

No. 14-24-00189-CR

In The Court of Appeals  
For the 14th District of Texas

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Deeon Morel Batts,  
Appellant

v.

The State of Texas,  
Appellee

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On Appeal from Cause Number 1682245  
From the 184th District Court of Harris County, Texas

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**Brief for Appellant**

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**Oral Argument Not Requested**

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## **STATEMENT OF THE CASE**

Deeon Morel Batts was indicted on September 18, 2020, on a charge of Aggravated Sexual Assault of a Child occurring on February 7, 2020. (CR 52).<sup>1</sup> A jury convicted him on March 7, 2024. (CR 387-390; 4RR 207).<sup>2</sup> The court sentenced him to 50 years imprisonment. (CR 387-390; 5RR 78). On March 7, 2024, he filed a notice of appeal, and the trial court certified his right to appeal. (CR 395-396). No motion for new trial was filed.

## **STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to TEX. R. APP. P. 38.1(e), Appellant's counsel does not request oral argument.

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<sup>1</sup> The Clerk's Record on appeal is designated by "CR" followed by page number.

<sup>2</sup> The Reporter's Record on appeal is designated by volume number, followed by "RR," followed by page number.



### **ISSUES PRESENTED**

1. The trial court abused its discretion in denying the defendant's motion for mistrial after a key witness had an inflammatory outburst and two audience members disrupted the proceedings, creating an atmosphere of hostility that deprived the defendant of a fair trial.
2. The trial court erred in admitting Exhibit 28, containing Jane Doe's statements to a nurse, under the medical diagnosis hearsay exception because the State failed to establish the necessary predicate for admissibility under Texas Rule of Evidence 803(4) and the requirements outlined in *Taylor v. State*.

## STATEMENT OF FACTS

The mother<sup>3</sup>, the complainant's mother, testified that on February 7, 2020, she returned home from grocery shopping and found her daughter Jane<sup>4</sup> crying in the kitchen. (3RR 60). Jane told her mother that the defendant, Deeon Batts, had been "doing sexual stuff to her." (3RR 61). The Mother later recorded a conversation with Batts in which he admitted to having a relationship with Jane, claiming it was consensual. (3RR 72; State's Exhibit 1).

Jane Doe, who was 12 years old at the time of the alleged incident, testified that on February 7, 2020, after her mother left to go grocery shopping, Batts sexually assaulted her on the couch. (3RR 155). She stated that the defendant took her clothes off, positioned his body on top of hers, and put his penis in her vagina, causing her pain. (3RR 156-157). Jane testified that she screamed for him to stop and that when he was done, she did not see

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<sup>3</sup> Although the Texas Rules of Appellate Procedure do not require pseudonyms for non-complaining witnesses, this witness will be referred to as the mother or mother so her unique name is not linked to the minor complaining witness.

<sup>4</sup> For privacy reasons, the minor complaining witness will be referred to as Jane, or Jane Doe. TEX. R. APP. P. 9.10(a)(3).

anything come out of Batts' penis (3RR 158). She also stated that the defendant gave her \$10 or \$20 and told her not to tell her mother. (3RR 160).

Detective Twyla Kimberlin testified about her investigation into the sexual assault allegations. She stated that she took over the case from another detective in June 2020 and arranged for Jane to have a forensic interview, during which Jane disclosed details of the sexual abuse. (4RR 16-17). Detective Kimberlin also obtained medical records from Jane's hospital visit on the day of the alleged incident. (4RR 22).

Heather Simon, the sexual assault nurse examiner (SANE) who examined Jordan on February 7, 2020, testified about her findings. Nurse Simon documented abrasions to Jane's genitals that were consistent with sexual trauma, though she acknowledged on cross-examination that the injuries could have other causes. (4RR 111). The nurse also collected several swabs as evidence during the exam. (4RR 116).

Tammy Taylor, a DNA analyst with the Harris County Institute of Forensic Sciences, testified that the defendant's DNA profile was

found on multiple swabs collected from Jane's sexual assault kit, including her perianal, perineal, and labial swabs. (4RR 156-161). The defendant could not be excluded as the contributor to the DNA profiles obtained from the sperm fractions of these swabs. (4RR 157-160).

