

ORIGINAL

No. 23-6806

23-6806

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

JAN 02 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

BRUCE WAYNE HARP — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Bruce Wayne Harp, 01929800
(Your Name) Petitioner, pro se
Robertson Unit
12071 FM 3522
(Address)

Abilene, Texas 70601
(City, State, Zip Code)

(325) 548-9035
(Phone Number)

QUESTION(S) PRESENTED

QUESTION ONE

WHEN DOES PENAL CODE 21.02 ADULTERATE THE
JUSTICE SYSTEM, OBSTRUCTING DUE PROCESS,
A FAIR TRIAL AND AN IMPARTIAL JURY ?

LIST OF PARTIES

State Trial Judge:

The Honorable Chap Cain, 253rd Judicial District Ct.
Liberty Texas.

Counsel for Bruce Wayne Harp at trial and state appeal:

Lameka Trahan, Liberty, Texas

Daniel P. Bradley, Houston, Texas

Counsel for State of Texas at trial, state appeal, state habeas

Logan Picket, District Attorney, Liberty, Texas

Stephen C. Taylor, Assistant District Attorney, Liberty, TX.

Counsel for the State of Texas in the district court on this Petition for Writ of Certiorari:

Willa E. Cockshutt, Assistant Attorney General, Austin,
Texas.

Sarah Harp, Assistant Attorney General, Austin, TX

District Court:

The Honorable Marcia Crone, United States District
Judge for the Eastern District of Texas, Beaumont, TX.

The Honorable Zach Hawthorn, United States
Magistrate Judge, Eastern District of Texas,
Beaumont, Texas.

United States Court of Appeals

Lyle W. Cayce - CLERK (504) 310-7700

Christina L. Rachal - Deputy Clerk

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
United States vs. Hatchet, 765 F. Supp. 349 (OPINION)	1
Warger vs. Shavers, 574 U.S. 40 (Head Note 12)	3
United States vs. Johnson, 366 F. Supp. 2d 822 (Head Note 1)	6
Millard vs. Harris, 406 F. 2d 964 (OPINION)	7
Loaghan vs. Firestone Tire, 749 F.2d 1519 (Head Note 5)	7

STATUTES AND RULES

22 D.C. Code Ann. § 3503-11 (1967) (Repealed)	7
ARTICLE 26.13 - PLEA OF GUILTY, Code of Criminal Procedure,	10

OTHER

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT.....	5
CONCLUSION.....	6
QUESTION ANSWERED.....	(1 thru 11)

INDEX TO APPENDICES

APPENDIX A

Fifth Circuit's denial of Petitioner's C.O.A.

APPENDIX B

Affidavit of Bryan J. Sweeney, PhD

APPENDIX C

APPENDIX D

APPENDIX E

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 A to the petition and is

reported at No. 23-40110 USDC No. 1:18-cv-261; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

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

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 23, 2023.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

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

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment - Freedom of Religion

- "Pleas of Guilty and Not Guilty" (page 10 and 11)

Fifth Amendment - Due Process of Law

- "Defective True Bill of Indictment" (page 6 and 7)

Sixth Amendment - Impartial Jury

- "Preferred Date of Trial" (page 4)
- "Stacking the Jury in the States Favor" (page 4-6)
- "Denied Defense an Expert" (page 6)
- "Withholding Two(2) Eyewitness Testimonies" (page 7 and 8)

Fourteenth Amendment - Due Process of Law

- "Flies in Ointment - Exculpatory Evidence" (page 8 and 9)

ARTICLE 26.13, Code of Criminal Procedures

- "Pleas of Guilty and Not Guilty" (page 10)

STATEMENT OF THE CASE

Petitioner was first indicted for the offense of INDECENCY WITH A CHILD by CONTACT. Petitioner pled Not Guilty to the offense (Cause: CR30272). Petitioner was re-indicted for an offense of CONTINUOUS SEXUAL ABUSE OF A CHILD, Penal Code 21.02(b), alleging to have occurred on or about January 1, 2007 through September 30, 2009. Petitioner pled Not Guilty. A jury was selected on April 7, 2014, the trial was on April 8, 2014 using only seven(7) witnesses from the church that turned him in. Petitioner was found guilty. On April 9, 2014 Petitioner was sentenced to thirty-five (35) years without parole in the Texas Department of Criminal Justice-Institutional Division.

