

No. \_\_\_\_\_  
Extension of Time Application No.  
17A929

**In the  
SUPREME COURT OF THE UNITED STATES**

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Stephen Patrick Black,

*Petitioner,*

v.

State of Texas,

*Respondent,*

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On Petition for a Writ of Certiorari to the  
Supreme Court of the State of Texas

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED FOR REVIEW**

1. Are Directed Verdicts constitutional in civil trials relating to indefinite civil commitment? Directed verdicts are disallowed in criminal trials and all essential elements must be proven beyond a reasonable doubt even when the evidence is overwhelming as to the guilt of the defendant. Civil commitment trials involve the liberty of the individual not for a determinate period, but for an indeterminate period, therefore directed verdicts involving a person's liberty should not be allowed in any trial: criminal or civil. Moreover, all essential elements determining a person's guilt, or innocence should be left to a unanimous jury decision beyond a reasonable doubt. Does the use of directed verdicts in civil trials involving a person's liberty violate the Constitutional Amendments Five, Six, Seven, Nine, Sections 1-2, and Fourteen, Sections 1?
  
2. Egregious fundamental error contained in the jury charge can be raised for the first time on appeal. The Special Prosecution Unit in the State of Texas prepares jury charges for sexually violent predator civil commitment trials and they contain a fundamental error that cannot be overcome by the trial records and the charge itself. Is egregious fundamental error contained in a jury charge a violation of the Constitutional Amendments Five, Six, Seven, Nine, Sections 1-2, and Fourteen, Sections 1?

## **LIST OF PARTIES**

1. THE STATE OF TEXAS, Plaintiff and Respondent;
2. STEPHEN PATRICK BLACK, Defendant and Petitioner.

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## OPINIONS BELOW

The 274th Judicial District Court of Texas granted a directed verdict against Petitioner on April 6, 2016, determining he met the requisite qualifications on the repeat sexual offender element or issue (first prong for jury deliberations) (See Appendix Exhibit (App. Ex.) #10 p. 3) Further stating he had no material fact issues to raise questioning that determination (See App. Ex. #2 pp. 2-3), and by doing so, he would be relitigating the facts of the qualifying convictions (res judicata collateral estoppel, or issue preclusion). Fourth Court of Appeals Decision, *State of Texas v. Stephen Patrick Black*, Cause Number 15-1805-CV 522, S.W.3d 2; 2017, Tex. App. LEXIS 2224 (See App. Ex. #5 pp. 4-6).

Consequently, Petitioner was indefinitely civilly committed on April 7, 2016 (See App. Ex. #7 p. 7). He then filed for a Notice of Appeal in the Fourth Court of Appeals on June 28, 2016, (See App. Ex. #10 p. 1) and raised the issues of improper use of directed verdicts, wherein controverted fact issues were raised at the trial court questioning the requisite qualifying repeat sexual offender prong, element, or issue to be decided by the jury and not a judge. See *Black, id.* The appeal was denied on March 15, 2017, (See App. Ex. #2 p. 1). Petitioner subsequently filed a Motion for Rehearing on March 30, 2017, which was denied April 6, 2017, (See App. Ex. #2 p. 4). A Mandate was handed down on November 27, 2017, (See App. Ex. #2 pp. 5-8).

Petitioner filed a Petition for Review with the Supreme Court of Texas on July 21, 2017, and it was denied on September 5, 2017, (See App. Ex. #1 p. 1). Thereafter, he filed a Motion for Rehearing on October 5, 2017, and it was subsequently denied on November 21, 2017 (See App. Ex. #1 p. 1). The only findings forwarded to the Petitioner were “denial cards” sent by the

clerk of the Supreme Court stating the Petition for Review and Rehearing were denied. (See App. Ex. #1 p. 1).

Furthermore, Petitioner is questioning the issue of egregious fundamental error contained in the jury charge. He raised this issue in the Petition for Review filed with the Supreme Court of Texas, along with the issue of improper use of directed verdicts. Egregious jury charge error can be raised for the first time on appeal, and Petitioner contends the error contained in the charge cannot be overcome by the record, the charge itself, and is harmful. Therefore, the harmful error analysis cannot be applied (See App. Ex. #7 pp. 1-6).

The charge error is harmful in that the jurors were misled and confused as to exactly what their duty was. The confusion is contained in the reporter's record (See App. Ex. #10 pp. 6-11), thereto the jurors throughout the trial were constantly being told they had two issues, elements, or prongs to vote on: 1) is the person a repeat sexual offender, and 2) do they possess a behavioral abnormality? Consequently, the jury charge does not contain instructions that the jurors have to vote "yes" or "no" to the two issues, elements, or prongs prior to voting on the final question on the last page, which is where another error lies it states: "is the person a sexually violent predator?"

One cannot take two very different elements and conjoin them into one!<sup>1</sup> This is a grave injustice. The charge should contain both elements as questions for the jurors to vote on.

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<sup>1</sup> See *In re Commitment of Hill*, 334 S.W.3d 226, 229-230 (Tex. 2011) ("legislatively mandated [for jurors to] **require the state to prove both elements of a conjunctive statute.**") (Emphasis added); citing *Wainwright v. Witt*, 469 U.S. 412, 419-20 (1985) ("described as "recognizing, in a criminal case, that jurors may be asked to commit to follow law and statute.").

