

Docket No. _____

IN THE SUPREME COURT OF THE UNITED STATES

EARL DAVID WORDEN,
PETITIONER,

-v-

THE STATE OF TEXAS,
RESPONDENT.

On petition for writ of certiorari from the
Texas Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

Bryan W.L. Garris
Attorney for Earl David Worden

1018 Preston Street, 8th Floor
Houston, Texas 77002
Phone: 832-722-8915
Fax: 832-327-9001
Bryan@txdefense.net
Member of the Supreme Court Bar

QUESTIONS PRESENTED FOR REVIEW

1. Was Petitioner's trial counsel ineffective for opening the door to prejudicial extraneous evidence and for failing to object to the injection of racial animus into his trial?
2. Did the repeated outside influences brought to bear on the jury and jury misconduct violate Petitioner's right to a jury trial?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner: Earl David Worden

Petitioner's Appellate Counsel: Bryan W.L. Garris
1018 Preston Street, 8th Floor
Houston, Texas 77002

Petitioner's Trial Counsel: Jonathan Landers
1018 Preston Street, 8th Floor
Houston, Texas 77002

Coby DuBose
1018 Preston Street, 8th Floor
Houston, Texas 77002

The State of Texas: Sean Teare
Honorable District Attorney
Harris County District Attorney's Office
1201 Franklin Street, 6th Floor
Houston, Texas 77002

Zachary Gibson
Assistant District Attorney
Harris County District Attorney's Office
1201 Franklin Street, 6th Floor
Houston, Texas 77002

Simone Colson
Assistant District Attorney
Harris County District Attorney's Office
1201 Franklin Street, 6th Floor
Houston, Texas 77002

Rebecca Marshall
Assistant District Attorney
Harris County District Attorney's Office
1201 Franklin Street, 6th Floor
Houston, Texas 77002

Trial Court: Honorable Jim Anderson
228th District Court of Harris County
1201 Franklin Street, 16th Floor
Houston, Texas 77002

RULE 29.6 STATEMENT

Petitioner is not a corporate entity.

LIST OF PROCEEDINGS

Before the Trial Court:

Pretrial Conference, Trial on the Merits, and Sentencing; 228th District Court of Harris County, Texas; Cause No. 1622305; *State of Texas v. Earl David Worden*; Criminal trial resulting in judgment of conviction and sentence, both entered on December 15, 2022.

Hearing on Mr. Worden's *Motion for New Trial*; 228th District Court of Harris County, Texas; Cause No. 1622305; *State of Texas v. Earl David Worden*; *Motion for New Trial* denied on February 22, 2023.

Before the State Intermediate Court of Appeals:

Court of Appeals, 1st District of Texas; No. 01-23-00133-CR; *Earl David Worden v. The State of Texas*; Judgment and Opinion affirming conviction originally entered on December 31, 2024. *See* Appendix D. This Judgment and Opinion was later withdrawn and the same Court entered a new Judgment and Opinion affirming conviction on September 30, 2025. *See* Appendix B. A motion for En Banc Reconsideration was denied on December 11, 2025. *See* Appendix C.

Before the Texas Court of Criminal Appeals:

Petition for Discretionary Review; Texas Court of Criminal Appeals; PD-0029-26; *Earl David Worden v. The State of Texas*; Order denying *Petition for Discretionary Review* entered March 12, 2026.

TABLE OF CONTENTS

Questions Presented for Review	2
Parties to the Proceedings Below	3
Rule 29.6 Statement	4
List of Proceedings.....	5
Table of Contents	6
Table of Authorities	8
Citations of Opinions and Orders Entered Below	10
Statement of Jurisdiction	13
Constitutional Provisions and Statutes Involved.....	14
Statement of the Case	17
Argument: Reasons for Granting Relief	26
Conclusion	42
Certificates of Mailing/Compliance.....	43

Volume I

- Appendix A -- Texas Court of Criminal Appeals' Order Denying *Petition for Discretionary Review*, entered March 12, 2026.
- Appendix B -- Texas 1st Court of Appeals' Memorandum Opinion, affirming conviction, entered September 30, 2025 (and withdrawing prior Memorandum Opinion entered December 31, 2024).
- Appendix C -- Order Denying *Motion for En Banc Reconsideration* and *Motion for Rehearing*, entered December 11, 2025.
- Appendix D -- Texas 1st Court of Appeals' Memorandum Opinion, affirming conviction, entered December 31, 2024 (later withdrawn by Memorandum Opinion entered September 30, 2025).

Appendix E -- Original Trial Court Judgment, entered December 15, 2022.

Appendix F -- Excerpt from *Motion for New Trial* Hearing, held February 22, 2023.

TABLE OF AUTHORITIES

Cases

<i>Buck v. Davis</i> , 580 U.S. 100 (2017)	34-35
<i>Colyer v. State</i> , 428 S.W.3d 117 (Tex.Crim.App. 2014)	37
<i>Davis v. State</i> , 329 S.W.3d 798 (Tex.Crim.App. 2010).....	33-35
<i>Dawson v Delaware</i> , 503 U.S. 159 (1992)	33
<i>Elkins v. State</i> , 647 S.W.2d 663 (Tex.Crim.App. 1983)	31
<i>Ex parte Martinez</i> , 330 S.W.3d 891 (Tex.Crim.App. 2011)	33
<i>Frangias v. State</i> , 450 S.W.3d 125 (Tex.Crim.App. 2013)	29
<i>Hinton v. Alabama</i> , 571 U.S. 263 (2014)	29
<i>Kimmelman v. Morrison</i> , 477 U.S. 365 (1986)	29
<i>Loliscio v. Goord</i> , 263 F.3d 178 (2 nd Cir. 2001)	37
<i>McQuarrie v. State</i> , 380 S.W.3d 145 (Tex.Crim.App. 2012)	37
<i>Newton v. State</i> , 301 S.W.3d 315 (Tex.App – Waco 2009), pet. ref’d) (op. on remand).....	32
<i>Parker v. Gladden</i> , 385 U.S. 363 (1966)	37
<i>Pena-Rodriguez v. Colorado</i> , 580 U.S. 206 (2017)	34-37
<i>Remmer v. U.S.</i> , 347 U.S. 227 (1954).....	37
<i>Robertson v. State</i> , 187 S.W.3d 475 (Tex.Crim.App. 2006)	34-35
<i>Shanklin v. State</i> , 190 S.W.3d 154 (Tex.App.—Houston [1 st Dist.] 2005, pet. granted)	29
<i>Sheppard v. Maxwell</i> , 384 U.S. 333 (1966).....	37
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	26, 28-32, 35-36