Deeon Batts testified during the punishment phase of his trial. He maintained his innocence and claimed that his admissions in the recorded conversation with the mother were false statements made to placate his wife and save his marriage. (5RR 60-62; 67). Batts asserted that he had never had any inappropriate physical or sexual contact with Jane or any other minor. (5RR 63). He requested leniency in sentencing, stating that he was not a threat to anyone and promising not to reoffend. (5RR 65-66).

## SUMMARY OF THE ARGUMENT

1. The trial court erred in denying a mistrial because the emotional outburst during trial by the victim's mother (a testifying witness) combined with emotional outbursts from two audience members created unfair prejudice that could not be cured by jury instructions. Unlike *Gamboa v State*, which involved only a single outburst from a bystander, this case involved the more prejudicial situation of a testifying witness expressing hatred toward the defendant during her testimony, compounded by emotional outbursts from two audience members. The case is more analogous to *Brooks v. Dretke's* concept of implied bias, where certain circumstances are so prejudicial that no reasonable juror could remain unaffected, regardless of curative instructions. When a testifying witness has such an emotional outburst directly accusing and expressing hatred toward the defendant, combined with audience disruption, it creates a fundamentally unfair trial atmosphere that can only be remedied by a mistrial.

2. The trial court erred in admitting, under the medical diagnosis/treatment hearsay exception (Rule 803(4)), the counselor's testimony about statements the victim made identifying the defendant during therapy sessions. Under *Taylor v. State*, for such statements to be admissible, the proponent must show both that truth-telling was vital to treatment and that the declarant was aware of this importance. Here, the State failed to meet this burden - there was no evidence that knowing the defendant's identity was pertinent to treating her trauma or anger issues, and nothing in the record showed that the victim understood that being truthful about the perpetrator's identity was important to her treatment. The SANE nurse was treating the victim for trauma from the assault and while general statements about the assault might have been pertinent to treatment, the specific identification of the defendant was not. This harmed Batts.

## ARGUMENT AND AUTHORITIES

### ISSUE NUMBER ONE

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE DEFENDANT'S MOTION FOR MISTRIAL AFTER A KEY WITNESS HAD AN INFLAMMATORY OUTBURST AND TWO AUDIENCE MEMBERS DISRUPTED THE PROCEEDINGS, CREATING AN ATMOSPHERE OF HOSTILITY THAT DEPRIVED THE DEFENDANT OF A FAIR TRIAL .

#### A. APPLICABLE LAW

The denial of a motion for mistrial is reviewed under an abuse of discretion standard. *Ladd v. State*, 3 S.W.3d 547, 567 (Tex. Crim. App. 1999). “An instruction to disregard attempts to cure any harm or prejudice resulting from events that have already occurred.” *Young v. State*, 137 S.W.3d 65, 69 (Tex. Crim. App. 2004). When prejudice can be cured, an instruction to disregard eliminates the need for a mistrial and conserves resources consumed by restarting trial. *Young* 137 S.W.3d at 69. A type of event that requires a mistrial occurs less frequently than correcting the harm with a sustained objection or an instruction to disregard. *Young* 137 S.W.3d at 69. Therefore, a mistrial is required of a trial court only if “an objection could not have prevented, and an instruction to disregard could not cure, the prejudice stemming from an event at trial.” *Young* 137 S.W.3d at 69; see *Archie v. State*, 221 S.W.3d

695, 699 (Tex. Crim. App. 2007) (quoting *Hawkins v. State*, 135 S.W.3d 72, 77 (Tex. Crim. App. 2004)). In reviewing the need for a mistrial, the court will consider the nature of the error, the persistence of the prosecution in committing or causing the error, the flagrancy of the violation, the instruction given by the trial court, and the weight of the incriminating evidence. *Waldo v. State*, 746 S.W.2d 750, 754 (Tex. Crim. App. 1988). Injury to a defendant is measured on a case-by-case basis. *Ashley v. State*, 362 S.W.2d 847 (Tex. Crim. App. 1963).

Batts preserved this issue with a timely request for a mistrial. (3RR 80 and 85). And the court made a ruling on the request for a mistrial. (3RR 100).

## **B. ARGUMENT**

The trial court erred in denying the defendant's motion for mistrial after a testifying witness had an emotional outburst in front of the jury. While the court questioned the jurors about their ability to remain impartial, this approach was insufficient to cure the prejudice caused by such a dramatic display from a key witness. The nature and severity of the outburst, coming from the victim's



mother as she was testifying, created an implied bias that could not be overcome merely by juror assurances. This Court should hold that such an outburst requires a mistrial, regardless of juror statements about impartiality.

