No.: 18-7424

ORIGINAL

In The
Supreme Court of the United States
_____ Term, 2017

WILLIAM FELIX VAIL — Appellant

vs.

STATE OF LOUISIANA — Appellee(s)

On Petition for a Writ of Certiorari to

LOUISIANA SUPREME COURT

William Felix Vail #714762
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Angola, LA 70712

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QUESTION(S) PRESENTED

1. Did the State offer sufficient evidence to prove guilt beyond a reasonable doubt?
2. Should the State have been allowed to offer evidence via the Doctrine of Chances when it had no physical proof of death and had to rely on civil presumptions?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Appellant respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix "D" to the petition and is the Louisiana Supreme Court in Docket Number 2018-K-0202.

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Third Circuit Court of Appeals appears at Appendix "B" to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was December 28, 2017
A copy of that decision appears at Appendix "D".

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This conviction was obtained in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution; and; ***Ex Parte Bain***, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed.2d 849 (March 28, 1887). Specifically, Mr. Vail was tried on an Indictment which the Court had Granted a Motion to Amend to a lesser charge; then Re-Stated the Indictment without presentation to the Grand Jury for the greater charge.

NOTICE OF PRO-SE FILING

Mr. Vail requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); Mr. Vail is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

REASONS FOR GRANTING THE PETITION

In accordance with this Court's *Rule X (c)*, Mr. Vail presents for his reasons for granting this writ application that:

> (c) A State Court or a United States Court of Appeal has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

This case offers the Court a *sue generis*, unresolved issue of law to consider: whether in a criminal case for murder, the State can wrap a *Civil Code* legal **presumption** of death inside a *probability of death* and offer it as other crimes evidence. The State Court's rulings allowing the State to offer "other bad acts evidence" under a rarely used "Doctrine of Chances," is the first time where a court has permitted evidence of another bad act, when the prior bad act was not indisputably proved to have occurred. Every other published case researched, in Louisiana or nationally, permitting the use of the Doctrine of Chances, has involved a prior act(s) that was either conceded by defendant to have occurred, or where direct evidence existed to prove its occurrence, independent of the defendant's confession.

The Louisiana Third Circuit Court of Appeal does not explain how each statement would amount to a confession, individually or together (See: pp. 60-1). The Court did not analysis or application of case law showing each statement proved guilt for all elements of the crime. Nor did the Court address how "taken together" the statements proved each element of the crime – such as a statement 1 addressing element, and statement 2 addressing element.

The only citation by the Court for support of the finding that combining these admissions could constitute a confessing is ***State v. Richardson***, 16-0107 (La. App. 3rd Cir. 12/28/16), 210 So.3d 340, p. 34. ***Richardson*** is a curious citation for support because the majority opinion in that case ***expressly refused to decide*** whether the statements were admissions or confessions. See: 201 So.3d at 358. The Court stated, "we concluded that ***whether or not*** the defendant's statement constitutes an admission, a confession, or a combination of both, there was sufficient evidence ..." to convict. *Id.* (***emphasis added***). Thus, although the Court discussed the difference between admissions and confessions, the majority opinion refused to state whether the statements by Mr. Richardson were confessions. See also: 201 So.3d at 362 (Cooks, J. dissent)(Majority fails to determine whether evidence is direct or circumstantial). The majority also did not state anywhere that similar admissions, made multiple times, can be "taken together" to add up to a confession.

In ***State v. Jones***, 451 So.2d 35, 40 (La. App. 2nd Cir. 1984), the Louisiana Second Circuit Court of Appeal held a defendant's statement "that he had shot the person twice with a pistol which he had thrown in a river" was not a confession, but rather an admission and, thus, "circumstantial evidence of the crime charged." The defendant in ***Jones*** was on trial for Second Degree Murder, which required a showing of specific intent. The Court found the statement "did not involve intent, they merely stated facts which tended to establish guilt." *Id.* The statement lacked important intent-related information, like the purpose of the shooting. *Id.*

Likewise, in ***State v. Booth***, 532 So.2d 203, 206 (La. App. 3rd Cir. 1988), the Louisiana Third Circuit Court of Appeal held a defendant's statements were not confessions, but rather admissions in a Second Degree Murder case. After telling police several versions of what happened, the defendant finally admitted to breaking into the victim's home to steal items, but stated that while in the house, the victim armed himself with a knife and tried to attack him with it, when she accidentally stabbed herself. *Id* at 205. The defendant even admitted to trying to destroy evidence by burning the victim's house down, with her in it, the next day. *Id* at 205-5. The Court found the "statements were incriminating, but were not confessions" to the crime charged of murder, which required proof of intent. *Id* at 2016.