QUESTION ONE

WHEN DOES PENAL CODE 21.02 ADULTERATE THE JUSTICE SYSTEM, OBSTRUCTING DUE PROCESS, A FAIR TRIAL AND AN IMPARTIAL JURY?

Penal Code 21.02 adulterated the Justice system when it denied Petitioner his rights established in the First, Fifth, Sixth and Fourteenth Amendments in the Constitution of the United States through:

- Preferred Date of Trial
- Stacking the Jury in the State's Favor
- Denied Defense an Expert Witness
- Defective True Bill of Indictment
- Withholding Two (2) Eye witness Testimonies
- Flies In Ointment - Exculpatory Evidence
- Pleas of Guilty and Not Guilty

"Our federal criminal justice system, once guided by the highest principles of fairness and justice, will be nothing more than a mill, backlogged by an endless supply of criminal cases brought in the interest of obtaining a stiff penalty upon conviction, brought by the Guidelines, that will, in the end, adulterate the justice system they were so heralded to save."

OPINION BY: James R. Nowlin
United States District Judge
United States v. Hatchet, 765 F. Supp. 349
Signed and entered this 20th day of June 1991

The penalty attached to Penal Code 21.02 is stiff (R.R. 5, 47, 9), 25 to 99 years without parole or life without parole. It is for the most egregious sex offenses against a child, in essence, equivalent to murder, requiring a jury to convict if they believe only two (2)

instances occurred 30 or more days apart. Defense must be able to overcome predestined hyperbole; the hysteria produced from the mere mention of the offense. (R.R. 5, 52, 5-13; 92, 21).

The Constitution of the United States opens with seventeen (17) words that differentiates a nation with scrupulous principles of fairness from a nation ruled by narcissistic dictatorship or by an adulterated Justice system.

"We the People of the United States in order to form a more perfect union, establish^① Justice,

The Holy Bible reveals the nature and character of God.

"All [God's] ways^② are justice." (Deuteronomy 32:4 (NKJV^③))

The Constitution's Justice must be synchronous with a Sovereign's since our Statesmen intended to "form a more perfect union" by and through established Justice.

Though the Constitution declares to "establish" Justice, Assistant District Attorney, Stephen C. Taylor, states in Voir Dire, "the legislature continues to tweak these laws regarding offenses against children (RR. 5, 24, 24, 25). Tweaking law in an effort to simply stiffen penalties is not fairness, just, equitable, impartial, unbiased, dispassionate or objective. Therefore, the use of Penal Code 21.02 to convict a person demands superior transparent evidence with explicit detail, supported by confirming testimony from interviewing specialist, forensic experts and statements consistent to investigated facts, all of which were absent in Petitioner's case. The heart of Penal Code 21.02 has been tweaked into a death penalty and a catch-all penal code capable of adulterating its own established Justice if used in a case defining one incident, supported by direct evidence, simply agreeing over and over to the State's questioning.

Merriam- Webster's Collegiate Dictionary · Eleventh Edition:

①establish - to institute (as law) permanently by enactment or agreement.

②ways - characteristic, regular or habitual manner or mood of being, behaving, happening.

③NKJV - New King James Version, Copyright © 1982 by Thomas Nelson

After the jury was seated, Taylor's opening remarks portraits portraits the single event of what he will orchestrate with only him and his direct evidence, the victim of the alleged offense, B. B., (R.R. 6, 3, 12), a 15 year old female, leading her through his story. Taylor becomes the CPS specialist, Advocacy Forensic Recorder and the Expert Witness the State never uses.