The trial court's denial of a mistrial in this case requires reversal because the combination and nature of the outbursts created a level of prejudice that no instruction could cure. This case presents a perfect storm of prejudicial factors: an emotional outburst from a testifying witness who was also the victim's mother, occurring during crucial evidence, followed by multiple audience disruptions that transformed the courtroom atmosphere.

1. The Witness Outburst Was Severe and Created Implied Bias.

The record shows that during the playing of a recorded conversation between the witness (the victim's mother) and the defendant, the witness had a severe emotional outburst in front of the jury:

THE WITNESS:	(Witness crying.) I hate you. I hate you. Why you do that to my baby?
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THE COURT: Ma'am, settle down. Settle down, ma'am. Settle down, ma'am.

THE WITNESS: I hate you. I hate you.

(RR3 77).

This was not a mere emotional reaction – it was a devastating accusation from the victim’s mother, condemning the defendant through tears of anguish. Such a display of raw maternal grief and fury strikes at the heart of the trial, shattering any hope of impartiality. No reasonable juror could witness this outburst and remain unaffected in their judgment.

The severity of this outburst alone distinguishes it from cases where courts have found instructions sufficient. But its prejudicial impact was magnified by the witness's unique role in this case.

## 2. The Doctrine of Implied Bias Applies to This Case

The doctrine of implied bias, as articulated by the Fifth Circuit in *Brooks v. Dretke*, provides that "there are certain factual circumstances in which no reasonable person could not be affected in his actions as a juror and in which the Constitution refuses to

accept any assurances to the contrary." 444 F.3d 328, 331 (5th Cir. 2006). This doctrine is clearly established federal law and can serve as the basis for habeas relief under AEDPA. *Id.* at 329-30.

In *Brooks*, the court found implied bias when a juror was arrested for a weapons offense during the sentencing phase of a capital murder trial. The court reasoned that the juror's fate, facing possible felony prosecution, rested in the hands of the same prosecutor seeking the death penalty for the defendant. This created an intolerable risk that denied the defendant his constitutionally guaranteed impartial jury. *Id.* at 332.

The present case presents an even stronger argument for implied bias. Here, the entire jury witnessed an emotional outburst from a key witness – both the victim's mother and the state's outcry witness - directly accusing the defendant and expressing hatred towards him. This powerful display of emotion from a sympathetic figure is likely to have a profound impact on any reasonable person serving as a juror. Just as in *Brooks*, where the court found that "no reasonable jurist could disagree" that the circumstances created an implied bias, the same conclusion should be reached here. *See Id.*

The implied bias doctrine is particularly relevant here because, unlike typical spectator disruption cases, this case involved an outburst from someone the jury was required to evaluate for credibility.

### 3. Juror Assurances Cannot Overcome Implied Bias.

While the trial court in this case questioned each juror individually about their ability to remain impartial, such assurances are insufficient to overcome implied bias. As the *Brooks* court noted, there are circumstances where "the Constitution refuses to accept any assurances to the contrary." 444 F.3d at 331. This principle traces back to the Supreme Court's decision in *Remmer v. United States (Remmer II)*, where the Court found that under certain circumstances, there is "such a state of facts that neither [the juror] nor anyone else could say that he was not affected in his freedom of action as a juror." 350 U.S. 377, 381 (1956).

The emotional outburst in this case, coming from the victim's mother while testifying, creates precisely such a circumstance. The

visceral impact of witnessing a grieving mother's accusatory outburst is not something that jurors can simply set aside, regardless of their sincere beliefs or assurances to the contrary. As in *Brooks*, where the court found implied bias despite the juror's assurances of impartiality, this Court should recognize that the circumstances here create an implied bias that cannot be cured through questioning or instructions. This principle becomes even more critical when considering the source and timing of the outburst.

4. The Outburst from a Testifying Witness is More Prejudicial than a Bystander Outburst.

While courts have sometimes found bystander outbursts to be curable through jury instructions, an outburst from an actual testifying witness is far more prejudicial and difficult to disregard. In *Gamboa v. State*, the Court of Criminal Appeals found no reversible error where a family member of the victim shouted, "You did this for 200 dollars?" during testimony. 296 S.W.3d 574, 580 (Tex. Crim. App. 2009). However, *Gamboa* is distinguishable

because it involved an outburst from a bystander, not a testifying witness.