Here, like in ***Jones*** and ***Booth***, statements by Mr. Vail that he killed his wife are not confessions because the statements do not address the issue of specific intent. Killing another human being is not the only element required to prove the crime of murder in 1962. Therefore, Mr. Vail's statements were admissions at best and should have been considered circumstantial evidence. Furthermore, Mr. Fremont and Mr. Biedebach were the only two who specifically said Mr. Vail used the word "kill," and neither one of them interpreted that statement as Mr. Vail meaning he intentionally killed his wife. Both men interpreted Mr. Vail's statement as his regret for not being able to more to save her.

Additionally, while Mr. Turnage expressed greater suspicion about what Mr. Vail allegedly told him, the statement that Mr. Vail "fixed" his wife is much more ambiguous than "killed" and was clearly in the context of talking about having more kids (p. *33)(I didn't want the youngin' I got, and I didn't want another one, and fixed that damned bitch. She won't never have another kid"). Saying his "fixed" Mary so she would not have any more kids is not a clear statement of guilt of the specific intent murder of Mary. In order for the jury to conclude "fixed" meant "to murder," it necessarily requires an inference to make that leap.

The use of the phrase "fixed" could have meant other things than to kill with specific intent. For

example, since the statement is in the context of talking about kids, "fixed" could mean that Mr. Vail had his wife get a tubal litigation. It does not matter if the statement was true or not. It only matters that "fixed" in the context of the statement is subject to multiple interpretations and only by making certain inferences can one be know if he meant "murder."

Moreover, the fact that Mr. Turnage believed "fixed" to mean "murder" - kill with specific intent – does not make the statement direct evidence or a confession. The impact of the statement on Mr. Turnage is subjective. Instead this evidence would go to the weight of Mr. Turnage's testimony and his credibility – not sufficiency.

This Court should grant Mr. Vail's Writs to review the State Courts' decision on this issue. Because of the weak circumstantial case woven by the State in this case, if these statements had been viewed in their proper context as circumstantial evidence instead of direct evidence, the State would not have proven its case beyond a reasonable doubt. Therefore, this Court should grant Writs, reverse the State Courts' ruling on finding direct evidence in this case and remand to the Louisiana Third Circuit Court of Appeal for a new analysis. Alternately, if the Court finds the Record is sufficient to rule once these statements are properly considered as circumstantial evidence, then the Court should evaluate the evidence itself and acquit Mr. Vail on insufficient evidence grounds.

Here the State presented circumstantial evidence and testimony regarding the disappearance of two women Mr. Vail knew decades after the death of this wife in this case. To this day, ***there is no direct proof*** that either woman is ***dead***, nor that Mr. Vail had anything to do with their deaths. The State was permitted to use presumption of death in Louisiana's Civil Code to meet its burden in the pre-trial hearing and later to "prove" to the jury the women were dead. The State claimed they disappeared, or were absent, for more than five years under circumstances such that death seemed certain. LSA-C.C.Arts. 30, 54.

Recently, the Louisiana Supreme Court declared that the burden of proof to offer 404(b) evidence of other bad acts is by preponderance of the evidence. At its core, a burden of proof is a matter of probability – how much evidence is necessary in order for the fact finder to be satisfied something occurred. The issue here is not necessarily with the use of probabilities *in general*, rather it is the State's use of civil presumptions to establish a prior, extrinsic act occurred and the misuse of the Doctrine of Chances to prove the defendant caused the act to occur.

Letting the State Courts' rulings stand, will lead down a dangerous slippery slope where 404(b) evidence will be allowed in criminal cases – where constitutional protections exists – based on civil presumptions, instead of actual evidence of the existence of the fact being offered. This Honorable Court should accept this case and review the State Court's rulings.

Additionally, the Court should accept this Application for Writs of Certiorari to review the State Courts' sufficiency determination. Most importantly, is the misinterpretation of law regarding confessions and admissions. The appellate court held three "admissions by the defendant, *taken together*, are confessions and therefore are direct evidence that he committed the offense" (Rec.p. 34) (*emphasis added*). This is an erroneous interpretation of law because admissions – which are circumstantial evidence where an inference of guilty *can* be drawn – cannot be added "together" to result in a confession – which is direct evidence.

Furthermore, each admission in isolation does not amount to a confession because none of them were acknowledgments of guilt *of the crime charged*, from which no inference needed to be drawn. See: **McCormick on Evidence, § 185 (2d Ed. 1972)**. The State Courts' rulings should be reversed on this issue and either remanded for reconsideration or this Honorable Court should find the wholly circumstantial case in this matter to be insufficient proof beyond a reasonable doubt.

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a

Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

STATEMENT OF THE PROCEEDINGS

In 1962, Mr. William Felix Vail, known as "Felix" was arrested for the suspicious drowning death of his wife, Mary Horton Vail. Despite the evidence that existed at the time – all of which had been lost, a Grand Jury failed to indict Mr. Vail of the murder. Nevertheless, in 2016, Mr. Vail was found guilty of the 1962 murder of his wife. He was sentenced to life imprisonment at hard labor without the benefit of Probation, Parole, or Suspension of Sentence.