<i>U.S. v. Lloyd</i> , 269 F.3d 228 (3 rd Cir. 2001)	37
<i>Wiggins v. Smith</i> , 539 U.S. 510 (2003)	29
<i>Williams v. State</i> , 301 S.W.3d 675 (Tex.Crim.App. 2009)	31
<i>Woodman v. State</i> , 491 S.W.3d 424 (Tex.App.—Houston [14 th Dist.] 2016, pet. ref'd)	37

Constitutional Provisions, Statutes, and Secondary Sources

U.S. CONST. amend. XI	27, 37
U.S. CONST. amend. XIV.....	37
28 U.S.C. § 1257(a)	13
TEX. CODE CRIM. PROC. art. 38.37.....	17

CITATIONS OF OPINIONS AND ORDERS ENTERED BELOW

Petitioner was charged, by indictment, with the offense of sexual assault of a child.

Petitioner's case was before the 228th District Court of Harris County, Texas, in trial court Cause No. 1622305. After a pretrial conference, the case proceeded to trial and the jury returned a guilty verdict on December 15, 2022. On that same date, the Court assessed punishment and sentenced Petitioner to twenty years confinement. The judgment of conviction and sentence were entered December 15, 2022. No citation to that judgment is available, but a copy is attached as Appendix E.

Petitioner filed a *Motion for New Trial*, presenting numerous claims, including his Sixth Amendment ineffective assistance of trial counsel claims and his Sixth and Fourteenth Amendment deprivation of right to trial by jury and due process claims – related to improper outside influence and jury misconduct – the same claims presented in this Petition. Petitioner's *Motion for New Trial* was denied orally at a hearing held on February 22, 2023, and by operation of law pursuant to TEX. R. APP. PROC. 21.8(c). No citation to that order is available, as the motion was overruled by operation of law, however, a copy of the excerpt of the *Motion for New Trial* hearing is attached as Appendix F.

Petitioner appealed his conviction to the 1st Court of Appeals of Texas, presenting numerous claims, including his Sixth Amendment ineffective assistance of trial counsel claims and his Sixth and Fourteenth Amendment deprivation of right

to trial by jury and due process claims – related to improper outside influence and jury misconduct – the same claims presented in this Petition. The 1st Court of Appeals denied Petitioner’s claims on the merits in a December 31, 2024 Opinion that was unpublished and was later withdrawn, and cited as *Worden v. State*, No. 01-23-00133-CR, 2024 WL 5248880 (Tex. App.—Houston [1st Dist.] Dec. 31, 2024). A copy of that original Opinion is attached as Appendix D.

The 1st Court of Appeals then issued a second unpublished Opinion (withdrawing the prior Opinion) on September 30, 2025, and cited as *Worden v. State*, No. 01-23-00133-CR, 2025 WL 2773189 (Tex. App.—Houston [1st Dist.] Sept. 30, 2025, pet. ref’d). A copy of that Opinion is attached as Appendix B.

Petitioner filed a *Motion for En Banc Reconsideration* and *Motion for Rehearing* with the 1st Court of Appeals, with respect to the original Opinion (Appendix D), and which were rendered moot and denied, respectively, on September 30, 2025, in footnote 1 of the subsequently released Opinion (Appendix B) on which was denied on April 26, 2022. *Worden v. State*, No. 01-23-00133-CR, 2025 WL 2773189, fn. 1 (Tex. App.—Houston [1st Dist.] Sept. 30, 2025, pet. ref’d).

Petitioner filed a *Motion for En Banc Reconsideration* and *Motion for Rehearing* with the 1st Court of Appeals with respect to the subsequently released Opinion (Appendix B), which were denied and denied as moot, respectively, on December 11, 2025. No citation is available, but a copy of the letter denying the motions is attached as Appendix C.

Petitioner filed a *Petition for Discretionary Review* with the Texas Court of Criminal Appeals, which was refused on March 12, 2026. No citation is available, but a copy of the letter refusing the Petition is attached as Appendix A.

STATEMENT OF JURISDICTION

The Texas Court of Criminal Appeals denied Petitioner's *Petition for Discretionary Review* on March 12, 2026. *See* Appendix A. Pursuant to Rule 13(1) of the Rules of the Supreme Court of the United States, the deadline for filing this Petition for Writ of Certiorari is 90 days from the date of entry of that order, and is June 10, 2026. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to have the Assistance of Counsel for his defence.”

U.S. CONST. amend. XI.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

“. . . nor shall any State deprive any person of life, liberty, or property, without due process of law”

U.S. CONST. amend. XIV.

28 U.S.C. § 1257(a) provides:

“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.”

28 U.S.C. § 1257(a).

TEX. R. APP. PROC. 21.8 provides:

“Court’s Ruling

(a) *Time to Rule.* The court must rule on a motion for new trial within 75 days after imposing or suspending sentence in open court.

(b) *Ruling.* In ruling on a motion for new trial, the court may make oral or written findings of fact. The granting of a motion for new trial must be accompanied by written order. A docket entry does not constitute a written order.