Other jurisdictions have recognized this crucial distinction. The Second Court of Appeals explained why a bystander outburst did not require a mistrial, noting that "the outburst came from a bystander, not a testifying witness" and "the bystander immediately left the courtroom." *Phiffer v. State*, No. 02-23-00222-CR, 2024 WL 2347680 (Tex. App. –Fort Worth May 23, 2024 no pet. h.) (not designated for publication).

While Texas courts have addressed witness outbursts before, the circumstances here are markedly different from previous cases. The Court of Criminal Appeals' decision in *Coble v. State* demonstrates why this case requires a different result. *See Coble v. State*, 330 S.W.3d, 253, 290-291 (Tex. Crim. App. 2010) (outburst of defendant's wife during her testimony at defendant's capital sentencing was "I hate you for making me go through this again and my kids. You're mean" did not require a mistrial as evidence of defendant's character was relevant and admissible at penalty phase and judge instructed the jury to disregard).

The Court of Criminal Appeals' decision in *Coble v. State* is readily distinguishable from the present case in several critical ways. In *Coble*, the witness outburst occurred during the punishment phase when the defendant's wife exclaimed "I hate you for making me go through this again with my kids. You're mean." *Coble* 330 S.W.3d at 290-291. The Court found this outburst did not require a mistrial, but three crucial distinctions make the holding inapplicable here:

First, the timing and context: The *Coble* outburst occurred during punishment phase, where emotional displays are both expected and relevant to the jury's determination. Evidence of a defendant's impact on family members and character is explicitly admissible at punishment. In contrast, the outburst here occurred during guilt/innocence phase where the jury was supposed to objectively determine guilt based solely on admissible evidence.

Second, the nature of the witness. In *Coble*, the outburst came from the defendant's wife expressing personal feelings about having to testify. Here, the outburst came from the complainant's mother who was also the outcry witness - a dual role that made her

emotional accusation particularly damaging to the presumption of innocence. Her outburst effectively converted her from a fact witness into a passionate advocate for guilt.

Finally, the connection to the evidence. The *Coble* outburst was unrelated to the substantive evidence being presented. Here, the mother's outburst occurred during the playing of a recorded conversation - a key piece of evidence. This timing meant the outburst became inextricably intertwined with the jury's consideration of critical evidence, making it impossible for jurors to evaluate the recording objectively.

Additionally, *Coble* involved a single outburst in isolation, while this case involved multiple disruptions that created a markedly different atmosphere. The *Coble* court's reasoning about curative instructions makes sense for an isolated emotional display during punishment phase but cannot extend to this case's more prejudicial circumstances during guilt/innocence determinations.

Finally, and perhaps most critically, the connection to evidence distinguishes this case from *Coble* in a fundamental way. The *Coble* outburst was unrelated to the substantive evidence



being presented. Here, the mother's outburst occurred during a pivotal moment in the trial - the playing of a recorded conversation between the witness and the defendant. This created three distinct layers of prejudice absent in *Coble*:

First, the outburst became inextricably intertwined with the jury's consideration of the recording itself. The mother's emotional accusation - "I hate you. I hate you. Why you do that to my baby?" - occurred while the jury was attempting to evaluate the recorded evidence. No instruction could separate the raw emotional display from the jury's perception of that evidence.

Second, the timing magnified the prejudicial effect because the outburst validated the prosecution's interpretation of the recorded conversation. Rather than allowing jurors to evaluate the recording objectively, the witness's emotional reaction suggested how to interpret any ambiguity in the defendant's recorded statements.

Third, unlike the *Coble* outburst, which was a momentary interruption, this outburst permanently altered how jurors would process a key piece of evidence. Even if jurors later attempted to

evaluate the recording dispassionately, they could not unhear the mother's anguished accusations that accompanied their first exposure to this evidence.

The crucial distinction from *Coble* is not just about timing—it's about how the outburst fundamentally compromised the jury's ability to evaluate evidence objectively. While Coble's outburst was an isolated emotional display during the punishment phase, the outburst here infected the jury's consideration of substantive evidence during the determinative guilt/innocence phase.

Additionally, *Coble* involved a single outburst in isolation, while this case involved multiple disruptions that created a markedly different atmosphere. The *Coble* court's reasoning about curative instructions makes sense for an isolated emotional display during the punishment phase of a trial but cannot extend to this case's more prejudicial circumstances during guilt/innocence determinations where the very integrity of the fact-finding process was compromised.

