testimonal statements because witness available and defendant had no prior opportunity to cross-examine witness. A violation of the Confrontation Clause is subject to harmless error analysis. Harmless error exist if it is established beyond a reasonable doubt

is established beyond a reasonable doubt that the violation did not contribute to the verdict. U.S. v. Kizzee, 877 F. 3d 650, 651-63 (5th Cir. 2017)(erroneous admission of witness's out-of-court statements not harmless because other circumstantial evidence inconclusive and statments likely contributed to defendant's conviction).

Texas courts and the confrontation requirement adversaral testing

As this Court stressed in Crawford v. Washington, "[t]he test of the Sixth Amendment does not suggest any open ended exceptions from the confrontation requirement to be developed by the courts." 541 U.S. at 54, 124 S. Ct. 1354, 158 L. Ed. 2d 177. Nor is the "role of the courts to extrapolate from the words of the [Confrontational Clause] to the values behind it, and then to enforce it guarantees only to the extent they serve (in the court's views) those underlying values." Giles v. California, 554 U.S. 353, 375, 128 S. Ct. 2678, 171 L. Ed. 2d 488(2008) accordingly, the clause does not tolerate dispersing with confrontation solely for an evidentiary purpose; Melendez-Dias clarified, made in aid of a police investigation, ranks as testimonal. 557 U.S. at --, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (forensic reports available for use at trial are 'testimonal statements' and certifying analyst is a 'witness' for purpose of the Sixth Amendment") Bullcoming, 180 L. ed. 2d at 624.

Bullcoming's holding seems to lay out a full easy procedure in preparation of a state's prosecution by using the foundation given by the Supreme Court. This as in opposition to the Texas procedure allowing, as in Haden's case in argument, the analyst,

Kelli Faussett, who authored the forensic investigation in the line of outcry questioning,, as so become unimportant and even replacing her testimony by a detective Cindy Dowler (Black). This as Dowler (Black) was allowed to repeat Faussett's outcry questioning and "overriding" Faussett's questioning to which was seen in this well public supplement (478940.2) brought through the record. (This supplement (478940.2) involved with case number: 12-05505 by officer 1293 investigated by Cynthia Dowler on 3/12/12 at 9:47am (Appendix (D Pg 1-11) Suppl (pg. 1 of 11) now known as Supplement (478940.2)). This soon became Cindy Dowler some how as the outcry witness as State's Attorney Brownlee brought no one to any hearing held. (Docket No. R.R. 142-142) (Appendix (E 1-6).

Dire Consequences Observed Are Dubious

"The States and its amici urges that unbending application of the confrontation clause to forensic evidence would impose an undue burden on the prosecution. This argument, also advanced in the dessent, post at - -- --, 180, L. Ed. 2d at 635-636, largely repeats a refrain rehearsed and rejected in Melendez-Dias, see 577 U.S., at - -- --, 129 S. Ct. 2527, 174 L. Ed. 2d 314. "The Constitutional requirement, we reiterate, may not [be] disregard[ed]...at our convenience." id., at -, 129 S. Ct. 2527, 174 L. Ed. 2d 314 and the predictions of dire consequences we again observe are dubious. See id., at --, 129 S. Ct. 2527, 174 L. Ed. 2d 314.

This holding seems to pose in opposition to Texas Code of Criminal Procedure 38.072 and its application of these forensic evidences" and the Supreme Court's "unbending application of confrontation clause to forensic evidence" labeled so in Bullcoming, 180 L. Ed. 2d at 624.

Texas 38.072 In Direct Confrontation Conflict

Texas applies in its Code of Criminal Procedure under Art. 38.072 an outcry hearing that through each stringent predicate applies in its hearsay exception. See Bays v. State, 396 S.W. 3d 580, 591 (Tex. Crim. App. 2013); citing Long v. State, 800 S.W. 2d 545, 547-48 (Tex. Crim. App. 1990). Deduction equates its self against the Supreme Court's own fundamental confrontation clause hold.