(c) *Failure to Rule.* A motion not timely ruled on by written order will be deemed denied with the period described in (a) expires.”

TEX. R. APP. PROC. 21.8.

TEX. CODE CRIM. PROC. art. 38.37 (as of February 9, 2022, the date of the pretrial hearing) provides in pertinent part:

“Art. 38.37. Evidence of Extraneous Offenses or Acts.

Sec. 1.

(a) Subsection (b) applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

(1) if committed against a child under 17 years of age:

(A) Chapter 21 (Sexual Offenses);

...

(b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense shall be admitted for its bearing on relevant matters, including:

(1) the state of mind of the defendant and the child; and

(2) the previous and subsequent relationship between the defendant and the child.

Sec. 2.

- (a) Subsection (b) applies only to the trial of a defendant for:
 - (1) an offense under any of the following provisions of the Penal Code:

. . .

(D) Section 22.011(a)(2) (Sexual Assault of a Child);

- (b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, and subject to Section 2-a, evidence that the defendant has committed a separate offense described by Subsection (a)(1) or (2) may be admitted in the trial of an alleged offense described by Subsection (a)(1) or (2) for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant.

Sec. 2-a. Before evidence described by Section 2 may be introduced, the trial judge must:

- (1) 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; and
- (2) conduct a hearing out of the presence of the jury for that purpose.

Sec. 3. The state shall give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 1 or 2 not later than the 30th day before the date of the defendant's trial.

Sec. 4. This article does not limit the admissibility of evidence of extraneous crimes, wrongs, or acts under any other applicable law.”

TEX. CODE CRIM. PROC. art. 38.37.

STATEMENT OF THE CASE

General Background

In 2019, Petitioner was charged, by indictment, with the offense of sexual assault of a child, his daughter B.W., alleged to have occurred on or about January 1, 1997.

B.W. is Petitioner's daughter with his estranged wife Sharon Worden ("Sharon"). The couple had six kids, including B.W. and J.S., and others. B.W. claimed Petitioner sexually assaulted her for two years, almost nightly, but did not report the abuse to law enforcement until 2018, and only then after a detective contacted her while investigating Petitioner for another matter related to a Shell Refinery. B.W. alleged the sexual assaults occurred in the small trailer that the entire family lived in beginning in early 1996.

Petitioner is a well-known police-accountability publisher with a substantial fan base. He also has many active anti-fans, who publish disparaging material about Petitioner on the internet. Several fans and anti-fans attended Petitioner's trial, which became an issue with respect to juror influence throughout the trial.

Prior to Petitioner's trial, the trial court held a pre-trial TEX. CODE CRIM. PROC. art. 38.37 hearing related to alleged extraneous offenses or acts, and informed the parties (to which both agreed) that the Court's ruling in that hearing would be final for Art. 38.37 extraneous offense purposes.

During the hearing, the State singularly presented the testimony of S.S., Petitioner's daughter from a separate relationship, who alleged Petitioner inappropriately touched her. The State presented no other allegations.

The Court excluded the testimony from Petitioner's trial, finding the allegations remote, not credible, and that there was substantial evidence to rebut or call into question that extraneous offense, and under 403 grounds.

Petitioner pleaded not guilty to the charged offense, and his jury trial commenced on December 12, 2022.

Trial Counsel Opened the Door

During opening statements, defense counsel told the jury this case would come down to credibility, and that there were three reasons B.W.'s allegation was not credible:

- 1) it was not possible in a trailer with seven other people, for sexual abuse to happen almost every night for two years, without any other person in the house ever noticing;
- 2) the story changed drastically from the original story 22 years earlier; and
- 3) there was a benefit to B.W. for the original story, as she was able to move to her grandmother's trailer, enabling her to see her boyfriend outside the supervision of her parents.

The State argued that defense counsel's opening statement opened the door to otherwise inadmissible extraneous-offense evidence involving alleged sexual misconduct with a different child, J.S. The State argued these incidents all fit within the opened door – contending that they rebutted the argument that Complainant was fabricating and it would have been impossible given the layout of the trailer and the

number of people that were living in the household at the time, and that Defense counsel had put into the minds of the jurors that Complainant had a motive to fabricate these allegations because she wanted to get out of the residence and move in with her grandmother to continue her relationship with her boyfriend.

Defense counsel argued that he did not open the door to any rebuttal extraneous matters, stating: “I did not say that this current story changed or was false. I’m sorry. I didn’t say a reason why the current story was invented. I said, ‘Here’s the reason for the original story which he’s not on trial for.’”¹

Defense counsel further stated: “I’ve not intended to open the door to the extent that I have, and it’s harmful to my client. I’ll admit that later. I just want that to be clear.” The State similarly acknowledged: “We were reassured several times by Defense counsel that he would not be opening the door.” This was consistent with Defense counsel’s statement, just before jury selection: “I’ll put on the record I doubt we’re going to be opening the door of anything, and I don’t intend to.”

The trial court agreed with the State, overruled trial counsel’s objections, and found that trial counsel had opened the door to the extraneous evidence, and allowed the State to introduce four egregious alleged sexual related extraneous matters involving J.S. over defense counsel’s objections. The State heavily relied on the extraneous allegations throughout the trial and in closing argument.

¹ The “original story” was on the day that Complainant moved out of the home, which allegedly took place when Complainant was over 17 – no longer a child, which did not involve any sexual assault, and which could not support a conviction under the indictment either factually or legally.

Petitioner first presented his claim that trial counsel was ineffective for opening the door to such prejudicial evidence in his filed *Motion for New Trial* following the trial, and raised this claim in his direct appeal to the 1st Court of Appeals, and again in his filed *Petition for Discretionary Review* with the Texas Court of Criminal Appeals. The 1st Court of Appeals denied relief on the merits of this claim and the Texas Court of Criminal Appeals denied discretionary review. *See* Appendix A; Appendix B (Opinion pages 39-46). That identical claim is presented herein.