If one is taken by an unconstitutional directed verdict, then the final question to vote on should be worded exactly as the prong states. As stated above there are two prongs: 1) is the person a repeat sexual offender, and 2) do they possess a behavioral abnormality. The jurors must vote yes or no to EACH element before they can precisely determine a person is a sexually violent predator. Conjoining the two elements into one question is harmful error without proper instruction to the jurors. This type of error would never be detected by laymen jurors. They were either confused or misled by the record and the charge itself.

Wherefore, directed verdicts are improper to use in criminal or civil trials where the liberty of an individual hangs in the balance. All issues, elements, and prongs should go directly to the jury to vote on, even if the evidence is overwhelmingly against the defendant. Similarly, egregious fundamental jury charge error is an improper mode to civilly commit an individual. If the State of Texas has to lower its standards to commitment an individual as an SVP who otherwise should not be, where has justice, liberty, and the pursuit of happiness gone?

### **JURISDICTION**

The Texas Supreme Court issued its final judgment on November 21, 2107, (See App. Ex. 1 p. 1) denying a Petition for Review, wherein A Motion for Rehearing was filed and denied on November 21, 2017, (See App. Ex. 1 p. 1). The jurisdiction of this Court is invoked under 28 U.S.C. § § 1257(a), and 1254(1).



**CONSTITUTIONAL PROVISIONS STATUTES**  
**AND POLICIES AT ISSUE**

**Fifth Amendment to the United States Constitution**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; **nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb**; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

**Sixth Amendment to the United States Constitution**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and **public trial, by an impartial jury of the State and district wherein the crime shall have been committed**, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

**Seventh Amendment to the United States Constitution**

In Suits at common law, where the value in controversy shall exceed twenty dollars, **the right of trial by jury shall be preserved**, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**Ninth Amendment to the United States Constitution**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Fourteenth Amendment to the United States Constitution**

Section 1. [Citizens of the United States.] 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 within its jurisdiction the equal protection of the laws.**

**Texas Constitution, Article I, Section 3. Equal Rights**

All free men, when they form a social compact, **have equal rights**, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

**Texas Constitution, Article I, Section 3a. Equality Under the Law**

Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

**Texas Constitution, Article I, Section 15. Right of Trial by Jury**

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. **Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense**, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

**Texas Constitution, Article I, Section 19**

**Deprivation of Life, Liberty, etc.; Due Course of Law**

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

**21 U.S.C.S. § 1981(a). Equal rights under the law**

(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, **to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens**, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

**21 U.S.C.S § 2000h-4. Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws**

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law **unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.**

**Title 11, Chapter 841 Commitment of Sexually Violent Predators**  
**Subchapter H, Miscellaneous Provisions, Section 841.146(b)**

Civil Commitment Proceeding; Procedure and Costs. (b) Except as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal

for civil cases. **To the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, THIS CHAPTER CONTROLS.** (Emphasis added).

**Scintilla Rule: Ballentine's Law Dictionary, 3<sup>rd</sup> Edition (2002)**

The rule that if there is any evidence presenting a conflict, at least evidence of some substance, not mere vague, uncertain or irrelevant matter, it must be submitted to the jury.

**Texas Rules of Civil Procedure, Rule 268**

**Motion for Instructed Verdict**

A motion for directed verdict shall state the specific grounds therefor.

**Texas Rules of Civil Procedure, Rule 275**

**Charge Read Before Argument.**

Before the argument is begun, the trial court shall read the charge to the jury in the precise words in which it was written, **including all questions, definitions, and instructions which the court may give.**

**Texas Rules of Civil Procedure, Rule 277**

**Submission to the Jury**

In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions. The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.

**STATEMENT OF THE CASE**

**A. Facts Giving Rise to This Case**

Directed verdicts are not used in criminal trials and therefore should not be used in civil trials involving the indefinite civil commitment of a person's freedom. Indefinite civil commitment is a severe deprivation of a person's liberty, therefore all constitutional safeguards should be implemented, insuring all substantive and procedural due process guarantees have been followed.

Consequently, in their effort to construct an effective sexually violent predator (SVP) statute scheme, to wit: HSC 841.001-841.153 (See App. Ex. #12), Texas Legislators failed to address the issue of utilizing directed verdicts at SVP trials (See App. Ex. #4 p. 7). Trial Courts, the Texas Courts of Appeals (See App. Ex. #2 and #4 pp. 5-10), and the Supreme Court of Texas have varied differences of opinion regarding the use of directed verdicts at civil commitment trials. The Supreme Court of Texas has yet to entertain this argument

Furthermore, the Special Prosecution Unit (SPU), being a Specialized Prison Prosecution Division of the Texas Department of Criminal Justice (TDCJ), propose the jury charges being used at all SVP trials since the inception of Texas' SVP Act in 1999. Thus, devising all the jury charges that have egregiously harmed individuals indefinitely committed as SVP's. (See App. Ex. #'s 7 and 9).