Kelli Faussett As Original Outcry Witness Hidden

Established through an improper outcry §38.072 hearing Cindy Dowler (Black) was established as the first person who "John" and "William" told a descernable version of the outcry. (Mag. R&R pg. 6 of 42 of Appendix (B-Pg 6-42)

In the proceeding it was argued by Haden's trial counsel, Mr Hughey campaigned first for Jeremy Johnson, as the official first person told by "John" anything, "John's" youth minister (Docket no. 9-7, pg. 144) Appendix E-1-6. The state's attorney, Stacy Brownlee, responded to Jeremy Johnson's encounter with "John" as only general allusion outcry and instead rallied for Detective Cindy Downler (Black) who investigated Haden's case and who called back in "John" and "William" to have limited questioning about dates involved with watching porn on Haden's computer with them for a warrant being issued. (Docket no. 9-7 pg. 143; Appendix E-1-9). Mag. R&R pg. 6 of 42; Supplement (478940.2) pg. 6-11 Appendix D 6-11. The court blindly agreed with States Attorney Brownlee though never following any "stringent predicate" to determine in the record these finding as required in §38.072. The court ruled Dowler (Black) as the only witness to provide direct testimony that acts alleged were committed in Gregg County (Docket no. 9-7 pg. 145; Appendix E 1-9); See also Mag. R&R pg. 7 of 42; Appendix (B-7-42

"In a second hearing at trial outside the presence of the jury Haden's attorney, Hughey argued that based on Black's report, the proper outcry witness was CPS investigator Kelli Faussett." Docket no. 9-8 pg. 6 Appendix E-8-9 See also Mag. R&R pg. 7 of 42; Appendix B-7-42 Hughey was corrected by Brownlee who conceded

"that Faussett did a CAC (Children Advocacy Center) interview but John's ability to give details was quite limited. She stated that "In a very unusual circumstance, Ms. Dowler (Black) felt it necessary to go back and get further details from this child. (Mag. R&R pg. 7 of 42; Appendix B-7+42 This fact is clearly erroneous to the record in the supplement which states under Dowler (Black's) own notes that Dowler (Black's) sole reasoning for this second inverview of "John" and "William" was D.A. Investigator Joe Bound's search warrant for Haden's computers and on Bound's orders for Dowler (Black's) "Interview of Haden (John) and Stovall (William) about dates they were shown the porn on the computers. (Suppliment (478940.2); Appendix D pg. 7)

Due to Brownlee's self determination of Dowler (Black's) interview, eliciting more details about the offenses alleged in Gregg County, the court ultimately, on only Brownlee's assertion, ruled with the State's attorney and her determination of facts. (Mag R&R pg. 7 of 42 Appendix B-7+42.

Notice Failure With Open Ended Exceptions

Haden's attorney, Hughey, establishes a notice failure to the seemingly false position Brownlee established in that the state's attorney propositioned with Hughey, at an earlier time, that the state's outcry witness was asserted as Dowler (Black), Hughey denied such allegations saying "he had never had a conversation with Brownlee about Black being the outcry witness" and went further saying "Black in her own statement said that Faussett was the outcry witness." Id Mag. R&R pg. 6-9 This seeks reproval (as the gravman isn't clear misapplication of

its own Tex. Procedure which holds truth (Tex. Crim. Code Proc. Art. 38.072) But to its fundamental departure of the 6th Amendment of confrontation through Crawford and Bullcoming which caused confusion and unfairness. The argued application "suggesting an open ended exception from the confrontational requirement to be developed by Haden's trial court." The state's ability to silent the record seems to have won approval from every post conviction proceeding Haden pursued successfully obstructing his ability to confront Kelli Faussett not only as an outcry witness but further as the auther and forensic investigator of the most elemental fact outside of Jeremy Johnson, John's youth pastor, who started the investigation and was brought to trial in behalf of his testimony. (Mag R&R 2; Appendix(B p.2); Mag R&R p. 6-7; Appendix (B p. 6-7).

The clause does not tolerate dispensing with confrontation simply becuase the court believes that questioning one witness about another's testimonal statements provides a fair enough opportunity for cross-examination. Bullcoming, 564 U.S. 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610, 2011 U.S. Lexis 4790 (2011).

Author/Analyst Of The Report

Through Brownlee asserts that Faussett was unavailable the state's attorney does ask the court if she needs to get in touch with Faussett imposing unprepared trial preperation along with trial delay if the court decided to rule it imparitive. "Confrontation Clause imposes a burden on the prosecution to present it's witnesses not on the defendant to bring these adverse witnesses into court". Melendez-Diaz, 557 U.S. at - -, 129, S. Ct. 2527, 174 L. Ed. 2d 314. Statutes governing these procedures

typically "Render... otherwise hearsay forensic reports admissible [,] while specifically preserving a defendants right to demand that the prosecution call the author/analyst of[the] report." PDS Brief 9; 2527, 174 L. Ed. 2d 314 (observing that notice-and-demand statutes permit the defendant to assert (or forfeit by silence) his confrontation clause right of the receiving notice of the prosecutor's intent to use a forensic analyst's report.").