Alleged Racism

During B.W.'s testimony, the State also elicited that her mother Sharon was not living with the family at the trailer in January 1996. B.W. claimed, with no objection from Defense counsel, that Sharon was not living with the family because they were hiding her pregnancy from the children – and that Petitioner refused to raise the child because “it was half-Black,” and that because of this, that baby had to be given up for adoption. The State also introduced a picture of Complainant and her friend, Latoya, a young Black girl. During closing arguments, the prosecutor (herself a Black woman) reemphasized this testimony, arguing: “She had given birth to a biracial child that the Defendant wouldn’t allow to move back into the trailer. So that child had to be put up for adoption.” Trial counsel acknowledged that he failed to object to the evidence of racial animus during the guilt-innocence phase of trial because he was caught off guard by the comment.

Petitioner first presented his claim that trial counsel was ineffective for failing to object to this evidence in his filed *Motion for New Trial* following the trial, and

raised this claim in his direct appeal to the 1st Court of Appeals, and again in his filed *Petition for Discretionary Review* with the Texas Court of Criminal Appeals. The 1st Court of Appeals denied relief on the merits of this claim and the Texas Court of Criminal Appeals denied discretionary review. *See* Appendix A; Appendix B (Opinion pages 39-46). That identical claim is presented herein.

Jury Deliberations and Verdict; Trial Court's Comment; Outside Influences

Numerous active anti-fans of Petitioner attended the trial, including Teresa Richard and Douglas Ripley. These individuals sat on the prosecutor's side during trial, and fans of Petitioner sat on the side associated with the Defense.

The Court, the Bailiff's, the prosecutor, and Defense counsel were actively concerned attendees might try to influence the jury. The Defense raised these concerns with the Court numerous times.

During the trial, the jury was walked in and out of the courtroom through the same doors that were used by the general public to enter and exit, and the jury used the same elevators used by the public.

During *voir dire*, Defense counsel Coby DuBose observed Ripley speaking to a venire member. This was brought to the attention of Judge Yates (who presided over *voir dire*). Judge Yates told the Bailiff, who ejected Ripley from the courtroom. Ripley was allowed back into the courtroom during subsequent trial days, and Attorney DuBose observed him near jurors coming and leaving during breaks and after the trial.

During a Tuesday break, John Gray observed Ripley and Richard in the hallway by the elevator banks in a heated discussion with another attendee, when Richard yelled they were “supporting a rapist and sex offender,” within earshot of the jury and loud enough to get the Bailiff’s attention.

At the conclusion of the first day of deliberations, the jurors sent a note indicating that they were split – 6 not guilty, 6 guilty. The trial court asked the jurors if they thought additional deliberations would help them reach a verdict, and again they were split – 6 yes, 6 no. The trial court asked the jurors to return in the morning, and told them that they had heard about “25 years of a dysfunctional family at best” in a day and a half of testimony, and then released them for the evening.

Tara Seber, the significant other of D.W., also attended the trial. Seber was outside the courthouse and observed jurors leaving after the first deliberation day. She observed Richard cross Franklin Street and talk to two men she identified as jurors.

Jurors reported that, following the first day of jury deliberations, they were followed to their cars by Gray, who was carrying camera and recording equipment. Gray confirmed he walked with the group of jurors, while carrying his camera equipment and microphone, and then he walked back to the courthouse and encountered a second group of jurors, making eye contact, and walked through the group. When Gray entered the courtroom the following day, the trial court confronted him, and the Bailiff confirmed two jurors said Gray followed them.

The jurors appeared troubled by these issues, writing a note to the Court asking that the Court refrain from using their names.

Following the guilty verdict, the trial court recognized Gray's impact on the case, stating his friends had not done him any favors with the jury. The trial court acknowledged making these comments, otherwise absent from the record, in the hearing on the motion for new trial.

Petitioner first presented his claim that he was deprived of his Sixth and Fourteenth Amendment rights to an impartial jury through the due process clause based on outside influence and jury misconduct in his filed *Motion for New Trial* following the trial.

In denying that motion, the trial court stated:

"But there were numerous attempts to influence and intimidate a jury that I believe were absolutely unsuccessful. This was the hardest working, most diligent jury panel I've had in 37 years. They were attentive and intelligent. Wouldn't prove that -- I can't bring it in here. It's not part of the trial.

At the end of the case, after Mr. Worden agreed to sentencing, I went back in the back to tell the jury the outcome of sentencing because they thought they were going to do sentencing. When I walked in the jury room, I was stupefied to the point I actually took a video of what they did. My first video in my 37 years down here of jury work product. They had papered the room with giant pieces of white paper, different colors, charts, diagrams, a list of witnesses and dates, to show the diligence they did over multiple hours of deliberation."

Petitioner also raised this claim in his direct appeal to the 1st Court of Appeals, and again in his filed *Petition for Discretionary Review* with the Texas Court of Criminal Appeals. The 1st Court of Appeals denied relief on the merits of this claim

and the Texas Court of Criminal Appeals denied discretionary review. *See* Appendix A; Appendix B (Opinion pages 39-46). That identical claim is presented herein.

The Trial as a Whole

The trial record reflected a sharply contested factual case built on a decades-old accusation unsupported by physical evidence or contemporaneous corroborating records. The investigating detective found no police reports, CPS records, forensic interviews, medical records, therapy records, or support-group records corroborating the alleged abuse, apart from records showing that the family lived in a trailer park. The State's proof also contained material inconsistencies and contradictions on issues central to the accusation. B.W.'s account shifted as to when the alleged abuse began, how often it occurred, whether she had previously told family members, and whether the detective had told her the statute of limitations had changed. Sharon testified that B.W. had not reported any other alleged abuse for more than fifteen years; Sonya Baumann testified that B.W. had expressly said Petitioner never sexually molested her; and another of the couple's children, a light sleeper who slept with a direct view into the hallway, testified that he never saw Petitioner leave his bedroom at night to enter B.W.'s room.