Taylor: I believe that the evidence will show that B.B. will testify that from the years 2007 through September 2009, that Bruce Wayne Harp would come into the room that she shared with Olivia Harp -- Olivia was approximately nine months older than B.B. -- and after saying good night to her brother, Roger, and good night to his daughter, Olivia, he would say good night to B.B., and he would sit on the side of her bed and say good night to her and put his hand inside her clothes, inside her panties, and he wouldn't say nothing, no moans or anything. And after a period of time, he would remove his hand and go his way to whatever he had that evening.

(R.R. 6, 13, 2-13)

Taylor: It was common for her to have it happen to her almost every night.

(R.R. 6, 15, 23, 24)

The mother, Stephony Garrett, in her Hearsay Statement (CR, 10), item 4, 3rd paragraph, stated Petitioner was "moving his hand for 5 to 10 minutes".

"For the purposes of Federal Rules of Evidence 606(b)(2)(A), generally speaking, information is deemed "extraneous" if it derives from a source 'external' to the jury. 'External' matters include publicity and information related specifically to the case the jurors are meant to decide, while 'Internal' matters include the general body of experiences that jurors are understood to bring with them to the jury room" (Warger v. Shavers, 574 U.S. 40 - Head Note 12)

EXTERNAL EFFECT

Preferred Date of Trial

Assistant District Attorney, Stephen C. Taylor, "preferentially set" the date of trial two (2) times during Petitioner's "ARRAIGNMENT" on February 14, 2014 (RR 2, 4, 15; 7, 3 and 4), two (2) times during "BOND REDUCTION HEARING" on March 20, 2014 (R.R. 3, 4, 21; 10, 5) and two (2) times during "PRE-TRIAL MOTION" on April 1, 2014 (R.R. 4, 5, 19; 8, 5 and 6) without objection from appointed Civil Family and Real Estate Defense Attorney, Lemaka A. Trahan.

On Monday, April 7, 2014, as Petitioner was being transported from the Liberty County Jail to the Liberty County Courthouse he could see on three (3) sides of the Courthouse, banners larger than life that said, "CHILD ABUSE WEEK - April 7-11, 2014" and Child Abuse Slogans posted at each parking space. Petitioner's daughter, Sarah Woolery, (sharp4christ@yahoo.com) found online a picture of a printed invitation to a candle-light vigil on April 8, 2014, the day of Petitioner's trial.

A fair trial is adulterated and the Sixth Amendment is violated from the day-of-trial publicity that influenced all potentially good jurors equally (R.R. 5, 52, 5-13; 92, 21).

INTERNAL EFFECT

Stacking the Jury in State's Favor

During Voir Dire, Juror Braxton, an educated female who was closely related to Prosecutor Ragis Fontenot, the prosecutor on Petitioner's first indictment (CR30272), responded to Trahan's questions:

Trahan: Does anybody happen to know any of those prosecutors? (listed above on same page) Yes ma'am?

Braxton: Ragis Fontenot

Trahan: How do you know Mr. Fontenot?

Braxton: He's my -- he's the father of my little cousin.

Trahan: Yes ma'am. Is there anything about being distantly related to Mr. Fontenot that's going to cause you to be unfair to anybody in this case?

Braxton: No.

Ragis Fontenot was in fact Martha Braxton's beloved Uncle Ragis, her mother's brother. Collusion is suspected between Trahan and Braxton when Trahan uses the phrase "distantly related". Trahan and Braxton both lived in the small East Texas town of Liberty, Texas. Trahan died on October 31, 2016.

Braxton became a juror and so did:

- Christopher Elliott - FORMAN - "Problems with Priest" - (R.R. 5, 139, 18-25; 140, 1-22).
- Debra Wallen - Government employee - took "Sexual Sensitivity" testing - (R.R. 5, 148, 19-25).
- Robert Hollon - has "personal feelings" (R.R. 5, 118, 12-19).
- Mary Lomas - Correctional Officer (R.R. 5, 135, 17-22). All jurors are listed at ~~FER~~ (Clerks Record, 26).