Though not given proper notice by the trial court's hearing determination of Dowler (Black) as the outcry. Haden brought his connection of Faussett as the Children's Advocacy Center's forensic investigator and as so Haden's attorney asked the court to note his exception (Docket no. 9-8 p. 9;Appendix E-9; See also Mag. R&R pg. 7 of 12; Appendix (B-7)).

In Respondent Davis's answer with brief in support. (Doc 8 pg. 13 of 52 pg ID#: 99). It says "Haden contends that Black was not a proper outcry witness.... and that it was error to allow her testimony... The state responds among other things that Haden introduced the recording of "John's" interview with Black (which contained the asserted outcry about which testified) and, thus, he waived any complaint which he would have possessed regarding the admission of Black's testimony (ID Doc. 8 pg. 13)

Doctrine of curative admissibility helps to clearly and convincedly cure the prejudge created by the court in Haden's introduction of "John's" interview with Black. This Doctrine definedly Black's law dictionary allows Haden to introduce otherwise inadmissible evidence to remove the prejudice caused by improper admission of Black that was offered by the State's attorney. At first it seemed Hughey pushed for Blacks outcry

video on his own, this video was a defense Hughey used to push the theory that he held that Black as the detective was not the outcry witness's original or even more detailed outcry and possibly not even within right to discuss this outcry. His line of questioning to detective included questions like "video that was...taken by Black with machinery there at the Harrison County Sheriff's department?" (R.R. 219, 17-19). To which Black responds "Yes sir. It was our interview room at the time." (R.R. 219,20). Mr Hughey further questions Black "Okay now that video - - This video you can pretty much sponser and - - Because you are - - employed by the Harrison County Police - - I mean, Sheriff's Department. So your in ability - - like I said were admitting it as defendant's 1. But your in ability - - ability to author it because you are a representative of that department is that correct?" Id. Which Black again responds "Yes." (R.R. 224,12). Hughey finishes asking Black "Okay so your not really in a position to offer a - - CAC Interview, Becuase you're not the individual that basically taped that." (R.R. 224, 13-15). Showing Hughey as he is using his line of questioning to establish a curitive response to the courts allowing Black as the outcry and not allowing Faussett to be questioned. Hughey's proposal to make the video investigation of Black admissable in evidence under Defendant's 1 (R.R. 211,13), helps for the record that this "exparte written interrogatory" procedure used in this case would not pass muster under Craig Coronado v. State, 351 S.W. 3d 315 (Tex. Crim. App. 2011).

The Cheif merit of cross-examination is not that some future

time it gives the party opponent the right to dissect adverse testimony. It's principle virtue is in its immediate application of the testing process. It strokes fall while the iron is hot. State v. Saporen, 205 Minn. 358, 285 N.W. 898, 901 (Minn. 1939).

The Confusion In Texas Procedure
Applied Over Hearsay/Confrontation Precedent

Kelli Faussett being there at length first interview and in so establishing all elements involving the eight alleged offenses described in the indictment and William's extranious allegations it preserves the state's attorney tactidly withheld Faussett's forensic interview for fear of their preponderance of evidence of Gregg County not being truly established by any other statements but through Dowler (Black). This deceitful ommission of Faussett has thus far been overruled based on presumption of correction by the post-conviction courts on Texas Procedure.

Bullcoming's application would have removed the doubt of Faussett as forensic interviewer and author of the statement. If there was a question involved about the placement and participation of Faussett and Black it should have been test while the iron is hot throught the 38.072 hearing.

In Garcia v. State, it holds a proper outcry hearing but in doing so the Court of Criminal Appeals held the record void as to any specific details of the statements made to Remirez and as to any description of the alleged offenses made to Ramirez by the complainant. 792 S.W. 2d at 91. Muniz was employed by the Texas Department of Human Services as a child protective specialist. 792 S.W. 2d at 90. Who though second person child spoke to in detail, the trial court ruled was the outcry witness. Id. This under the logic of Tex. Crim. Code Proc. 38.072 Sec 2(a)(2).

In a dissenting opinion made by Judge Clinton he brings to light "The original bill creating this section allowed all hearsay statements of a child victim under 13 to be admitted into evidence." Bill analysis. H.B. 579, 69th Legislature (1985). This more expansive portion of the bill was replaced with express limitation of the hearsay exception to the "first person" to whom the child describes the alleged offense. See H.B. Id.. The bill also amended the family code with a section substantially identical to article 38.072. See U.T.C.A. Family Code §54.031. Thus, the legislative intent - the "focal point" of the majority's analysis - was not only to create a narrow hearsay exception in offenses relating to the physical and sexual abuse of children, but also to permit the admission of the statements only after certain procedural safeguards are met. 792 S.W. 2d at 92.