In that already contested evidentiary posture, trial counsel's opening statement became the asserted basis for admitting highly prejudicial extraneous allegations, evidence counsel had not intended to invite and acknowledged was harmful to his client. The closeness of the case was confirmed by the jury's first-day deadlock: after deliberating, the jury reported it was split six to convict and six to

acquit before returning the next day and reaching a guilty verdict. Thus, the constitutional errors alleged here arose in a close case dependent on delayed, inconsistent, and largely uncorroborated testimony, where the improper admission of prejudicial collateral allegations and counsel's deficient performance could readily have affected the verdict.

ARGUMENT: REASONS FOR GRANTING RELIEF

Petitioner's case presents significant Sixth and Fourteenth Amendment questions concerning the integrity of criminal trials – whether reviewing courts may excuse trial counsel's admitted, unintended opening of the door to devastating extraneous offense evidence as “strategy;” whether trial counsel may stand silent while the State injects irrelevant and damaging allegations of racial animus into a close criminal trial, and whether reviewing courts may reject an outside-influence claim by looking post-verdict to the jury's deliberative work product rather than applying the required objective prejudice inquiry.

As discussed herein, the decision below conflicts with this Court's Sixth and Fourteenth Amendment precedents – transforming the deference we owe and give defense counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), into near-immunity for even admitted mistakes. The decision also minimizes a counsel's failure to object to racialized and egregious character evidence that the State emphasized in closing argument; and sanctions an outside-influence analysis that looks to the actual jury's deliberative work product instead of the constitutional danger created by outside pressure on jurors.

This case also presents an appropriate vehicle for granting relief, as the federal questions are well-developed, preserved, and passed upon below. Trial counsel admitted he did not intend to open the door to extraneous evidence and understood that doing so was harmful – he'd even fought to keep out extraneous evidence, winning a critical pretrial hearing, and then opened the door in his opening

statement. Counsel admitted he missed the racial-animus objection because he was caught off guard. With respect to the outside influence claim, the trial court even acknowledged “numerous attempts to influence and intimidate” the jury, but denied relief by relying on its subjective view that the actual jury was diligent and hardworking. Finally, the prejudice is concrete – the trial was close, the State’s proof was delayed, largely uncorroborated, inconsistent, and the jury initially divided six-to-six.

These issues are presented below and Petitioner requests this Court grant this Petition and agree to hear the merits of his claims.

1. Was Petitioner’s trial counsel ineffective for failing to object to the injection of racial animus into his trial and for opening the door to prejudicial extraneous evidence?

Petitioner was deprived of his right to the effective assistance of counsel under the Sixth Amendment to the U.S. Constitution for two reasons: 1) his trial counsel opened the door to highly prejudicial extraneous evidence involving sexual abuse allegations; and 2) his trial counsel failed to object to the injection of racial animus into his trial.

The Sixth Amendment to the United States Constitution provides in pertinent part:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to have the Assistance of Counsel for his defence.”

U.S. CONST. amend VI.

This Sixth Amendment provision provides more than just the presence of counsel alongside the accused; but rather, provides for the right to the effective assistance of counsel – envisioning counsel playing a role that is critical to the ability of the adversarial system to produce just results. *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

To prevail on a claim of ineffective assistance of counsel requiring reversal of a conviction, an applicant must establish by a preponderance of evidence that: 1) trial counsel's performance was deficient – that it fell below an objective standard of reasonableness; and 2) that the deficient performance deprived applicant of a fair trial – that there is a reasonable probability that but for trial counsel's deficient performance, the outcome of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Each of Petitioner's presented ineffective assistance of counsel issues is addressed in turn.

A. Trial counsel was ineffective for opening the door to prejudicial extraneous evidence.

Petitioner was deprived of his right to the effective assistance of counsel when his trial counsel opened the door to highly prejudicial extraneous evidence involving alleged sexual acts with a different child, J.S., during his opening statement wherein he attacked B.W.'s credibility directly.

Defense counsel's actions constituted deficient performance where he opened the door to the prejudicial extraneous matters by directly attacking the Complainant's credibility, when the credibility and the sheer impossibility of that

inconsistent and contradicted story would be before the jury without trial counsel's unnecessary and direct opening-the-door commentary.

This Court's ineffective assistance of counsel cases draw a critical distinction between informed strategic choice and professionally unreasonable error. *Strickland v. Washington*, 466 U.S. 668, 689-91 (1984). *Strickland* requires deference to reasonable professional judgment and strategic choices, but it does not require reviewing courts to insulate errors as strategy when they result from misunderstanding, inadvertence, or a failure of counsel to appreciate the legal consequences of a taken course of action. *Strickland*, 466 U.S. at 690-91; *see also Kimmelman v. Morrison*, 477 U.S. 365, 385 (1986); *Wiggins v. Smith*, 539 U.S. 510, 521-23 (2003); *Hinton v. Alabama*, 571 U.S. 263, 274 (2014); *Shanklin v. State*, 190 S.W.3d 154, 164 (Tex.App.—Houston [1st Dist.] 2005, pet. granted); *Frangias v. State*, 450 S.W.3d 125, 138 (Tex.Crim.App. 2013).

The decision of the Texas courts departs from that concept.

Defense counsel's objective was not disputed. He sought to keep extraneous sexual-misconduct allegations out of trial, and was successful in obtaining a pretrial ruling excluding such extraneous evidence. He explicitly told the trial court before jury selection that he did not intend to open the door, and later when the State argued that his opening statement had opened the door, defense counsel told the trial court: "I've not intended to open the door to the extent that I have, and it's harmful to my client. I'll admit that later. I just want that to be clear." The State confirmed that

understanding, telling the trial court it had been reassured several times that defense counsel would not open the door.