State Counsel for Offenders (SCFO) is the Texas Organization statutorily required to represent indigent offenders facing indefinite civil commitment. They also devise and propose jury charges for the SVP trials, but for some reason they are disregarded (See App. Ex. #8). The jury charges used by the SPU contain egregious fundamental harmful error. Furthermore, these errors cannot be overcome by the charge, or in the trial record (See App. Ex. #10 pp. 6-11). The record provides ample evidence of the confusion concerning the jury's duty to vote on the two elements, issues, or prongs, to wit: 1) is the person a repeat sexual offender, and 2) does he suffer from a behavioral abnormality (See App. Ex. #10 pp. 6-11).

## B. **The District Court Proceedings**

Petitioner objected to the State's Motion for a Directed Verdict (See App. Ex. #10 p. 3). The court overruled the motion and granted it in favor of the State. The Texas HSC 841.146(b) states that, "if there is a conflict between the Texas Rules of Civil Procedure (TRCP) and the HSC 841, the Texas HSC Chapter 841 controls." (Paraphrased).

Petitioner contends the SPU, the District Courts, and the Appellate Courts of Texas usually agree that the TRCP control on the issue of directed verdicts based on Rule 268, wherein states, "A motion for directed verdict shall state the specific grounds therefor." TRCP Rule 268 does not specify their use in civil trials involving a person's freedom, but the SPU, District Courts, Courts of Appeal, and the Supreme Court of Texas differ in their opinions.

They believe their use is justified on the grounds that no material fact issues exist to debate, and that the first element, issue, or prong has been "administratively decided," and that the person possesses two or more judgment of convictions proving they are a repeat sexual offender. If this is the case, why did the Texas Legislators include the first element of a two prong issue for the court and jury to deliberate on determining if a person is an SVP?

It is a vast waste of judicial resources trying to convince a judge, or jury that a person is a repeat sexual offender when it allegedly has been "administratively decided," or they simply possess two or more sexual convictions. The truth is, a vast amount of probative value lies in the first prong; otherwise the SPU would not calculatedly motion the court for a directed verdict on the issue; lest they lose their case if a jury did decide a person is not a repeat sexual offender, although they may possess one or more sex crime adjudications.

The SPU misuses the doctrine of collateral estoppel erroneously concluding the defendant is relitigating the facts previously decided in their original sexual conviction. The qualifying offense is a prerequisite for civil commitment as an SVP. The SPU uses details from the original conviction for their litigating purposes, but when the defendant decides to bring out details they cry "res judicata, collateral estoppel or issue preclusion." (See App. Ex. #11). (A letter from an attorney at State Counsel for Offenders who attended an Oral Argument (for Richard Dunsmore) of a three judge panel from the First Court of Appeals in Houston).

This is when the SPU typically motions the court for a directed verdict on the first issue of the two requisite qualifying convictions, which is: "Is the person a repeat sexual offender?" Thereby, eliminating the defendant's ability to raise any issues of material facts, possibly proving he may not possess one or more qualifying offenses.

The issue of egregious fundamental jury charge error has continuously been in place since the inception of the SVP Act in Texas. Each element that is presented during the trial is perfectly laid out in the jury charge definitions: 1) is the person a repeat sexual offender, and 2) do they possess a behavioral abnormality, but for some reason the SPU converts both issues, prongs, and elements into one question: "is the person a sexually violent predator?"

Both elements have to be voted on independently. Each one is a requisite element determining if a person is an SVP. Combining them into one question without proper jury instructions in the charge misleads and confuses the jurors. (See App. Ex. #8 compared to App. Ex. #9). As you can see, there is a difference how one could incorrectly perceive what is actually

being asked of them to vote on. This is how the jurors are misled by the SPU to vote in favor of committing the individual unknowingly.

The language "SEXUALLY VIOLENT PREDATOR" replaces the final question the jurors were to vote on which was "DOES HE SUFFER FROM A BEHAVIORAL ABNORMALITY" (See App. Ex. #7 p. 5). Petitioner's jury charge was created to cause intentional deception as to the exact issue the jurors were to vote on. They were intentionally battered during trial with a "see-saw" testimony on the exact issue, element, or prong they were going to the deliberation room to vote on (See App. Ex. #10 pp. 6-11).

At one point they are told to vote on the issue if Petitioner has a behavioral abnormality, then they are told to vote on the issue if he is a sexually violent predator. Then the jury charge does not instruct them to vote yes if he has a behavioral abnormality, after the definitions. It just gives them the definitions, but neglects to instruct them they have to vote affirmatively on the issue, element, or prong if he suffers from a behavioral abnormality first before they can answer the final question: "is he a sexually violent predator?" (See App. Ex. #7 pp. 3-4). Therefore, Petitioner should be granted a new trial on this error alone.

**B. The Appellate Court Proceedings**

The appellate court affirmed the decision of the trial court that a directed verdict was a proper tool, because Petitioner did not have probative evidence to a material fact (See App. Ex. #2 pp. 4-5). Petitioner contends the appellate court is in error concluding he did not possess evidence with probative value (See App. Ex. #4 pp. 13-16).

