

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MONCLAIRE SAINT LOUIS — PETITIONER

vs.

UNITED STATES OF AMERICA— RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Nader Hasan
Law Offices of Nader Hasan, P.C.
10603 Judicial Dr.
Fairfax, Virginia 22030
Phone: (703) 865-5590
Fax: (703) 865-5597
Email: nhasan@naderhasan.com
Counsel for Petitioner Monclair Saint Louis

QUESTION PRESENTED

1. Whether witness testimony, on more than one occasion, reveals that a rape was committed during a kidnapping, by someone other than the defendant, create a prejudice that is too significant to overcome with any curative instruction to the jury?

LIST OF PARTIES

In addition to the parties listed in the caption of the case on the cover page, Ulriste Tulin, was a defendant in the district court and also an appellant in the court of appeals.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDINGS.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED...	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE WRIT.....	3
CONCLUSION.....	4

INDEX OF APPENDICES

APPENDIX A.	Opinion of the United States Court of Appeals for the Fourth Circuit, <i>United States v. Saint Louis</i> , 889 F.3d 145 (4 th Circuit 2018).
APPENDIX B	Final Judgment of the United States District Court for the Eastern District of Virginia.

TABLE OF AUTHORITIES CITED

Cases

United States v. Barnes
747 F.2d 246, 250 (4th Cir.1984)

United States v. Greene
834 F.2d 86, 88 (4th Cir.1987)

U.S. v. Lentz
383 F.3d 191 (4th Cir. 2004)

Constitutional Provisions

The Due Process Clause of the Fifth Amendment –

“ No person shall...be deprived of life, liberty, or property, without due process of law.”

PETITION FOR WRIT OF CERTIORARI

Petitioner Monclair Saint Louis respectfully petitions for a writ of certiorari review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the petitioner's conviction appears at Appendix A and is report at *United States v. Saint Louis*, 889 F.3d 145 (4th Circuit 2018)..

JURISDICTION

The United States Court of Appeals for the Fourth Circuit issued its opinion on May 2, 2018. App. A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Due Process Clause of the Fifth Amendment to the United States Constitution provides, in pertinent part: "No person shall...be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

STATEMENT OF THE CASE

The Petitioner, Monclaire Saint Louis, was convicted of conspiracy to commit hostage taking (18 U.S.C. § 1203), two substantive counts of hostage taking and aiding and abetting hostage taking (18 U.S.C. § 1203, 2), and using a firearm during a crime of violence (18 U.S.C. § 924).

The evidence at trial provided that, in June of 2012 a group of men kidnapped Yvroseline Fergile from the front of a residence in Carrefour, Haiti. Six days later, Ms. Fergile escaped her captors. After learning of the escape, the Haitian authorities went to the site of the kidnapping to investigate. While there, the agents collected several items, including a poster of a Haitian rap group, of which Mr. Saint Louis is a member.

Later that summer, a second U.S. citizen, Ariante Marcelin, was abducted from her home at gunpoint by a group of men. One of the men assaulted and raped Marcelin's niece, who was the home that at the time of the kidnapping. One of the captors, Samson Jolibois was apprehended and implicated Mr. Saint Louis in the kidnappings.

The government agreed that Mr. Saint Louis was not the perpetrator of the rape. A pretrial motion requesting that testimony of any rape be precluded from trial as it would be highly prejudicial to Mr. Saint Louis. The district court agreed and precluded the government from mentioning "rape" in its case,

Notwithstanding the court's order, the testimony about the victim's nieces being raped during one of the kidnappings (by someone other than the Petitioner) came out at trial. Although the judge provided a curative instruction, the same witness provided testimony that again mentioned the rape by stating that "he was pulling his pants up." Although the judge provided a curative instruction, the amount of prejudice on the Petitioner was too great to overcome with a any instruction to the jury.

REASONS FOR GRANTING THE PETITION

REVIEW IS WARRANTED BECAUSE WITNESS TESTIMONY ABOUT A RAPE ON MORE THAN ONE OCCASSIONOF CREATED UNDUE PREJUDICE AGAINST THE PETITIONER THAT COULD NOT BE OVERCOME WITH A CURATIVE INSTRUCTION TO THE JURY

Review of this case is warranted because of the need for this Court to clarify whether a curative instruction is sufficient to remove the prejudice created by testimony of a rape committed by someone other than the accused, on two occasions, that was specifically precluded from trial. Such testimony would be, in the district court's own words, "highly prejudicial"; therefore, the court precluded testimony that would "identify the sexual nature of the assault."

Notwithstanding this ruling, the government's witness, Mr. Jolibois, gave testimony that violated the ruling. Mr. Jolibois first stated that one of the kidnappers "raped" Ms. Marcelin's niece. The government and the Court attempted to address the matter with a curative instruction, however, Mr. Jolibois mentioned the rape a second time when he stated that the after the assault the perpetrator was "pulling up his pants." At this point, there was not a curative instruction that could properly address the prejudice created by the testimony.

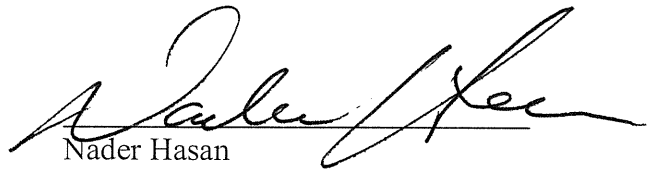
Mr. Saint Louis submits that this series of events warrants a review of this case. "[I]f prejudicial evidence that was not introduced at trial comes before the jury, the defendant is entitled to a new trial." *United States v. Barnes*, 747 F.2d 246, 250 (4th Cir.1984). "[T]here is a presumption of prejudice where such improper evidence has been made available to the jury, and the burden is on the government to prove that it is harmless." *Id.* at 250-51. It is not necessary that the defendant prove that the prejudicial evidence was intentionally placed before the jury to obtain a new trial; accidental or inadvertent submission of the materials will suffice. *See United States v. Greene*, 834 F.2d 86, 88 (4th Cir.1987); *U.S. v. Lentz*, 383 F.3d 191 (4th Cir. 2004).

Petitioner respectfully submits that review by this Court is warranted.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Nader Hasan', written over a horizontal line.

Nader Hasan
Law Offices of Nader Hasan, P.C.
10603 Judicial Dr.
Fairfax, Virginia 22030
Phone: (703) 865-5590
Fax: (703) 865-5597
Email: nhasan@naderhasan.com
Counsel for Petitioner Monclair Saint Louis

Date: July 31, 2018