The record presents a straightforward Sixth Amendment issue. The question is not whether Petitioner was entitled to contest the State's proof or challenge the reliability, sufficiency, or plausibility of an accusation – he may. The question is whether counsel exercised constitutionally reasonable professional judgment when he framed his opening statement in a way the trial court deemed sufficient to admit extraneous sexual-misconduct allegations he had worked hard to exclude and expressly did not intend to invite – and where counsel did not recognize, appreciate, or understand that he risked doing so.

The Texas 1st Court of Appeals opinion focuses on a different question, however. The court below treated the broad existence of a general defense strategy to attack B.W.'s allegations as enough to excuse the concrete professional failure. The courts reasoning is incompatible with *Strickland*. Defense counsel may have a reasonable goal and still perform deficiently by pursuing that goal through a legally disastrous and uninformed means. *Strickland* and its progeny protect reasoned tactical choices – they do not convert every harmful consequence of counsel's conduct into "strategy" merely because defense counsel was trying to defend the case.

The practical consequences of the lower court's flawed reasoning is substantial. Defense counsel frequently must challenge delayed, uncorroborated, or internally inconsistent accusations, all the while avoiding otherwise inadmissible propensity evidence. If an admitted opening-door error can be excused whenever the defense

had some reason to contest the State's proof, Strickland's performance prong would become hollow.

Moreover, there were available avenues to attack the substance of B.W.'s contentions without attacking B.W. herself in a way that opened the door to the extraneous matters, and he failed to avail himself of any of those avenues – constituting deficient performance. As Petitioner argued in his reply brief before the 1st Court of Appeals, his defense counsel could have made an opening statement that stated:

“You’re going to hear that B.W. claims she was sexually assaulted almost every night for two years in a small trailer and where she shared a bunk bed with her sister, and you’ll hear that all the other seven people that lived in that small trailer and were constantly present, could see into the hallway, could even see in the very room, and none of them ever saw, heard, suspected, or witnessed anything on even a single occasion. You’ll hear that the story changed over time. You’ll hear contradictions between the State’s own witnesses, including the many contradictions between B.W. and Detective Reed, B.W. and her mother, B.W. and her sister, B.W. and her brother, B.W. and her cousin, and you’ll go back and consider all this evidence when we reach the end and you go back to determine whether the State has met its high burden in this case.”

Though this is a simple example, it accomplishes all that defense counsel got out in his opening statement, and more, and does so without risking opening the door to the extraneous matters the trial court allowed into the case against Petitioner.

Counsel's deficient also prejudiced Petitioner – as it led to the admission of inherently prejudicial, inflammatory extraneous sexual offense and bad act evidence involving alleged sexual acts perpetrated against children, and a litany of Texas cases have recognized the inherent harm of such evidence. *See Williams v. State*, 301 S.W.3d 675, 687 (Tex.Crim.App. 2009); *Elkins v. State*, 647 S.W.2d 663, 665

(Tex.Crim.App. 1983); *Newton v. State*, 301 S.W.3d 315, 320 (Tex.App – Waco 2009), pet. ref'd) (op. on remand). Moreover, this testimony had a substantial and injurious effect on the verdict, as the Complainant's allegations were weak, inconsistent, directly contradicted, and unsupported by corroborating evidence, and where only propensity evidence was offered to support her claims. The State's theories and arguments also rested heavily on these extraneous matters.

The extraneous allegations were inflammatory and allowed the State to present alleged sexual conduct involving another daughter, J.S., in a case that otherwise lacked physical evidence, contemporaneous reports, medical records, CPS records, forensic evidence, therapy records, or support-group records corroborating the alleged abuse. In a trial where the jury initially divided six to six, there is at least a reasonable probability that the result was affected.

This Court should grant review to clarify that *Strickland* deference applies to informed professional judgment, but not to a defense counsel's admitted mistake that defeats his own stated strategy and injects devastating extraneous evidence into an otherwise weak criminal prosecution.

Petitioner was denied his Sixth Amendment right to the effective assistance of counsel, and the trial court erred in denying his motion for new trial, and the Texas courts below erred in analyzing this claim. Petitioner requests this Court find this issue merits review, permit him to fully present this claim to this Court, and ultimately grant him relief on this claim.

B. Trial counsel was ineffective for opening the door to prejudicial extraneous evidence.

Petitioner was deprived of his right to the effective assistance of counsel when his trial counsel failed to object to irrelevant and inadmissible bad-act evidence that Petitioner refused to allow his pregnant wife to return to the family home because she was pregnant with a Black man's child – that the child was biracial and that Petitioner would not raise the child because “it was half Black.” The testimony presented to the jury was that because of the child's skin color, he was given up for adoption. B.W.'s testimony proceeded, without objection: “They didn't want us to know that they were giving it up for adoption, and my father wouldn't raise it because it was half Black.” This testimony established that there is a child out there who lost out on being with his family and mother on account of his skin color and alleged racist beliefs of Petitioner.

The prosecutor, herself a Black woman, capitalized on this inadmissible evidence in closing statements to a jury that was also comprised of several Black members: “She had given birth to a biracial child that the Defendant wouldn't allow to move back into the trailer. So that child had to be up for adoption.” Trial counsel failed to object again.

The failure to object constituted deficient performance and was prejudicial and deprived Petitioner of a fair trial. *Dawson v Delaware*, 503 U.S. 159 (1992); *Davis v. State*, 329 S.W.3d 798, 805 (Tex.Crim.App. 2010); *Ex parte Martinez*, 330 S.W.3d 891, 903 (Tex.Crim.App. 2011). Indeed, this Court has recognized in other contexts that racial bias is uniquely destructive to the fairness and legitimacy of criminal proceedings – and yet Petitioner's counsel allowed him to be painted with that brush

when that prejudicial contention had nothing to do with any issues in the case. *See generally Buck v. Davis*, 580 U.S. 100 (2017); *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017).