Petitioner's qualifying criminal conviction of Burglary of a Habitation with intent to Commit Felony Force has been a source of contention even prior to the district court trial (See App. Ex #6 pp. 1-14 and #3 pp. 9-10). This material fact issue was raised several times throughout the trial with objection by the SPU claiming collateral estoppel (See App. Ex. #3 pp. 20-22). Petitioner contends the appellate court erred in their conclusion he did not have material facts with probative value (See App. Ex. #2 pp. 2-3). Petitioner received the Sentencing Transcripts from the criminal conviction and the language "sexual assault" does not appear anywhere, further he was not admonished to register as a sex offender either (See App. Ex. #13)

Thereafter, Petitioner filed a Petition for Review with the Supreme Court of Texas arguing the errors by both the trial and appellate court to no avail. His Petition was denied, and so was his Motion for Rehearing, which means they did not agree with the appellate court, but did not believe it was in the best interest of the jurisprudence for the State of Texas to entertain the argument at that time. Although this is contrary to Justice Terry Jennings concurring dissent concerning the use of directed verdicts. He believes Texas' Highest Court needs to address the issue on their difference of opinions. (See App. Ex. #4 p. 12 and p. 19 of this certiorari).



## REASONS WHY CERTIORARI SHOULD BE GRANTED

### RES NOVA

#### I.

Review is warranted, because the National Importance concerning the improper use of directed verdicts (at indefinite civil commitment trials) affects many people nationwide. The use of directed verdicts in criminal trials has been found unconstitutional; therefore, their subsequent use in civil trials (determining a person's freedom) is similar. Particularly, when applied to indefinite civil commitment proceedings, wherein the criminal standard of beyond a reasonable doubt and a unanimous jury decision (of the elements) are used to determine indefinite commitment of the individual (i.e., in the State of Texas). "There has been considerable difference of opinion over this question of practice [the use of directed verdicts], both in the courts of the United States and those of the state of New York [also in Texas]. We Have Discussed the Rule of Directed Verdicts, As Being a Legal Question On Which Opinion Has Varied." See *Fire Ass'n of Philadelphia v. Mechlowitz*, 266 F. 322-25 (1920).

In the case of *In re Commitment of Dennis Ray Stuteville* Court of Appeals of Texas, First District, Houston 463 S.W. 3d 543; 2015 Tex. App. LEXIS 2243, the Justice Terry Jennings dissented and concurred on the improper use of directed verdicts at SVP civil commitment trials by stating:

I join the majority opinion, but write separately to emphasize that the trial court erred in (1) directing a verdict in favor of the State on the issue of whether appellant, *Dennis Ray Stuteville*, is a "repeat sexually violent offender" 1 and (2) making improper comments to the venire panel during voir dire. Moreover, but for the fact that we are bound by the erroneous precedent of the Beaumont Court of Appeals in deciding the issue of the trial court's error in directing a verdict that appellant is in fact a "repeat sexually violent offender," appellant would be entitled to a new trial.

In his sixth issue, appellant argues that the trial court erred in granting the State a directed verdict on the issue of whether he is a repeat sexually violent offender because he was entitled to a jury trial upon his timely demand, the State had the burden to prove that he is a sexually violent predator "beyond a reasonable doubt," and a jury's finding that a person is a sexually violent predator must be unanimous. See Tex. Health & Safety Code Ann. §§ 841.061(b), 841.062(a), (b) (Vernon 2010).

Appellant correctly notes that the Sexually Violent Predator ("SVP") Act expressly provides that either the State or a person accused of being a sexually violent predator is "entitled to a jury trial on demand." Id. § 841.061(b). The SVP Act also specifically states that the pertinent fact-finder "shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator." Id. § 841.062(a) (emphasis added). And it further provides that a "jury determination that the person is a sexually violent predator must be by unanimous verdict." Id. § 841.062(b).

Regardless, the Beaumont Court of Appeals has, as noted in our majority opinion, held that the same trial court did not err in directing a verdict in another SVP Act civil-commitment case. See *In re Commitment of Lemmons*, No. 09-13-00346-CV, 2014 Tex. App. LEXIS 3888, 2014 WL 1400671, at \*3 (Tex. App.-Beaumont Apr. 10, 2014, no pet.) (mem. op.). The court did not "perceive" a "conflict between [section 841.062(a) of] the SVP statute and the Rules of Civil Procedure that precludes the granting of a directed verdict in a jury trial when no evidence of probative value raises an issue of material fact on the question presented." Id. However, this reasoning ignores the well-established meaning of the plain language of the SVP Act, which controls over our rules of civil procedure. See Tex. Health & Safety Code Ann. § 841.146 (b) (Vernon 2010).

The SVP Act provides, in no uncertain terms, that a person accused of being a sexually violent predator has a statutory right to a jury trial. Appellant was "entitled to a jury trial" upon his timely "demand," and he had the right to have

the jury determine, "beyond a reasonable doubt" that he is a sexually violent predator. Id. §§ 841.061(b), 841.062(a) (emphasis added). And such a determination "must be by unanimous verdict." Id. § 841.062(b).