The Court would not accept 14 strikes previously requested by Trahan (R.R. 5, 69, 12-25; 70, 1-18).

"The Sixth Amendment guarantees the criminally accused a fair trial by a panel of impartial and indifferent jurors. Voir Dire serves the purpose of assuring a criminal defendant that his right will be protected. Without an adequate Voir Dire the trial judge's responsibility to remove prospective

jurors who will not be able impartially to follow the courts instructions and evidence cannot be fulfilled. Similarly, lack of adequate voir dire impairs the defendant's right to exercise preemptory challenges" (United States v. Johnson, 366 F. Supp. 2d 822, Head Note 1). ~~The Court would not accept 14 strikes requested by Trahan (R.R. 5, 69, 12-25; 70, 1-18).~~

Denied Defense an Expert Witness

Defense Attorney Lameka Trahan, in her Reurge Motion for a Mitigating Expert (Clerks Record, 16) item 7 states, "Due diligence has been used to procure the attendance of Bryan J. Sweeney." In Bryan J. Sweeney's Affidavit (CAUSE NUMBER CR 30729A, EXHIBITS, AX-11) dated June 19, 2017, he states on page 2, item 1, "I do not recall, nor do I have documentation regarding, Attorney Lameka Trahan requesting an affidavit/letter from me to support her request for my appointment as an expert in Mr. Harp's case." (APPENDIX B)

The Court had denied Trahan's motion and she lied about her contacting an expert (RR 4, 7, 4). Maybe there was a hidden agenda when Trahan wanted Petitioner to stand with her as she argued for a mitigating expert for the Punishment Phase (RR 4, 3, 9-17).

Defective True Bill of Indictment

Penal Code 21.02 became law and effective on September 1, 2007. Only two(2) sexual contacts of a child under 14 years, 30 or more days apart, are required to convict. The indictment stated the range of time was from January 1, 2007 through September 30, 2009.

The story told to the jury by Assistant District Attorney, Stephen C. Taylor, (RR 6, 13, 2-13) describes one event that happened over and over "almost every night" (RR 6, 15, 23 and 24) over a span of 1003 days. This is characteristic of a

(5. fil)

sexual psychopath (22 D.C. Code Ann. § 3503-11 (1967), *Millard v. Harris*, 406 F.2d 964). OPINION Chief Judge BAZELON:

"The Sexual Psychopath Act was enacted in 1948 as a humane and practical approach to the problem of persons unable to control their sexual emotions.

A Sexual Psychopath in 1967 would face a maximum punishment for which was imprisonment for 90 days or a \$ 300. fine, or both.

The characteristic would also appear habitual.

"Habit evidence is highly persuasive as proof of conduct on a particular occasion. Habit evidence is considered to be highly probative and, therefore, superior to character evidence because the uniformity of one's response to habit is far greater than the consistency with which one's conduct conforms to character or disposition." (*Loughan v. Firestone Tire & Rubber Co.*, 749 F.2d 1519, Head Note 5).

In a rush to adulterate the Justice system, the Grand Jury, Court, District Attorney and Assistant District Attorney knowingly proceeded on the "preferentially set" date, then by adulterated legal means, changed the date on the Judgement of Conviction by Jury (Clerks Record, 63) from 01-01-2007 to 01-01-2008 (Clerks Record, 71-73), approved on a back dated form, to April 9, 2014, signed by Lameka A. Trahan (Clerks Record, 70), that referred to the Nunc Pro Tunc Judgement of Conviction by Jury signed and filed on May 7, 2014. Trahan either knew and didn't object or she came in on May 7, 2014 and signed back dated paperwork when she was not Petitioner's attorney.