The evidence had no legitimate connection to the charged offense, did not prove any element, serve in any way to corroborate the allegations, or explain any disputed material fact. Its force was character-based and racial, and invited the jury to condemn the Petitioner as a racist who would strip a child away from his mother, and to carry that moral condemnation into its evaluation of guilt.

Counsel did not object when this testimony or argument was presented to the jury, explaining later that he failed to object because the testimony “caught [him] off guard” and that he “missed the objection.” This is the absence of strategy.

Nevertheless, the Texas Court below found that counsel’s performance was neither deficient nor prejudicial, reasoning that “Isolated instances in the record reflecting errors of omission or commission do not render counsel’s performance ineffective, nor can ineffective assistance of counsel be established by isolating one portion of trial counsel’s performance for examination.” *See* Appendix B at Opinion page 45 (citing *Robertson v. State*, 187 S.W.3d 475, 483 (Tex.Crim.App. 2006)).

The 1st Court of Appeals even misapplied the Texas case *Robertson* by treating it as a bar to relief on a single error. *Robertson* holds the opposite: even isolated omissions constitute ineffective assistance when they admit highly prejudicial, inadmissible evidence that undermines credibility in a case resting on it. *Robertson v. State*, 187 S.W.3d 475, 484 (Tex. Crim. App. 2006).

Petitioner’s case mirrors the concerns of *Robertson*. The Court of Appeals itself recognized the State’s need for extraneous evidence “was considerable, given there were no eyewitnesses and no physical evidence to corroborate Complainant’s testimony.” The case hinged on credibility: whether the Complainant’s accusations of hundreds of sexual assaults were true, or Petitioner’s inherent denial credible. The jury heard demonizing testimony that Petitioner excluded a child from his home because it was Black, causing adoption, and trial counsel failed to object.

The lower court’s reasoning also conflicts with *Strickland* and even *Buck*. A single failure may be constitutionally decisive when it permits the jury to hear uniquely inflammatory evidence on a matter as corrosive as race. *Buck* itself involved ineffective assistance arising from counsel’s handling of race-based evidence, and this Court did not excuse the error because it appeared in a discrete part of the case. *Buck v. Davis*, 580 U.S. at 123-26.

The Court of Appeals further discounted the error, claiming defense counsel “lessened the prejudicial effect” by eliciting that the child was fathered by someone else. Appendix B at Opinion page 45. However, that is not what B.W. testified to – her testimony confirmed the child was excluded because of race, and so defense counsel did not neutralize the racial allegation – and that racial charge remained intact. The Court of Appeals effectively credited defense counsel for creating a second prejudicial explanation – but prejudice should not be cured by alternative prejudice.

Inadmissible racial animus testimony irreparably heightened the risk of conviction based on moral condemnation and extraneous bad acts, rather than evidence.

The Texas court's decision merits review because it permits state courts to minimize counsel's failure to object to racially inflammatory evidence in a way incompatible with this Court's race-and-jury precedents. Our Constitution does not tolerate criminal convictions infected by racialized reasoning and the Sixth Amendment does not permit counsel's admitted inaction to be insulated from meaningful review under the guise as being "isolated." This Court should grant review and affirm that a counsel's failure to object to irrelevant racial-animus evidence – later exploited in closing argument – constitutes deficient performance and prejudice under *Strickland*, particularly in a close and contested criminal trial.

Petitioner was denied his Sixth Amendment right to the effective assistance of counsel, and the trial court erred in denying his motion for new trial, and the Texas courts below erred in analyzing this claim. Petitioner requests this Court find this issue merits review, permit him to fully present this claim to this Court, and ultimately grant him relief on this claim.

2. Did the repeated outside influences brought to bear on the jury and jury misconduct violate Petitioner's right to a jury trial?

Petitioner was deprived of his Sixth and Fourteenth Amendment right to a fair and impartial jury free from outside influences, where numerous outside influences were brought to bear on the jury – also serving to constitute juror misconduct.

The Sixth Amendment to the U.S. Constitution provides that: “In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial jury” U.S. CONST. amend VI. In conjunction with the Fourteenth Amendment’s due process clause, this right guarantees an individual the right to a fair and impartial jury that is free from outside influence. U.S. CONST. amend XIV; *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966); *see also generally Remmer v. U.S.*, 347 U.S. 227 (1954); *Parker v. Gladden*, 385 U.S. 363, 364-65 (1966). Outside influences must not be brought to bear on any juror. *See also; McQuarrie v. State*, 380 S.W.3d 145 (Tex.Crim.App. 2012); *Colyer v. State*, 428 S.W.3d 117, 129-30 (Tex.Crim.App. 2014); *Woodman v. State*, 491 S.W.3d 424, 431 (Tex.App.—Houston [14th Dist.] 2016, pet. ref’d); *see also generally Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017).

Applying this federal principle, Texas, like other federal and state Courts have established a test that first looks at whether an outside influence was improperly brought to bear on any juror. *See Woodman*, 491 S.W.3d at 431. An outside influence is “something originating from a source outside of the jury room and other than from the jurors themselves.” *Id.* Then, without delving into the jury’s deliberations, the trial court must an objective analysis to determine whether there is a reasonable probability that the outside influence had a prejudicial effect on the “hypothetical average juror.” *Id.*; *see also Colyer*, 428 S.W.3d at 129-30; *McQuarrie*, 380 S.W.3d at 154; *U.S. v. Lloyd*, 269 F.3d 228, 238 (3rd Cir. 2001) (applying objective, hypothetical average juror test); *Loliscio v. Goord*, 263 F.3d 178, 186-87 (2nd Cir. 2001) (applying objective test). Petitioner meets this standard.