The prejudicial impact of the witness outburst in this case was further magnified by subsequent events that created an

atmosphere of hostility unprecedented in Texas case law. While the witness outburst alone created severe prejudice, what followed made the situation irreparable.

5. The Testifying Witness Outburst was  
Compounded by Outbursts from Two People in  
the Audience.

In this case, there was an outburst in the audience by two people in addition to the outburst from the witness. These additional outbursts just further polluted the ability of the jurors to be impartial. The judge admonished them after the outburst:

The Court:        Now, I would ask you to do this, and this goes with anyone in the audience. It is my understanding that one or two in the audience sort of had an emotional outburst too, and I want to make sure this applies to them as well.

...

The Court:        And this applies to those of you in the audience as well. I assume you-all are family members, I don't know. I don't know what your relationship is –

Ms. Alexander: It's my mom and my sister.

...

The Court:        You all understand as well?

Audience:        Yes sir.

(3RR 110-113).

This case involves a situation where it was not simply an audience member with an outburst. This was two audience members. Those two were in concert with a testifying witness. These multiple disruptions created a synergistic effect that transformed the trial atmosphere.

6. The outburst from both a testifying witness sworn in on the stand and multiple people in the audience created a prejudicial cumulative effect

The combination of outbursts in this case created prejudice greater than the sum of its parts. Unlike cases involving isolated disruptions, the sequence here is not dissimilar to an outburst that was made worse by the prosecutor calling attention to it. *Stahl v. State*, 749 S.W.2d 826, 832 (Tex. Crim. App. 1988) (en banc) (affirmed the court of appeals which reversed the conviction). In *Stahl*, the prosecutor called the deceased's mother, as a witness to the stand. During her direct examination she became emotional and cried "Oh, my God, My baby. My God." and as the jury exited, she continued "May he rest in hell. May he burn in hell. Oh, my baby." *Stahl* 749 S.W.2d at 828. The prosecutor then cumulated the

error by arguing in closing that justice would be to “tell them that we don’t like them causing grief to good people like [the deceased’s mother]”. *Stahl* 749 S.W.2d at 830).

This trial is similar in that the audience, not the prosecutor, cumulated the error by worsening the initial outcry. The jurors witnessed the mother, who was playing a confession, and numerous members of the audience having outbursts. Beyond the immediate impact on this trial, this situation raises broader concerns about trial integrity.

#### 7. Policy Considerations Support Requiring a Mistrial for Severe Witness Outbursts.

There are strong policy reasons to adopt a rule requiring a mistrial when a testifying witness has a severe emotional outburst accusing the defendant:

1. It preserves the integrity of the trial process by ensuring the jury decides the case based on admissible evidence rather than emotional displays.
2. It prevents witnesses from intentionally creating prejudicial outbursts to influence the jury.
3. It avoids putting jurors in the difficult position of trying to disregard highly emotional accusations they have witnessed.

4. It ensures defendants receive a fair trial free from the taint of improper emotional appeals.
5. It promotes judicial economy by avoiding appeals and potential retrials based on prejudicial outbursts.

While mistrials should not be granted lightly, severe emotional outbursts by testifying witnesses and outbursts from the audience create such a high risk of unfair prejudice that a mistrial is the appropriate remedy. A clear rule requiring mistrials in these circumstances would provide needed guidance to trial courts and ensure fair trials for defendants. The confluence of prejudicial factors in this case illustrates why courts must have clear standards for ordering mistrials in cases of severe witness outbursts.

### **C. CONCLUSION**

This case presents the rare circumstance where a mistrial was the only adequate remedy. The combination of a testifying witness's emotional outburst during crucial evidence, followed by multiple audience disruptions, created prejudice that no instruction could cure. The trial court's failure to grant a mistrial in these extraordinary circumstances was an abuse of discretion that

requires reversal. Batts showed by a reasonable probability that the outburst actually prejudiced him by preventing the jury from fairly examining the evidence in arriving at its verdict. *See Gamboa v. State*, 296 S.W.3d 574, 580 (Tex. Crim. App. 2009).

Although this is non-constitutional error subject to harm analysis under Rule 44.2(b). TEX. R. APP P. 44.2, there should be a reversal as it had a substantial and injurious effect on the verdict. Harm was apparent from having multiple outbursts that could not be cured simply by asking the jurors if they would be affected and was substantial.