Constant Misunderstanding Its Own Procedure

The court in Garcia v. State was decided in 1990 and as Haden shows in his case the state has used this hearsay exception to bring any witness it should deem. In Nino v. State, 223 S.W. 3d 749 (App Houston 14th Dist. 2007) It decided trial court abused its descretion in designating Meandrew, rather than Jane, as the outcry witness under section 38.072. Id 223 S.W. 3d at 753. Similar findings held in other cases described in Nino shows abuses in outcry hearing designations Brown v. State, 189 S.W. 3d 382. (Tex. App. San Antonio 1998, pet ref'd); Minds v. States, 970 S.W. 2d 33, 35 (Tex. App. Dallas 1998 no pet.); and Schuster v. State, 852 S.W. 2d 766, 768 (Tex. App. -Fort Worth 1993 pet ref'd).

QUESTION TWO: Does the harm analysis that Texas attaches to the Forensic Interview's Confrontation contradict Supreme Court holding in U.S. v. Kizzee, violating Haden's 14th Amendment Due Process?

Harmless Hurdle Near Impossible Protection

The next hurdle applies under a harm analysis to determine whether these errors affected appellant's substantial rights. See Tex. R. App. P. 44.2(b). As reviewed error as non-constitutional error. See Johnson v. State, 967 S.W. 2d 410, 417 (Tex. Crim. App. 1998). Improper admission of evidence is not reversible error if the same or similar evidence is admitted without objection at another point in the trial. Nino, 223 S.W. 3d 754. Similar decisions applied in Mayes v. State, 816 S.W. 2d 79, 88 (Tex. Crim. App. 1992); Leday v. State, 983 S.W. 2d 713, 717-18 (Tex. Crim. App. 1998); West v. State, 121 S.W. 3d 95, 105 (Tex. App. -Fort Worth); and Broderick v. State, 35 S.W. 3d 67, 74-75 (Tex. App. -Texarkana 2000, pet ref'd).

Aggresive Challenge To Supreme Court's Supervisory Powers

The argued Texas Procedure is being administered and applied through an unreasonable determination of clearly established federal law and Supreme Court holding. 2254(d). Furthermore, this harm analysis under Texas Rules of Appellate Procedure 44.2(b) in relation to a 6th Amendment Confrontation Clause violation is fundamentally unfair. The T.R.A.P. 44.2(b) is in opposition to the Chapman v. California, 386 U.S. 18, 22 (1967) beyond a reasonable doubt standard as applied to Constitutional errors. U.S. v. Kizzee, 877, F. 3d 650, 651-63 (5th Cir. 2017).

Even before this Court's decision in Crawford moreover it was common prosecutional practice to call the forensic analyst to testify. Prosecutors did so to bolster the persuasive power of [the State's] case[.]...[even] when the defense would have preferred that the analyst did not testify." PDS Brief 8. We note also the "small fraction of cases" that "actually proceed to trial." Melendez-Diaz, 557 U.S. at --, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (citing estimate that "nearly 95% of convictions in State and Federal courts are obtained via guilty plea.") and, when cases in which forensic analysis has been conducted [do] go to trial." defendants "regularly...(stipulate) to the admission of [the] analyst." PDS Brief 20. "[a]s a result analyst testify in only a very small percentage of cases." id. at 21, for "[i]t is unlikely that defense counsel will insist on live testimony whose effect will merely to highlight rather than cast doubt upon the forensic analysis" Melendez-Diaz, 557 U.S. at __, 129 S. Ct. 2527, 174 L. Ed. 2d 314. ...prosecutors schedule trial dates to accomodate analysts availability and trial courts liberally grant continuances where unexpected conflicts arise. Id at 24-25. Bullcoming, 180 L. Ed. 2d at 626. Haden pose's to the court the question presented in Bullcoming Brief for respondent 58, n. 15 (citation omitted) Here the State offered the BAC report, including Caylor's testimonal statements if the testimonal statements were not themselves admitted as evidence." Bullcoming, 180 L. Ed. 2d at 629.

As in Haden's case the suppliment from Killi Faussett wasn't admitted as evidence but fundamental defect of the confrontation clause in that this document supplied permiated through the probable cause to arrest, investigation gathering indictment

allegations, all the way through the trial, and finally conviction. This seems to blockade Haden's 14th Amendment right of Due Process and Due Course of Law resulting in a miscarriage of justice. Reed v. Farley, 512 U.S. 339, 348 (1994) (quoting Mill v. U.S., 368 U.S. 424, 428 (1962)

Conclusion Of Haden's Journey

Haden has made his way down the well traveled road of the finalization stretch of post conviction bound now for the Highest Court seeking his constitutionally promised dreams afforded by the Amendments protected in the halo of guardianship known as the Supreme Court.