Withholding two(2) Eyewitness Testimonies

Olivia Harp, Petitioner's daughter, was in the room during

each alleged sexual assault (R.R. 6, 30, 23-25; 31, 1-23). As an eye-witness, her testimony during trial would have carried more weight than in the form of an Affidavit dated May 26, 2017, 3 years and one(1) month after trial. Olivia was not under the Rule as the others on trial day and it is assumed that her Affidavit, prepared by Petitioner's retained attorney, Steven Lieberman, was fainted. Lieberman could have asked several more pages of questions, but did not. Petitioner was also an eyewitness and should have been put on the stand. Now his appeals fall on deaf ears in light of his conviction.

Even D. J. [Melton] (R.R. 6, 147, 22-25; 148, 1-23), who asked defense witness, Rebecca Flory, to lie for Stephony (R.R. 6, 148, 11-25; 149, 1-16) will testify that Stephony asked her to see if Rebecca would claim Petitioner made sexual advances at her.

Rebecca Flory met Petitioner's family at Calvary Baptist Church. (R.R. 6, 146, 10-12). During the years 2007 through 2009 Stephony and Petitioner grew a Children's Choir from eight(8) to about 40+ children under 14 years. This happened within 12 months. Both Stephony and Petitioner worked with more children in a club at the church called A.W.A.N.A. (Approved Workmen Are Not Ashamed). There is no evidence that Liberty County Investigators performed an investigation. Stephony and Petitioner presented two(2) musicals, "Acorns to Oaks" and "Angel Alert." D.J assisted in Angel Alert.

EXONERATORY EVIDENCE

Flies in Ointment

Justice is adulterated without an Expert Witness that could explain the two(2) slip-of-the-tongues from previously coached statements of the complainant, B.B., and her

mother, Stephony. An expert could have helped jurors understand what was behind the facade of the hysteria.

Trahan: So you-all stayed in twin beds first and then the twin beds were taken from you, and y'all stayed in the full?

B.B.: Yes, ma am, because we were in - sleeping on a fullsize mattress after the incident had occurred.

(R.R. 6, 48, 6-10)

Stephony: ... and often times called my mom to show up at the house if I was going to be somewhere else for any length of time.

Taylor: Did you tell your mom?

Stephony: I didn't tell her about the incident.

(R.R. 6, 69, 18-22)

Taylor claimed it happened "almost every night" (R.R. 6, 15, 23 and 24) and B.B. claimed "countless" (R.R. 6, 37, 18-20; 58, 9-11). Irrelevant, immaterial and unduly repetitious evidence adulterates the justice system, especially using Penal Code 21.02 in a case where the subconscience surfaces in both child and mother among the hysteria of the day that attracts the light of truth. The truth is, it was all a lie.

Sweeny, the adrift expert, could have addressed B.B.'s decision to use her own style of hyperbole with the phrase, "as a little girl I was suppose to be" (R.R. 6, 26, 25; 27, 1), (R.R. 6, 28, 16-20) and answered Trahan's question about the phrase (R.R. 6, 54, 1-9).

Pleas of Guilty and Not Guilty

ARTICLE 26.13, PLEA OF GUILTY - Code of Criminal Procedure

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

NOTE: No hearing and no admonishment for a plea of guilty occurred. No record exists.

In Cause No. CR 30729 (Clerks Record, 53,54) is a SEX OFFENDER REGISTRATION ADMONISHMENTS form. It states that Petitioner has pled guilty in accordance to ARTICLE 26.13 Code of Criminal Procedure. There was no plea of guilty and no hearing. The plea was "not guilty" as shown in (Clerks Record, page 63,64) the "Judgement of Conviction By Jury" dated and filed April 9, 2014. It states in "Plea of to Offense", Not Guilty. It also states in "Plea to Offense", Not Guilty, in the "Nunc Pro Tunc Judgement of Conviction by Jury" dated and filed on May 7, 2014.

Petitioner could find no cases on dualing pleas.