Although the SVP Act concerns "civil" commitments, the Texas Legislature, in crafting the statute, invoked well-established and understood constitutional and criminal-law principles. Given the grave {463 S.W.3d 560} consequences at stake in SVP Act civil-commitment proceedings, it is readily apparent that the legislature chose its words carefully, and no court is free to ignore the plain meaning of these words. *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 562 (Tex. 2014) ("We must enforce the statute 'as written' and 'refrain from rewriting text that lawmakers chose.>"). By directing the jury to find in favor of the State, the trial court usurped the fact-finding authority that the legislature has clearly assigned solely to the jury in SVP Act civil-commitment proceedings. It, thus, violated appellant's statutory right to a trial by jury.

As noted by Justice Scalia, the right to a jury trial "embodies 'a profound judgment about the way in which law should be enforced and justice administered.'" *Carella v. California*, 491 U.S. 263, 268, 109 S. Ct. 2419, 2422, 105 L. Ed. 2d 218 (1989) (Scalia, J., concurring) (quoting *Duncan v. Louisiana*, 391 U.S. 145, 155, 88 S. Ct. 1444, 1450, 20 L. Ed. 2d 491 (1968)). He explained:

It is a structural guarantee that "reflect[s] a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges." A defendant may assuredly insist upon observance of this guarantee even when the evidence against him is so overwhelming as to establish guilt beyond a reasonable doubt. That is why the Court has found it constitutionally impermissible for a judge to direct a verdict for the State. ID. at 268, 109 S. Ct. at 2422 (quoting *Duncan*, 391 U.S. at 155, 88 S. Ct. at 1450) (emphasis added) (citation omitted). And because "with a directed verdict, 'the error . . . is that the wrong entity judged'" the facts,

the error cannot be harmless. *Id.* (quoting *Rose v. Clark*, 478 U.S. 570, 578, 106 S. Ct. 3101, 3106, 92 L. Ed. 2d 460 (1986)).

Respectfully, the Beaumont Court of Appeals, in concluding otherwise seriously erred in *Lemmons*. However, as we note in our majority opinion, because this case was transferred to us for decision, we are bound by the holding in *Lemmons*, no matter how wrong it may be. See Tex. R. App. P. 41.3. **Because the error of the Beaumont Court of Appeals is of such importance to Texas jurisprudence that it requires correction, it should be reviewed by our high court.** See Tex. Gov't Code Ann. § 22.001(a)(6) (Vernon 2004).

In his seventh issue, appellant argues that certain remarks made by the trial judge to the venire panel constituted improper comments on the weight of the evidence because they directed the jury's attention to the then-upcoming testimony of the State's expert and served to "bolster" and "vouch[] for its credibility and reliability."

Quoting this Court, the Texas Supreme Court has made it quite clear that our "statutes, court-made rules, and judicial decisions emphatically and repeatedly prohibit Texas judges from commenting on the weight of the evidence." *In re M.S.*, 115 S.W.3d 534, 538 (Tex. 2003) (quoting *In re T.T. & K.T.*, 39 S.W.3d 355, 359 (Tex. App.-Houston [1st Dist.] 2001, no pet.)). It explained that comments on the weight of the evidence "take many forms," and it has "specifically prohibit[ed] judicial comments that 'indicate the opinion of the trial judge as to the verity or accuracy of the facts in inquiry.'" *Id.* (quoting *McDonald Transit, Inc. v Moore*, 565 S.W.2d 43, 45 (Tex. 1978)). Moreover, a trial judge makes an impermissible comment on the weight of the evidence when he assumes the truth of a material controverted fact or {463 S.W.3d 561} exaggerates, minimizes, or withdraws some pertinent evidence from a jury's consideration. *Redwine v. AAA Life Ins. Co.*, 852 S.W.2d 10, 14 (Tex. App.-Dallas 1993, no writ). He also makes an improper comment on the weight of the evidence by suggesting to the jury his opinion about the evidence. *Id.* And reversal is required if an improper comment on the

weight of the evidence is one that was calculated to cause and probably did cause the rendition of an improper judgment. See Tex. R. App. P. 44.1(a)(1). *Stuteville*, 463 S.W. 3d at 559 (2015).

Petitioner contends the trial court judge Honorable Gary Steele did make an improper comment to the jurors about the weight of the evidence pertaining to the prong of whether he was a repeat sexual offender (See App. Ex. #10 p. 8). He stated that what the jurors were about to hear might undermine the criminal convictions, but that a directed verdict was already granted concerning that issue.

Justice Jennings could not have stated the issue in a better light. The improper use of directed verdicts should be abolished from civil trials involving a person's freedom. Civil trials are usually over material items, not people's freedom. Directed verdicts were intended to remove portions from the fact finder on issues that could be resolved easily by objective means, such as a car title involving a dispute between who actually owns a car. But, when a person's freedom is at stake all questions, elements, issues, or prongs should go to the jury; no matter how overwhelming the evidence is against them.<sup>2 3</sup>