## ISSUE TWO

THE TRIAL COURT ERRED IN ADMITTING EXHIBIT 28, CONTAINING JANE DOE'S STATEMENTS TO A NURSE, UNDER THE MEDICAL DIAGNOSIS HEARSAY EXCEPTION BECAUSE THE STATE FAILED TO ESTABLISH THE NECESSARY PREDICATE FOR ADMISSIBILITY UNDER TEXAS RULE OF EVIDENCE 803(4) AND THE REQUIREMENTS OUTLINED IN *TAYLOR V. STATE*.

### A. INTRODUCTION

At its core, the medical diagnosis exception exists for a simple reason: patients must be able to tell their doctors what hurts so they can receive proper treatment. But what happened here strayed far from that purpose. The State took an exception meant for genuine medical care and turned it into a conduit for accusations, using a medical examination as an opportunity to gather evidence rather than guide treatment.

#### 1. The Critical Requirements of Rule 803(4)

The medical diagnosis exception to hearsay serves a specific purpose: allowing admission of statements necessary for proper medical care. This makes sense when a patient tells a doctor about physical symptoms or medical history. But this purpose breaks down when, as here, the statements go beyond medical necessity



and appear aimed at gathering evidence rather than providing treatment.

The Texas Rules of Evidence codify this common-sense limitation. Rule 803(4) provides an exception only for statements that are both "made for" and "reasonably pertinent to" medical diagnosis or treatment. *See* TEX. R. EVID. 803(4). This dual requirement ensures that the exception stays tethered to its purpose - facilitating proper medical care rather than creating a backdoor for inadmissible testimony.

## 2. The *Taylor* Framework and State's Burden

*Taylor v. State* established specific safeguards to prevent abuse of this hearsay exception in sexual assault cases. These requirements recognize both the unique challenges of child declarants and the risk that medical examinations might become backdoor channels for inadmissible testimony. As the proponent of State's Exhibit 28, the State bore the burden of showing these statements fit within this carefully circumscribed exception. *See Taylor v. State*, 268 S.W.3d 571, 578-79 (Tex. Crim. App. 2008);

State's Exhibit 28). The State failed to meet this burden in multiple ways, each compounding the prejudice to Batts' right to a fair trial.

Before examining these specific failures, it's important to understand the framework courts use to evaluate statements under the medical diagnosis exception, particularly in cases involving child declarants and allegations of sexual abuse.

### 3. Standard of Review

“Hearsay is not admissible except as provided by statute or the Rules of Evidence or by other rules prescribed according to statutory authority.” TEX. R. EVID. 802. Once the opponent of hearsay evidence makes the proper objection, it becomes the burden of the proponent of the evidence to establish that an exception applies that would make the evidence admissible despite its hearsay character. *E.g., Martinez v. State*, 178 S.W.3d 806, 815 (Tex.Crim.App.2005); *Cofield v. State*, 891 S.W.2d 952, 954 (Tex. Crim. App.1994). Texas Rule of Evidence 803(4) provides an exception to the hearsay rule for statements made for medical diagnosis or treatment. The rule states:

"A statement that: (A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause." TEX. R. EVID. 803.

In *Taylor v. State*, 268 S.W.3d 571 (Tex. Crim. App. 2008), the Court of Criminal Appeals elaborated on the application of this rule, particularly in cases involving child declarants and allegations of sexual abuse. The court established that:

1. The proponent of the evidence must show that the declarant was aware that the statements were made for the purpose of medical diagnosis or treatment.
2. It must be shown that proper diagnosis or treatment depends on the veracity of such statements.
3. For statements identifying the perpetrator, it must be demonstrated that this information was pertinent to diagnosis or treatment.
4. In cases involving ongoing therapy, especially with child declarants, there must be evidence that the child understood the need for truthfulness in their statements.

In determining whether a trial court erred in admitting or excluding hearsay evidence under such an exception to the hearsay rule, a reviewing court looks to see whether the trial court clearly abused its discretion; before the reviewing court may

reverse the trial court's decision, it must find the trial court's ruling was so clearly wrong as to lie outside the zone within which reasonable people might disagree. *Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003). Because Texas Rule 803(4) is identical to its federal counterpart in the Federal Rules of Evidence it is appropriate to look to federal cases and commentary for guidance in its proper construction. TEX. R. EVID. 803(4); *See also* FED. R. EVID. 803(4); *see also Coffin v. State*, 885 S.W.2d 140, 147 n. 4 (Tex. Crim. App. 1994) (“Cases and commentaries interpreting the Federal Rules of Evidence are instructive in our construction of similarly worded provisions in our own rules.”).