This ardous road of constitutional interpretation such as "overturning final and presumptively correct on collateral review because the state cannot prove that error is harmless under Chapman undermines the state's interest in finality and infringes upon their sovereignty over criminal matters. Moreover there is a 'reasonable possibility' that trial error contributed to the verdict. See Chapman v. California, 386 U.S. at 24, 17 L. Ed. 2d 705, 87 S. Ct. 824 (quoting Fahy v. Connecticut, 375 U.S. 85, 86, 11 L. Ed. 2d 171, 84 S. Ct. 229 (1963)), is at odds with the historic meaning of Habeas Corpus - to afford relief to those whom society has grievously wronged."

Brecht v. Abrahamson, 507 U.S. 637, at 373. Still holds Haden's heart in hope of constitutional hero's to withhold fundamental justice to this grievously wronged.

To humbly hold my pen to the Writ of Certiorari brings the professional expectations held by the founding fathers who in their dedication and duty perserved the foundation to writ

protection of this beautiful constitution regulates. This process which is bound and protected by those such as those justices serving as the sworn protectors of the most important documents in this system of checks and balances. Though considering myself as unworthy I stand with James Madison "who told Congress that the 'independant' federal courts would be the guardians of those rights." Chapman at 21, 17 L. Ed. 2d 705, 875 S. Ct. 824..Brecht, 507 U.S. 645, at 378.

I ask as a component of "We The People" this Court humbly to intervine and ask itself "[W]hether a conviction for crime should stand when a state has failed to accord federal, constitutionally guaranteed rights is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they guarantee and whether they have been denied, with faithfulness to the constitutional union of the state's we cannot leave to the union of the states we cannot leave to the formulation of the authoritative laws, rules, and remedies designed to protect people from infractions by the states of federally guaranteed rights." I bid.

Prayer

Haden prays this Court grant his Writ of Certiorari and after thorough investigation correct Texas clear and substantial misapplication of the 6th Amendment of the Confrontation Clause. Help apply Bullcoming to the confrontation of the forensic investigator and bring an end to the Texas trial court's confusion of a procedure which underscores the foundation of the 14th Amend. awarded by the Supreme Court's protections stand as a whole for the one.

Reason's For Allowance Of The Writ

Gregg Haden, an inmate currently incarcerated at George Beto Unit Prison, Texas Department of Criminal Justice, serving a sentence of 380 years respectfully petitions this court for a Writ of Certiorari to review his 6th and 14th amendment violations of his confrontation under this courts ruling of **bullcoming**. This Texas confrontation violation through comity and sovernity was violated by the 124th diatrict court of Gregg Co. Texas, Court of Criminal Appeals Texarkan Texas, Texas Supreme Court of ~~Appeals~~ Appeal's The Eastern District Court of ~~Tees~~ Texas and finally the 5th Circuit United State Court of Appeals in violation of The United States Supreme Court Holdings and Federal Law.

Reason's For Granting The Writ

The Texas Court's have failed under the scrutiny of the Bullcoming standard allowing the 5th Cir. to adopt and deny Haden's fundamental right in violation of the 6th and 14th amendment.

The State of Texas denied Haden his 6th amendment right of The United State's Supreme Court awarded him in the stetes through the 14th amendment due process. The question is important not only to Haden but all who are being denied the right to confront the forensic investigator who's line of questionimng lead to the ultimate conviction of the accused. The principle's of **Bullcoming v. New Mexico** apply to allow crutial confrontation of forensic investigator's for bias, conflicts, practice procedure and prejudice that hold this delicate balance between evidence of which usually hold's ~~no~~ No other evidence but testimonal evidence.

Haden relies on Supreme Court Rule 10(c) as stated (c) A state court or United State's Court of Appeal's has decided an important question of federal law that has not been, but should be settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this court. Haden conviction was based upon the forensic investigation of "John" Haden's step-son, and "william" Haden's nephew, by children advocacy center's(CAC) Kelli Faussett. (appendix D-1) As reported by Cynthia Dowler (Black). (Appendix D-1) This 6th and 14th amendment violation of his constitution right was created by the prosecution not bringing in Kelli Faussett to trial but with out notice instead in an improper outcry hearing establishing Cynthia Dowler (black) as the outcry witness in two seperate hearings (Appendix