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<sup>2</sup> See *Sullivan v. Louisiana*, 508 U.S. 285, 277 ("The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ...." In *Duncan v Louisiana*, 391 US 145, 149, 20 L Ed 2d 491, 88 S Ct 1444 (1968), we found this right to trial by jury in serious criminal cases to be "fundamental to the American scheme of justice," and therefore applicable in state proceedings. The right includes, of course, as its most important element, the right to have the jury, rather than the judge, reach the requisite finding of "guilty." See *Sparf v United States*, 156 US 51, 105-106, 39 L Ed 343, 15 S Ct 273 (1895). Thus, although a judge may direct a verdict for the defendant if the evidence is legally insufficient to establish guilt, he may not direct a verdict for the State, no matter how overwhelming the evidence. *Ibid.* See also *United States v Martin Linen Supply Co.*, 430 US 564, 572-573, 51 L Ed 2d 642, 97 S Ct 1349 (1977); *Carpenters v United States*, 330 US 395, 410, 91 L Ed 973, 67 S Ct 775 (1947)"); see also *U.S. v. Martin Linen Supply Co.*, 430 U.S. 564 (1977).

<sup>3</sup> *Sullivan*, 508 U.S. 285, 282-83 (Chief Justice Rehnquist, concurring, "In *Arizona v Fulminante*, 499 US 279, 113 L Ed 2d 302, 111 S Ct 1246 (1991), we divided the class of constitutional violations that may occur during the course of a criminal proceeding, be it at trial or sentencing, into two categories: one consisting of "trial error[s]," which "may ... be quantitatively assessed in the context of other evidence presented," *id.*, at 307-308, 113 L Ed 2d 302, 111 S Ct 1246 (opinion of Rehnquist, C.J., for the Court), and are amenable to harmless-error analysis; the other

Unbelievably, an emphatic Chief Justice of the United States Supreme Court once said, "In a number of cases dissenting opinions have in time become law" That resounding statement was made by Chief Justice Charles Evan Hughes (1862-1948). In the present argument, I fully agree with the ex-Chief Justice and with the dissenting opinion of Justice Terry Jennings of the First Court of Appeals in Houston, Texas. Directed verdicts at indefinite civil commitment trials are an injustice when a person's freedom hangs in the balance of one lone judge.

This type of arbitrary action completely circumvents the founding father's intentions set forth in the U.S. Constitution, U.S. Government Code, Texas Constitution, Texas State Statutes, and Texas Rules of Civil Procedure. The following non-exhaustive list is a compilation of the Amendments, Statutes, and Rules exposing the improper use of directed verdicts. Furthermore, they expose Petitioner's Federal and State rights that have been violated, such as:

1. **Fifth Amendment:** [n]or be deprived of life, liberty, or property, without due process of la[w]
2. **Sixth Amendment:** [p]ublic trial, by an impartial jury of the State and district wherein the crime shall have been committee[d]
3. **Seventh Amendment:** [t]he right of trial by jury shall be preserve[d]

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consisting of "structural defects," which "affec[t] the framework within which the trial proceeds," *id.*, at 310, 113 L Ed 2d 302, 111 S Ct 1246, and require automatic reversal. There is a "strong presumption" that any error will fall into the first of these categories. *Rose v Clark*, 478 US 570, 579, 92 L Ed 2d 460, 106 S Ct 3101 (1986). Thus, it is the rare case in which a constitutional violation will not be subject to harmless-error analysis. See *Fulminante*, *supra*, at 309-310, 113 L Ed 2d 302, 111 S Ct 1246 (listing examples of structural errors). The Court holds today that the reasonable-doubt instruction given at *Sullivan's* trial, which (it is conceded) violates due process under our decision in *Cage v Louisiana*, 498 US 39, 112 L Ed 2d 339, 111 S Ct 328 (1990) (*per curiam*), amounts to structural error, and thus cannot be harmless regardless of how overwhelming the evidence of *Sullivan's* guilt. See *ante*, at 281-282, 124 L Ed 2d, at 190-191. It grounds this conclusion in its determination that harmless-error analysis cannot be conducted with respect to error of this sort consistent with the Sixth Amendment right to a jury trial. We of course have long since rejected the argument that, as a general matter, the Sixth Amendment prohibits the application of harmless-error analysis in determining whether constitutional error had a prejudicial impact on the outcome of a case. See, e.g., *Rose*, *supra*, at 582, n 11, 92 L Ed 2d 460, 106 S Ct 3101. The Court concludes that the situation at hand is fundamentally different, though, because, in the case of a constitutionally deficient reasonable-doubt instruction, "the entire premise of *Chapman* [harmless-error] review is simply absent." *Ante*, at 280, 124 L Ed 2d, at 189

4. **Ninth Amendment:** The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
5. **Fourteenth Amendment:** [N]o 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.
6. **Texas Constitution, Article I, Section 3. Equal Rights:** All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.
7. **Texas Constitution, Article I, Section 3a. Equality Under the Law:** Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.
8. **Texas Constitution, Article I, Section 15. Right of Trial by Jury:** The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.
9. **Texas Constitution, Article I, Section 19 Deprivation of Life, Liberty, etc.; Due Course of Law:** No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.
10. **21 U.S.C.S. § 1981(a). Equal rights under the law:** [t]o sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizen[s]
11. **21 U.S.C.S § 2000h-4. Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws:** [u]nless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