Batts preserved this error for review. Batts objected to State’s Exhibit 28 as hearsay. (4RR 83). A discussion followed that demonstrates the court understood exactly what Batts was objecting to in the report. (4RR 83-86). This objection was overruled. (4RR 86). Measured against these requirements, the State's showing falls short in multiple, compounding ways.

**B. THE STATE FAILED TO ESTABLISH THE NECESSARY PREDICATE FOR  
ADMISSIBILITY**

**1. No evidence that Jane Doe understood the  
importance of truthfulness**

The most fundamental flaw in the State's predicate was the complete absence of evidence that Jane understood her statements served a medical purpose. The record shows only that Nurse Simon "starts with informed consent" and "make[s] sure they don't have any questions." (4RR 87). This perfunctory description falls far short of *Taylor's* requirement that "it is readily apparent that the child-declarant was aware" that truthfulness was vital for treatment. *Taylor*, 268 S.W.3d at 589.

This isn't a technical oversight - it goes to the heart of why we admit these statements in the first place. We allow this exception because patients who understand they're speaking for medical purposes are likely to be truthful. Without evidence establishing this understanding, the key premise underlying the exception collapses.

The contrast with cases properly admitting such statements is telling. In *Fahrni v. State*, the Texarkana Court of Appeals found

sufficient predicate where specific evidence showed the child understood the medical purpose. 473 S.W.3d 486, 496-97 (Tex. App. –Texarkana 2015, pet. ref'd). Here, we have nothing comparable.

## 2. Reliability Undermined by Significant Inconsistencies

The importance of establishing proper medical purpose becomes even clearer when examining the actual statements. Jane's account to the nurse contradicted her trial testimony in multiple significant ways:

### **Time of the Assault**

<b>To nurse:</b>	“around 3 or 4 p.m. (4RR 91)
<b>At trial:</b>	“after school...around 4:00 or 5:00” (3RR 155)

### **Location of the Assault**

<b>To nurse:</b>	“started by the freezer in the kitchen” (4RR 91)
<b>At trial:</b>	“in the living room” (3RR 155-156)

### Critical Details

<b>To nurse:</b>	Batts ejaculated (4RR 92)
<b>At trial:</b>	I do not remember seeing ejaculate (3RR 155-158).

These discrepancies cast serious doubt on the reliability of Jane's statements to the nurse, further undermining the case for admission under Rule 803(4). *See Taylor*, 268 S.W.3d at 591 (inconsistencies between declarant's out-of-court statements and trial testimony highlighted unreliability of hearsay).

These aren't minor discrepancies in peripheral details. They represent fundamental contradictions about where, when, and how the alleged assault occurred. Such inconsistencies demonstrate precisely why *Taylor* requires evidence that the declarant understood the medical purpose - without that understanding, statements lack the reliability that justifies their admission. *See Taylor* 268 S.W.3d at 589

### 3. The Identification's Medical Irrelevance

Perhaps most problematic is the State's failure to establish any medical necessity for identifying the perpetrator. While *Taylor*

recognizes that perpetrator identity might sometimes be medically relevant - such as cases involving household members with ongoing access to the child - no such justification exists here.

Instead, the record suggests the identification served purely investigative purposes. When Jane initially described the assault in medical terms, the nurse pressed further with a "clarifying question" specifically to elicit the perpetrator's name. (4RR 91). This transformed what might have been a legitimate medical inquiry into investigative interviewing.

This matters because:

- No evidence suggested knowing the perpetrator's identity affected treatment
- The nurse's questioning went beyond medical necessity
- The identification appeared aimed at future prosecution rather than immediate care.

*See Taylor* 268 S.W.3d at 591. (proponent should make record reflect why perpetrator identity was important to efficacy of treatment).



## **C. THE PREJUDICIAL IMPACT**

### 1. False Aura of Medical Reliability

The erroneous admission was particularly harmful because it allowed the State to present accusatory statements under the guise of medical reliability. By admitting these statements through a medical professional, the State effectively created expert vouching for credibility without the usual safeguards. This prejudice was amplified because:

- Medical professionals carry special weight with jurors
- The statements appeared more reliable because of their medical context
- The jury likely assumed medical necessity justified their admission

*See Taylor*.268 S.W.3d at 593.

