Cause No. PD-0667-14

EX PARTE:	§	IN THE
	§	
	§	COURT OF CRIMINAL APPEALS
	§	
GEORGE ROBERT POWELL, III	§	AUSTIN, TEXAS

RECEIVED IN
COURT OF CRIMINAL APPEALS
DEC 31 2014
Abel Acosta, Clerk

MOTION FOR REHEARING

NOW COMES George Robert Powell, III, Petitioner, pro se, and files this Motion for Rehearing, requesting this Honorable Court to reconsider the denial of his Petition for Discretionary Review, denied on November 19, 2014. In support of this Motion, Petitioner would show the following:

I.

The case at bar focuses on the mechanics and implimentation of Texas Rules of Evidence Rule 614, commonly called the "Witness Rule" or "the Rule", the Texas Code of Criminal Procedure Article 36.03 (Invocation of Rule) and the Texas Code of Criminal Procedure Article 36.06 (Instructed by the Court).

Petitioner has asserted that proper implimentation of these procedures, and for a witness to be placed under the Rule, three separate and distinct actions have to occur:

1) Invocation of the Rule (Tx.C.C.P. §36.03(a))

2) Admonishment of each witness by the court (Tx.C.C.P. §36.03(e))

3) Instruction by the court (Tx.C.C.P. §36.06)

Petitioner contends that two vital functions must be performed solely by the Trial Court: admonishment and instruction. Without proper admonishment, a witness is not subject to the contempt power of the court. Tx.C.C.P. §36.03(e), §36.06. Similarly, it is only the Trial Court that can instruct a witness as to who the witness can converse with, and about what. Id.

In the case at bar, the State claimed at trial that a violation of the Rule had occured. The first reaction of the Trial Court was that a violation did not occur, because the witnesses were not instructed and admonished by the Court. The State persisted, despite clear laws, and after an off-record, in chambers discussion (which now cannot be reviewed, violating Petitioner's right to due process), the Trial Court issues an "instruction" to the jury, claiming the defenses only two witnesses violated the Rule, when according to the Trial Court's own admission, they had not.

Petitioner contends that this was an erroneous impression by the Trial Court of impropriety on the part of the Defense's witness, and amounted to an impermissible comment on the credibility of the Defense's witnesses by the Trial Court.

This Honorable Court has not given clear directions to the lower courts regarding this issue. When is a witness properly placed under the Rule? If a trial court indicates that a witness has violated a rule of court, when they had not, is that an impermissible comment on the credibility of that witness? Is

the three step process argued by Petitioner as a matter of law, formalized by an opinion from this Honorable Court? Petitioner asserts that no such clear direction exists.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays that this Honorable Court GRANT this Motion for Rehearing and reconsider his Petition for Discretionary Review.

Respectfully submitted,

George Robert Powell, III
Petitioner, pro se

Inmate's Unsworn Declaration

I, George Robert Powell, III, TDCJ #1612668, being presently incarcerated in the Huntsville Unit of the Texas Department of Criminal Justice Institutional Division in Walker County, Texas verify and declare under penalty of perjury that the foregoing statements are true and correct.

Executed this, the 19th day of December, 2014.

George Robert Powell, III
TDCJ #1612668

George Robert Powell, III, TDCJ #1612668
Huntsville Unit
815 12th Street
Huntsville, TX 77342

Certificate of Service

I certify that a true and correct copy of Petitioner's Motion for Rehearing was mailed to:

Mr. & Mrs. Paul McWilliams,
Assistant District Attorneys
Bell County District Attorneys Office
P. O. Box 540
Belton, TX 76513

via U.S.P.S. First Class Mail.

Executed this, the 19th day of December, 2014.

George Robert Powell, III
Petitioner, pro se

George R. Powell III
#1612668
#815-12th St
Huntsville, TX 77348

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TO: Abel Acosta, Court Clerk
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