- 12. Title 11, Chapter 841 Commitment of Sexually Violent Predators Subchapter H, Miscellaneous Provisions, Section 841.146(b):** Civil Commitment Proceeding; Procedure and Costs. (b) Except as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. **To the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, THIS CHAPTER CONTROLS.**
- 13. Scintilla Rule: Ballentine's Law Dictionary, 3rd Edition (2002):** The rule that if there is any evidence presenting a conflict, at least evidence of some substance, not mere vague, uncertain or irrelevant matter, it must be submitted to the jury.
- 14. Texas Rules of Civil Procedure, Rule 268 Motion for Instructed Verdict:** A motion for directed verdict shall state the specific grounds therefor.
- 15. Texas Rules of Civil Procedure, Rule 275. Charge Read Before Argument:** Before the argument is begun, the trial court shall read the charge to the jury in the precise words in which it was written, including all questions, definitions, and instructions which the court may give.
- 16. Texas Rules of Civil Procedure, Rule 277: Submission to the Jury:** In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions. **The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.**

Petitioner declares he should not have to explain to the United States Supreme Court Justices how the application of the preceding list applies to the specific situation he is arguing. Thus, for arguendo's sake he prays the Honorable Justices will consider his inept inabilities and realize he was unjustly tried in the district court by the use of a directed verdict, that the appellate court did not understand the magnitude of their incorrect opinion, and the Supreme Court of Texas failed to entertain the argument of the improper use of directed verdicts.

The National use of directed verdicts in civil commitment trials is also improper. Other states that utilize their use are doing a grave injustice to those whose freedom is at stake. Criminal trials do not use directed verdicts this reason, therefore civil trials involving a person's



liberty should do the same. The U.S. Supreme Court is the only avenue to correct this improper use of directed verdicts in the State of Texas. They have declined to entertain the argument, and many people's lives hang in the balance, not to mention their families. This ruling is not only for the jurisprudence of the state of Texas, but for the Nation.

Justice Terry Jennings (previously quoted) stated the Highest Court of Texas needed to entertain, address, and correct this issue. Furthermore, had the First Court of Appeals NOT BEEN BOUND by the erroneous precedent set forth by the Ninth Court of Appeals, they would have given *Stuteville* a new trial. A directed verdict was rendered in his case and Justice Jennings dissented, but concurred the trial court abused its discretion and power by doing so.

## II.

**Review is warranted because many state and federal courts differ in their opinions as to what constitutes egregious fundamental jury charge error. These type of errors cannot be ignored if they render a different trial outcome, and review of this type of fundamental error is not amendable under the harmless-error analysis. Furthermore, constitutional errors of this sort can be raised for the first time on appeal, to wit: at the U.S. Supreme Court level.**

## II.

Egregious jury charge error is a fundamental error that requires a new trial<sup>4</sup> if the charge error cannot be overcome by the record or the charge itself.<sup>5</sup> Cases abound with the

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<sup>4</sup> See *Palmer v. State*, 2010 Tex. App. LEXIS 3156; citing *Palmer v. State*, 222 S.W.3d 92, 96 (Tex. App.--Houston [14th Dist.] 2006, pet. ref'd) (Palmer I) ("Thus, the court of appeals held that there was egregious jury charge error, reversed the conviction, and remanded the cause for a new trial.").

<sup>5</sup> See *Sullivan v. Louisiana*, 508 US 275 (1993) ("Constitutionally deficient criminal jury instruction as to definition of reasonable doubt, for purposes of proving guilt beyond reasonable doubt, held not amenable to harmless error.").

fact that harmful jury charge error is not amenable and cannot be reviewed under the harmless error analysis.<sup>6</sup>

In the case of *Sullivan* the Supreme Court commented by saying:

“Under the Federal Constitution's Sixth Amendment guarantee to an accused of the right to a jury trial in a criminal prosecution, although a judge may direct a verdict for the accused if the evidence is legally insufficient to establish guilt, a judge may not direct a verdict for the state, no matter how overwhelming the evidence. With respect to a criminal case, the Federal Constitution's due process requirement that the prosecution must prove guilt beyond a reasonable doubt, which requirement was adhered to by virtually all common-law jurisdictions, applies in state as well as federal proceedings. On certiorari to review a state appellate court's ruling in a state criminal case that an erroneous jury instruction-which was essentially identical to an instruction held unconstitutional in a United States Supreme Court decision-was harmless beyond a reasonable doubt, the Supreme Court will not consider whether the instruction in the case at hand would survive review under the constitutional standard set forth in a subsequent Supreme Court decision, even though the state has raised an argument in the Supreme Court with respect to the subsequent-decision issue, in view of (1) the question

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<sup>6</sup> See

presented to the Supreme Court; and (2) the state's failure to raise the subsequent-decision.”

Further stating:

“A constitutionally deficient reasonable-doubt instruction cannot be harmless error.

(a) Sullivan's Sixth Amendment right to jury trial was denied by the giving of a constitutionally deficient beyond-a-reasonable-doubt instruction. The Fifth Amendment requirement of proof beyond a reasonable doubt, see, e.g., *In re Winship*, 397 US 358, 364, 25 L Ed 2d 368, 90 S Ct 1068, and the Sixth Amendment requirement that the jury, rather than the judge, reach the requisite finding of "guilty," are interrelated: The required jury verdict is a verdict of guilt beyond a reasonable doubt. The Court's opinion in *Cage*, which held that an instruction of the sort given here does not produce such a verdict, is controlling.