### 2. Multiplication of Hearsay Accusations

Beyond creating a false aura of reliability, admitting State's Exhibit 28 allowed the State to present Jane's accusations repeatedly through different witnesses. This created an illusion of consistency despite the actual contradictions in her accounts.

Courts have long recognized the danger of such hearsay multiplication. *See Taylor*, 268 S.W.3d at 593.

### 3. Devastating Impact in a Credibility Case

In a case turning on credibility, allowing repeated hearsay accusations through a medical professional fundamentally distorted the jury's evaluation process. The prejudice was particularly acute.

Permitting unfronted hearsay accusations under medical treatment's guise undermines the Confrontation Clause's truth-seeking purpose and Rule 803(4). *See Taylor*. 268 S.W.3d at 592. The nurse's testimony about Jane Doe's statements provided additional corroboration of the alleged assault. Specifically, it corroborated what she said to the outcry witness despite her conflicting trial testimony. This corroboration from a medical professional significantly strengthened the prosecution's case.

In a case that hinges on the complainant's word against the defendant's, the introduction of inadmissible corroborating statements is highly detrimental to the defense. *See Taylor*. 268 S.W.3d at 593. Given the potential impact on credibility,

corroboration, and emotional resonance with the jury, the admission of this exhibit significantly harmed Batts' case as it was not properly limited or contextualized.

#### **D. CONCLUSION**

The admission of State's Exhibit 28 violated both the letter and spirit of Rule 803(4). It transformed a limited hearsay exception designed for legitimate medical purposes into a vehicle for bolstering credibility and multiplying accusations. When hearsay exceptions become mere conduits for accusatory statements, they undermine the fundamental fairness of the trial. This error, particularly given its impact on the central issue of credibility, requires reversal.

The trial court abused its discretion by admitting State's Exhibit 28 under Rule 803(4) because the State failed to lay the necessary predicate for admissibility. TEX. R. EVID. 803. The record does not show that Jane understood the purpose of her statements, and the inconsistencies between her outcry and her trial testimony highlight the unreliability of her hearsay accusations.

Although this is non-constitutional error subject to harm analysis under Rule 44.2(b). TEX. R. APP P. 44.2, there should be a reversal as it had a substantial and injurious effect on the verdict. By improperly bolstering the complainant's credibility on the ultimate issue, the erroneous admission of this evidence unfairly prejudiced Batts and deprived him of a fair trial. This Court should reverse the conviction and remand for a new trial without the tainted hearsay. *See Taylor*, 268 S.W.3d at 593.

## **CONCLUSION AND PRAYER**

The two errors in this case combined to deprive Batts of his fundamental right to a fair trial. First, the emotional outbursts—beginning with the victim's mother during her testimony and cascading into multiple audience disruptions—created an atmosphere of prejudice that no instruction could cure. This transformed the trial from a reasoned evaluation of evidence into an emotional spectacle. Second, the improper admission of hearsay statements under the guise of medical necessity allowed the State to present accusatory statements repeatedly while cloaking them in the false legitimacy of medical testimony. Together, these errors created a trial where emotion and inadmissible evidence, rather than proper legal proof, drove the verdict.

When a trial features both inflammatory outbursts during the presentation of key evidence and the improper admission of hearsay bolstering the central accusation, the cumulative effect destroys the fundamental fairness that our constitution guarantees. Each error independently requires reversal, but their combined

impact made it impossible for Batts to receive the fair trial to which he was entitled.

For these reasons, Batts respectfully prays that this Honorable Court sustain both issues presented, reverse the judgment of conviction entered below, and remand the case to the trial court for a new trial free from these prejudicial errors. Only through such relief can Batts receive what our system promises: a trial decided on properly admitted evidence rather than emotion and inadmissible hearsay.

Respectfully submitted,

*/s/ Curtis Barton*

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**CERTIFICATE OF SERVICE**

I certify that the foregoing brief was e-filed with the XX Court of Appeals, was served electronically upon the Appellate Division of the Harris County District Attorney's Office, and was also sent on the same date by first-class mail to:

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*/s/ Curtis Barton*

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CURTIS BARTON



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