Considering that more than fifty (50) years that passed between the alleged crime and the prosecution, there were numerous evidentiary issues that arose. The trial court made may rulings both in favor and against Mr. Vail, to which there were timely objections.

One specific issue litigated pre-trial, was the State's attempt to offer evidence that Mr. Vail may have caused the "disappearance" of a subsequent girlfriend in the 1970's, Sharon Hensley, and a subsequent wife in the 1980's, Annette Craver Vail.

No evidence existed to indicate to indicate the women died and/or died as a result of anything that Mr. Vail did. Nevertheless, the State offered a theory that there was sufficient circumstantial evidence to show that Mr. Vail's actions in this case must have been intentional because of the suspicious disappearances of the other women.

The State sought to use presumptions of deaths to prove the probability of similar of results. The defense objected to the use of the Doctrine of Chances, which the trial court allowed, deeming the evidence admissible. Supervisory Writs were taken on this Louisiana Third Circuit Court of Appeal, which likewise deemed the evidence admissible. ***State v. Vail***, 14-0436 (La. App. 3rd Cir. 11/5/14); 150

So.3d 576. The Louisiana Supreme Court subsequently denied Mr. Vail's Writ Application in *State v. Vail*, 14-2553 (La. 9/28/15); 176 So.3d 401.

The trial court also made other pre-trial evidentiary rulings that were objected to, including the allowance of deposition testimony in lieu of live testimony for witnesses whom were still alive at the time of trial, and admission of evidence taken from Mr. Vail's home by a private investigator. The trial court sentenced Mr. Vail to life imprisonment over the defense's objections that "murder" in 1962 had only one sentence: Death (Rec.p. 2939). Life sentences were not permitted under that version of the statute. The court denied a post-trial Motion for a New Trial (Rec.pp. 2936-37). An appeal was timely filed as well on August 1, 2017 on behalf of Mr. Vail by the Louisiana Appellate Project.

On December 28, 2017, the Louisiana Third Circuit Court of Appeal affirmed Mr. Vail's conviction and sentence with written reasons. Mr. Vail then timely filed for Writs of Certiorari to the Louisiana Supreme Court on January 29, 2018. The Louisiana Supreme Court affirmed Mr. Vail's conviction and sentence on November 20, 2018.. Mr. Vail now timely files Writs to this Honorable Court humbly requesting that this Court grant him relief for the following reasons to wit:

STATEMENT OF THE FACTS

Normally, it is cliché to say that a defendant in a high-profile case was convicted in the press before a jury of their peers had an opportunity to hear the case. For William Felix Vail, it is no cliché. After fifty plus years, the State re-opened this case after a journalist published several articles and a book, "Gone," about whispers and speculation surrounding this case (Rec.p. 2824)(State admitting journalist were "instrumental in obtaining evidence and garnering interests" in the case). But, also see (Rec.p. 2824, where the State also admitted that the press got things wrong in its reporting of this case).

The State worked closely with this reporter, freely exchanging information back and forth about a pending investigation. The State even utilized evidence gained by a private investigator working with

the reporter; the evidence was taken from Mr. Vail under false pretenses. Ultimately, the reporter's story and efforts to get the case re-opened became a self-fulfilling prophecy.

The "new information" about the case was not based on new analysis of the original information, rather it was based on events that took place decades after Mary Horton Vail's death and completely unrelated to it. No new forensic testing was conducted on the existing evidence. Nearly all the original evidence, which was insufficient to establish probable cause, was missing or destroyed due to the fifty-year gap in death and prosecution; all but assuring any exculpatory evidence was not available.

Nevertheless, the State found two forensic pathologists willing to determine a cause of death and manner of death, after looking at little more than two, grainy, black and white photos.

The State sought to weave a story based on unconnected incidents and statements taken out of context spanning fifty-years of a man's life. The State alleged Mr. Vail killed two subsequent women, a girlfriend and a wife, despite no evidence either was dead or Mr. Vail caused their deaths. The two women, like Mr. Vail, lived unconventional lives. They traveled nomadically, lived sparsely, and experimented sexually.[1]

LAW AND ARGUMENT

ISSUE NO. 1

The State failed to offer sufficient evidence to prove beyond a reasonable doubt that William Felix Vail was guilty of murdering his wife, over fifty years ago. The Louisiana Third Circuit Court of Appeal also erred in its analysis by finding statements attributed to Mr. Vail were confessions, and thus direct evidence, when in fact they were circumstantial evidence.

