

**CLAIM FOR RELIEF NUMBER TWENTY-NINE**

**APPLICANT WAS DENIED DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV, AND HIS SENTENCE OF DEATH VIOLATED THE CRUEL AND UNUSUAL PUNISHMENT PROVISIONS OF U.S. CONST. AMEND VIII, BY THE STATE COURT ALLOWING HIM TO BE SENTENCED TO DEATH WHEN THE EVIDENCE WAS FACTUALLY INSUFFICIENT TO SUPPORT HIS CONVICTION FOR CAPITAL MURDER WHERE THE STATE FAILED TO PROVE THAT APPLICANT HAD ATTEMPTED TO COMMIT OR HAD COMMITTED SEXUAL ASSAULT OF THE COMPLAINANT, AS ALLEGED IN THE INDICTMENT.**

**CLAIM FOR RELIEF NUMBER THIRTY**

**APPLICANT WAS DENIED DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV, AND HIS SENTENCE OF DEATH VIOLATED THE CRUEL AND UNUSUAL PUNISHMENT PROVISIONS OF U.S. CONST. AMEND VIII, BY THE STATE COURT ALLOWING HIM TO BE SENTENCED TO DEATH WHEN THE EVIDENCE WAS FACTUALLY INSUFFICIENT TO SUPPORT HIS CONVICTION FOR CAPITAL MURDER WHERE THE STATE FAILED TO PROVE THAT APPLICANT HAD INTENDED TO CAUSE THE DEATH OF THE COMPLAINANT AND CAUSED THE DEATH OF THE**

**COMPLAINANT BY STABBING THE COMPLAINANT WITH A KNIFE, AS ALLEGED IN THE INDICTMENT.**

**CLAIM FOR RELIEF NUMBER THIRTY-ONE**

**APPLICANT WAS DENIED DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV, AND HIS SENTENCE OF DEATH VIOLATED THE CRUEL AND UNUSUAL PUNISHMENT PROVISIONS OF U.S. CONST. AMEND VIII, BY THE STATE COURT ALLOWING HIM TO BE SENTENCED TO DEATH WHEN THE EVIDENCE WAS FACTUALLY INSUFFICIENT TO SUPPORT HIS CONVICTION FOR CAPITAL MURDER WHERE THE STATE FAILED TO PROVE THAT THE COMPLAINANT WAS KILLED BY APPLICANT DURING THE COURSE OF A SEXUAL ASSAULT OR ATTEMPTED SEXUAL ASSAULT, AS ALLEGED IN THE INDICTMENT.**

Applicant asserts that the evidence was factually insufficient to support the jury's verdict where the evidence was clearly so weak, unsupported, and unreliable, as to undermine confidence in the jury's determination. Applicant asserts that the evidence was factually insufficient to support the jury's verdict because the evidence that Applicant had committed or had attempted to commit aggravated sexual assault of the complainant, or that Applicant had caused the death of the complainant, or that Applicant had caused the death of the complainant during the course of committing or attempting to commit aggravated sexual

assault of the complainant was greatly outweighed by contrary proof. Applicant presents these issues separately to avoid any question of multifariousness. TEX. R. APP. 38.1(e). Accordingly, Applicant prays that the judgment and sentence be reversed and the cause remanded. TEX. CODE CRIM. PROC. ANN. art. 44.29(a).

## FACTUAL SUFFICIENCY

### A. Standard of Review

Evidence is factually insufficient if, viewing all of the evidence in a neutral light, "the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof." **Johnson v. State**, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). In determining the factual sufficiency of the elements of an offense, the reviewing court "views all the evidence without the prism of 'in the light most favorable to the verdict,' [i.e. views the evidence in a neutral light,] and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." **Clewis v. State**, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996) (cited in **Johnson v. State**, supra, 23 S.W.3d at 6-7)).

In a factual sufficiency review, the appellate court reviews the evidence weighed by the jury that tends to prove the existence of the elemental fact in dispute and compares it with the evidence that tends to disprove that fact. **Jones v. State**, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996), cert. denied, 522 U.S. 832, 118 S.Ct. 100, 139 L.Ed.2d 54 (1997). As stated: "[i]n conducting its factual sufficiency review, an appellate court reviews the fact