This case presents a serious outside influence problem. The Statement of the Case sets out the relevant events: courtroom attendees hostile to Petitioner were present throughout trial; one was removed after speaking with a venire member; hostile attendees were observed near jurors; one shouted that others were “supporting a rapist and sex offender” within earshot of the jury; after the first day of deliberations a hostile attendee was observed speaking with two men identified as jurors; jurors reported being followed to their cars by a person carrying camera and recording equipment; the bailiff confirmed that two jurors reported being followed; and the jury appeared troubled by these issues, as jurors later asked the court not to use their names.

The trial court itself acknowledged the seriousness of the situation. It stated that there were “numerous attempts to influence and intimidate a jury.” It recognized that people were doing their best to intimidate the jury, that jurors may have overheard screaming in the hallway, and that jurors had raised concerns about intimidation.

An objective analysis establishes a reasonable probability that these outside influences had a prejudicial effect on the hypothetical average juror. Jurors being followed to their cars by a trial attendee carrying visible camera and recording equipment raises serious concerns about juror safety, privacy, and security. When that individual was perceived as being associated with Petitioner, those concerns would naturally be directed toward him—an inference the trial court itself acknowledged when it told Petitioner that “his friends had not done him any favors.”

Hostile trial attendees also engaged jurors outside the courthouse and were heard yelling that Worden was a “rapist and sex offender” within earshot of the jury—conduct serious enough to prompt bailiff intervention. Such conduct constitutes classic outside influence and would prejudice the hypothetical average juror.

The trial court further contributed to outside influence by telling jurors during deliberations that they had heard “25 years” of a “dysfunctional family” in two days of testimony. Given the court’s unique authority, such commentary would reasonably reinforce the State’s narrative and invite juror speculation as to the cause of that dysfunction.

These influences demonstrably affected the jury. After the first day of deliberations, jurors were split 6–6, with half indicating further deliberation would be futile. The following day, jurors reported being followed to their cars, and later submitted a note expressing concerns about audience members and juror privacy.

Under an objective analysis, these events created a reasonable probability of prejudicial effect on the hypothetical average juror.

The Texas courts below -- both trial court and the 1st Court of Appeals – erred in analyzing this claim, both failing to conduct an objective analysis of its probable effect on a hypothetical average juror – and instead subjectively assessing how this jury appeared to function.

The trial court denied relief because it believed the attempts were “absolutely unsuccessful.” The court relied on its subjective view that the actual jury was hardworking, diligent, attentive, and intelligent, because the Judge post-verdict

observed the jury room after trial and saw charts, diagrams, witness lists, dates, and other work product reflecting the jurors' deliberations. The court concluded from that deliberative work product that outside influences had not affected the verdict.

The 1st Court of Appeals also erred in its analysis, reciting the proper standard and then abandoning it. The Court of Appeals expressly recognized that jurors may have overheard accusations of supporting a "rapist and sex offender" and that Gray may have attempted intimidation, but then concluded there was no prejudice because jurors deliberated carefully, requested transcripts, and spent hours reviewing evidence. *See* Appendix B, Opinion at 37-38.

Whether this jury worked hard is legally irrelevant, and a misapplication of the applicable legal standard. The controlling question is whether there is a reasonable probability that these outside influences would have prejudiced the hypothetical average juror. And there is such a probability under the facts of this case.

The right is to an impartial jury free from improper outside influence, and not merely to a jury that later appears hardworking. A reviewing court cannot cure outside influence by inspecting the jury's work product after the verdict and announcing confidence that the actual jurors overcame the influence. That approach shifts the focus from the constitutional danger created by external pressure to the trial judge's subjective assessment of the jury's diligence.

That departure is important. If courts may reject outside-influence claims based on post-verdict confidence in juror diligence, the constitutional protection

becomes difficult to enforce. Jurors exposed to intimidation or improper contact may still deliberate carefully, and may create charts, take notes, and even work hard. Diligent deliberation, however, does not answer whether outside pressure entered the process in a way the Constitution forbids.

The error is especially grave where, as here, the jury was initially divided evenly. At the end of the first day of deliberations, the jury reported a six-to-six split. The trial court then sent the jurors home after telling them that they had heard about “25 years of a dysfunctional family at best.” That judicial comment, combined with outside pressure from courtroom attendees and the reported following of jurors to their cars, created a serious risk of prejudice in a case already split.

The decisions below reflect a sanctioned departure from an objective test – permitting courts to deny outside-influence claims by relying on court perceptions of the actual jury’s diligence and deliberative work product, rather than examining the objective constitutional danger created by the outside influence.

This Court should grant review to reaffirm that the Sixth and Fourteenth Amendments protect against outside influences brought to bear on jurors, and that courts may not reject such claims by relying on post-verdict impressions of the actual jury’s diligence.

Petitioner was denied his Sixth and Fourteenth Amendment right to a fair and impartial jury, and the trial court erred in denying his motion for new trial, and the Texas courts below erred in analyzing this claim. Petitioner requests this Court find

this issue merits review, permit him to fully present this claim to this Court, and ultimately grant him relief on this claim.

CONCLUSION

Petitioner respectfully requests this Court find these issues merit review by this Court, grant the Petition for a Writ of Certiorari; order briefing and argument; grant Petitioner's claims for relief, reverse his conviction, and to give him any and all further relief to which he may be entitled.

Respectfully submitted,



Bryan W.L. Garris
Attorney for Earl David Worden
1018 Preston St., 8th Floor
Houston, Texas 77002
Phone: 832-722-8915
Fax: 832-327-9001
Bryan@txdefense.net

CERTIFICATE OF MAILING

I hereby certify that, on the 9th day of June, 2026, this pleading was served on the Court via the United States Postal Service and filed electronically.



Bryan W.L. Garriss

CERTIFICATE OF COMPLIANCE

I hereby certify that this document is within the page limits prescribed by Rule 33.2(b).



Bryan W.L. Garriss