

23-5083

No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED  
JUN 26 2023  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

JAMES CALFEE — PETITIONER  
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF CRIMINAL APPEALS, (TEXAS)  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES CALFEE  
(Your Name)

MARK W. Stiles Unit 3060 FM 3514  
(Address)

Beaumont, Texas 77705  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

1. Did Petitioner rights to due process of the Fourteenth Amendment of the United State's Const. violated?
2. Did the Texas Courts of APPEAL err in finding that the trial court did not abuse its discretion in allowing certain extraneous offense evidence?
3. Did the Texas Court of Appeals err in finding that the probative value of the extraneous offense evidence outweighed its prejudicial effect and opening the door to constitutional violations guaranteed by the United States Constitution.
4. Was the Texas Court of Appeals action's an arbitrary exercise of the powers of government?

## **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**

1. HARDEN V. DIR, 2022 U.S. DIST LEXIS 115223.
2. MEDINA V. LUMKIL, 2023 U.S. DIST LEXIS 97978

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## OTHER

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[ ] is unpublished.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[ ] is unpublished.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 \_\_\_\_\_ to the petition and is

[ ] reported at P.D.R. Refused on JUNE 7 2023; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the First Court of Appeals court 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.

## **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 JULY 7, 2023.  
A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, 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

1. The 5<sup>th</sup> Amendment of the United states constitution.  
Provisions concerning - Due Process of law and Just compensation clauses.
2. The United states Constitution Amendment 14 - In Part states "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 within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

Petitioner, June Calfee was convicted on August 20, 2021, for the offense of continuous sexual abuse of child Texas Penal Code § 21.02 (B). CR 114. Petitioner's punishment was assessed by the trial court at (30) thirty year's in the Texas Department of Criminal Justice System (TDCJ).

The Trial Court certified Petitioner's right to Appeal (See) CR, 120 And Petitioner filed his timely motion notice of Appeal on August 20, 2021 - CR 121.

Petitioner proceeded with counsel and filed his Direct Appeal with the First Court of Appeals (Texas) in which was Affirmed on December 20, 2022.

Petitioner June Calfee (See) counsel filed his Motion for Re Hearing In the First Court of Appeals (Texas) February 3, 2023, In which was denied by the First Court of Appeals (Texas)

Petitioner (See) counsel filed his Petition for Discretionary Review with the Court of Criminal Appeals (Austin Texas) Contending that the court of Appeals First District Judgments Affirming conviction was in conflict with Texas Precedent and was unreasonable.

The Court of Criminal Appeals refused Petitioner's Petition for Discretionary Review. (See) PD-0237-23.

## REASONS FOR GRANTING THE PETITION

The State of Texas resolution affirming and refusing Petitioner's state Appeals was an unreasonable decision in light of the evidence and in violation of Petitioner's Due Process clause Protections under the 5<sup>th</sup> and 14<sup>th</sup> Amend. of the United States Constitution.

"The touchstone of Due Process is Protections of the individual Against arbitrary action of Government.

DEN V. VIRGINIA, 129 U.S. 114, 123 (1889).

Petitioner contends that the state of Texas abused its discretion in admitting extraneous offense evidence.

Petitioner objected at trial and on Appeal that the evidence was substantially Prejudicial rather than Probative under Texas Rules of Evidence 403. The Houston court of Appeals found that the admission of extraneous offense testimony evidence outweighed its Prejudicial effect. Petitioner contends the testimony was improperly admitted into evidence.

In Petitioner's case its Probative value is substantially outweighed by a danger of unfair Prejudice, confusion of the issues, and misleading the jury. Therefore it is the defendant's burden to demonstrate that the dangers of unfair Prejudice substantially outweighs the Probative value".  
Le v. state, 479 S.W.3d 462, 471 (Tex. App. Houston [14<sup>th</sup> Dist] 2015, no pet).

A.P. was allowed to testify before the jury that Petitioner had committed two sexual acts against A.P. A.P's testimony did in fact have a Prejudice effect on the Petitioner, by the trial court allowing the jury to hear testimony of acts of a sexual abuse committed by the Petitioner. There was NO evidence beyond a reasonable doubt Petitioner committed those acts of abuse Nor did the state of Texas see any reason to pursue prosecution of said testimony by A.P.

"Evidence is unfairly Prejudice when it tends to have some adverse effect upon the defendant beyond tending to prove the fact or issue that justifies its admission into evidence".

Gerron v. state, 524 S.W.3d 308, 321 (Tex. App. Waco 2016, pet. ref'd). ALSO see; Chaparro v. state, 505 S.W.3d 111, 116 (Tex. App. Amarillo 2016, no pet.) ("Unfair Prejudice is undue tendency to suggest decision on improper basis commonly an emotional one".

The Texas Code of Criminal Procedure art. 38.37 sec-a (1) states the trial Judge must determine that the evidence likely to be admitted at trial will be adequate to support a finding by the Jury that the defendant committed the separate offense beyond a reasonable doubt.

The State of Texas missed its mark by denying and refusing this state appeal and opening the door to violations of Petitioner's guarantee protection's. The Due Process clause was intended to secure the individual from the arbitrary exercise of the powers of Government. Daniels v. Williams, 474 U.S. 332, 106 S.Ct. 662, 665 88 L.Ed. 2d 662 (1986). By requiring the Government to follow appropriate procedures when its clients decide to deprive any person of life, liberty, or property, the Due Process clause promotes fairness in such decisions. And barring certain Government actions regardless of the fairness of the procedures used to implement them, e.g.: it serves to prevent Government power from being used for purposes of oppression. Id. 329-332.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Coffey

Date: JUNE 26, 2023