On April 8, 2014 Petitioner's First Amendment right of exercising freely his right of religion, his religion, and was violated by an adulterated justice system of East Texas, Liberty County. Even his pastor, Gene Kendrick, of MIMs Baptist Church, in Conroe, Texas (R.R. 6,102,16-23) violated his own duty as a shepherd by bowing to laws that conflict with the covenant between believers exercising Biblical faith and teaching his members to do so by his own actions. Pastor Kendrick was not allowed, by law, to investigate and he chose not to. Gene Kendrick died on Thursday, April 13, 2017, the day before Good Friday. He died on the day Judas betrayed Jesus, known as the Day of Betrayal.

Petitioner had "taken wrong" (I Corinthians 6:7) inside his

right to practice Biblical principles per the Constitution and under the protection of his religion to seek the truth. Pastor Kendrick was wrong not to investigate, even if the laws of our land forbade him to do so. Not everything is as it seems, ask Job. Of all people, Kendrick should have known that.

CONCLUSION

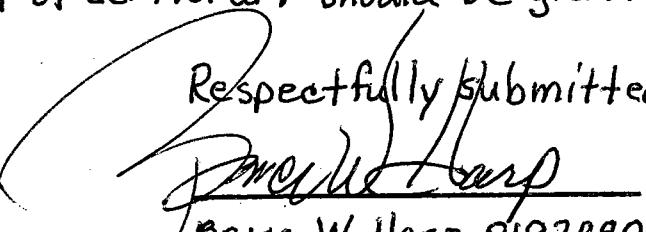
Weighing the adulterated evidence presented against Petitioner on April 8, 2014, as revealed in this Petition for Writ of Certiorari, dated January 1, 2024, the two-word, "testimony of Petitioner on April 8, 2014, Not Guilty," weighs more and must stand.

PRAYER

A new trial is not requested or preferred. Christians are not to settle disputes before unbelievers (1 Corinthians 6:1). Petitioner must maintain his First Amendment right even to his demise. Petitioner prays the Court to exonerate, acquit, or time served without sex offender registration.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Bruce W. Harp, 01929800

Petitioner, pro se

Robertson Unit

12071 FM 3522

Abilene, Texas 79601

(325) 548-9035

January 1, 2024

(11 of 11)

REASONS FOR GRANTING THE PETITION

The State could not prove indecency with a child by contact because there was a third forensic interview either at Safe Harbor or Bridgehaven Advocacy in Liberty County. So, Penal Code 21.02 was chosen as a catch-all. The more serious a sex crime appears the more believable the guilt in the hysteria of the moment, especially when the publicity of the date chosen sends human emotions into orbit like it did in Salem, Mass. in 1692.

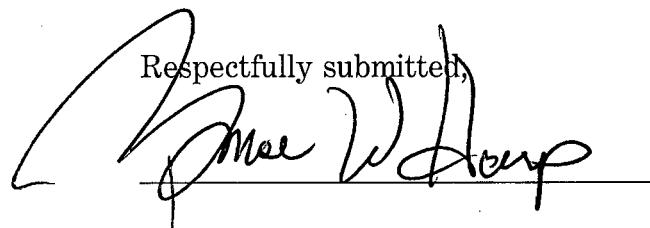
Supporting evidence was not presented for such a horrible crime against a child. There were no medical or psychological reports or experts in these fields to show physical and/or psychological damage, no Child Protective Services (CPS) specialist or Advocacy Center experts testified in collaboration with the alleged victim's testimony. It was not necessary when using Penal Code 21.02. You only need to make 12 people believe two (2) things happened 30 or more days apart.

Petitioner has shown in the record that the Court, Assistant District Attorney, Defense Attorney, the mother and the alleged victim lied or is guilty of deception by comission and/or omission in some form.

SEE FOLLOWING ANSWER TO QUESTION ONE (pages 1 thru 11)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: January 1, 2024