(b) The giving of a constitutionally deficient reasonable-doubt instruction is among those constitutional errors that require reversal of a conviction, rather than those that are amenable to harmless-error analysis. See *Chapman v California*, 386 US 18, 24, 17 L Ed 2d 705, 87 S Ct 824, 24 ALR3d 1065. Consistent with the jury-trial guarantee, *Chapman* instructs a reviewing court to consider the actual effect of the error on the guilty verdict in the case at hand. Since in petitioner's case there has been no jury verdict within the meaning of the Sixth Amendment, the premise for

harmless-error analysis is absent. Unlike an erroneous presumption regarding an element of the offense, see *Sandstrom v Montana*, 442 US 510, 61 L Ed 2d 39, 99 S Ct 2450, a deficient reasonable-doubt instruction vitiates all the jury's factual findings. A reviewing court in such a case can only engage in pure speculation-its view of what a reasonable jury would have done. When it does that, the wrong <\*pg. 187> entity judges the defendant guilty. Moreover, denial of the right to a jury verdict of guilt beyond a reasonable doubt, the consequences of which are necessarily unquantifiable and indeterminate, is certainly a "structural defec[t] in the constitution of the trial mechanism, which def[ies] analysis by 'harmless-error' standards" under *Arizona v Fulminante*, 499 US 279, 113 L Ed 2d 302, 111 S Ct 1246 (opinion of Rehnquist, C. J., for the Court). 596 So 2d 177, reversed and remanded."

Petitioner contends he could continue his argument and further support his argument for egregious jury charge error, but again he will not waste the Honorable Justices time by reiterating facts they already know to exist on the topic of harmful charge error.

## CONCLUSION

Petitioner concludes the difference of opinion concerning the improper use of directed verdicts in the State of Texas requires the intervention of the United States Supreme Court. Many people's lives are dependent upon a favorable ruling that will abolish their use. They are not used in criminal trials; therefore, they should not be used in civil trials involving a person's freedom.

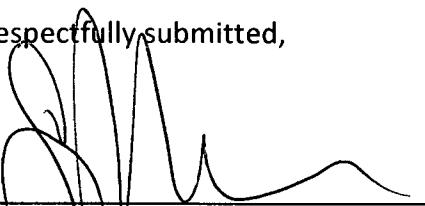
Furthermore, the use of a jury charge that contains egregious harmful error also needs to be addressed. The Special Prosecution Unit devises these creatures to commit a person maliciously. Combining two essential elements into one, then asking the jurors to vote on a single question is an injustice. These two elements cannot be voted on in a conjoined question without proper instructions requiring the jurors to vote affirmatively on the two elements first.

The first element: is the person a repeat sexual offender, and the second element: do they possess a behavioral abnormality are nowhere the same, each requires a separate vote.

## PRAYER

WHEREFORE, PETITIONER PRAYS, the Honorable Justices of the United States Supreme Court will grant this Writ for Certiorari in the name of Justice.

Respectfully submitted,

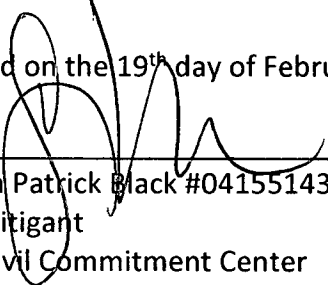


Stephen Patrick Black #04155143  
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**UNSWORN DECLARATION**

I, Stephen Patrick Black, do declare under penalty of perjury under the laws of the United States of America that the foregoing Writ for Certiorari is true and correct to the best of my knowledge and is in compliance with 28 U.S.C. § 1746.

Executed on the 19<sup>th</sup> day of February 2018.



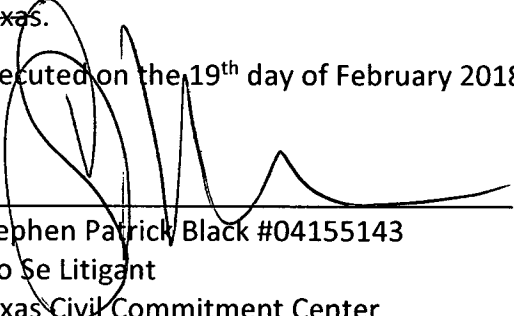
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**PROOF OF/CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Writ for Certiorari was served on all parties, pursuant to Supreme Court Rule 29.5(a)(c) and placed in the Texas Civil Commitment Center's Resident U.S. Mail Box. To be mailed via U.S. Mail to the Clerk of the Court Scott S. Harris, U.S. Supreme Court, 1 1<sup>st</sup> Street, N.E., Washington, D.C. 20543-0001, ~~and to be delivered to Justice Neil Gorsuch, who represents the Fifth Circuit Court of Appeals, for the District of Texas.~~

Executed on the 19<sup>th</sup> day of February 2018.



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A True and Correct Copy was mailed to the:

Special Prosecution Unit  
1300 11<sup>th</sup> Street, Suite 830  
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