Few men have sat before a jury of their peers and been tried in a manner as fundamentally unfair as Mr. William Felix Vail. It would be impossible to determine if the State has offered less direct, contemporaneous, non-speculative testimony as in this case. ***Still living*** State witnesses claimed to be

1 Sharon Hensley lived with Mr. Vail on the sides of river banks and in agricultural fields; she also had sex with an underage boy, who testified to this fact in deposition (Rec.pp. 2699-2701). Annette Craver Vail had traveled throughout Central America with Mr. Vail and other men; they often camped while traveling, and she voluntarily bequeathed her home to Mr. Vail months before she "disappeared" (Rec.pp. 1737, 4836).

unavailable on the date of trial to testify, but came to Louisiana a few weeks before trial to give deposition testimony. A forensic pathologist with nothing more than two 50-year old, black and white photos, testified a homicide occurred.

When a private investigator – who was working for the reporter working with the prosecution, intentionally lied to Mr. Vail to search his house for evidence, the evidence was deemed admissible. And most egregiously, when the State offered evidence of prior bad acts, it not only had to rely on mathematical statistics to establish the prior bad acts "probably" occurred, but it also had to rely on the Civil Code to get a presumption the bad acts "legally" occurred.

The evidence introduced at the trial of this case, when viewed under the ***Jackson v. Virginia***, 443 U.S. 307 (1979) standard, was insufficient to prove beyond a reasonable doubt that Mr. Vail committed the murder of his wife, Mary Horton Vail.

The Fifth Amendment to the United States Constitution provides that no person shall be "deprived of life, liberty, or property without Due Process of Law." The Fourteenth Amendment imposes the same Due Process requirements on the state. An accused is entitled to appellate review of the evidence to the extent that it supports a finding of guilt beyond a reasonable doubt. ***Jackson***, 443 U.S. 307.

"The rule as to circumstantial evidence is: assuming every fact to be proved that the evidence tends to prove, in order to convict, it ***must*** exclude every reasonable hypothesis of innocence." LSA-R.S. 15:438; see also, (Rec.p. 2930). In cases of circumstantial evidence, the ***Jackson*** standard means that when a jury "reasonably rejects the hypothesis of innocence presented by the [defense], that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt." ***State v. Captville***, 448 So.2d 676, 680 (La. 1984). Nevertheless, the ***Jackson*** standard does not permit jurors "to speculate if the evidence is such that reasonable jurors may must have a reasonable doubt." ***State v. Mussall***, 523 So.2d 1305, 1311 (La. 1988).

Mr. Vail requests that this Honorable Court for a review of the sufficiency of the evidence in this case because the State failed to prove beyond a reasonable doubt that he committed murder. The prosecution had the burden of proving *each* element of the crime beyond a reasonable doubt. See: *State v. Runyan*, 916 So.2d 407, 416 (La. App. 3rd Cir. 11/2/06).

The circumstantial evidence in was insufficient in this case to prove Mr. Vail intentionally caused the death of Mary Horton Vail. The State simply failed to exclude every reasonable hypothesis of innocence, such as an accident. The conviction must be reversed and set aside and an acquittal entered of record.

Mr. Vail would like this Honorable Court to take judicial notice that he has been unable to obtain a copy of the Record during the course of his Appeal. As Mr. Vail is a layman of the Law and unfamiliar with the proper pleadings of such, he not properly informed that the Appeal process would be the proper time to request such.

A. Conviction by Supposition: Forensic Evidence Testimony:

In 1962, hours after Mary Horton Vail's body was found, an autopsy was performed by a pathologist. All the physical evidence from the autopsy had been lost. Dr. Cook's autopsy report is all that remained. He was the *only* doctor to examine the body.

The Coroner's Death Certificate indicated the death was an accidental drowning, based on the autopsy findings. There was no indication of her death being the result of intentional wrongdoing by anyone, including Mr. Vail. The pathologist who conducted the autopsy took notes consistent with most forensic autopsies, noting: the visibility of physical evidence on the body, damage to the body, observations of internal organs, etc. (Rec.pp. 2397-2400).

Nearly fifty years later, the current Coroner of Calcasieu Parish, Dr. Terry Welke, claimed he was able to determine a homicide occurred in this case. Not by reexamining Mary's body for physical

evidence. Not even reading Dr. Cook's autopsy report and taking issue with Dr. Cook's findings because of new knowledge in the field of Forensic Pathology.[2]

Instead, Dr. Welke claimed to have looked at the fifty-year-old, grainy, black and white pictures of Mary's body and instantaneously was able to make a *scientific* determination that the cause of her death was a homicide, not an accidental drowning. In Dr. Welke's supposition, he was uncertain how Mary died, but believed she died as the result of another person taking her life: homicide.

Dr. Welke testified that his conclusions were quite elementary, considering *his* interpretation of the photos. Mainly, Dr. Welke focused on two things: the position of Mary's hands/arms and the faint discoloration that appears to be on Mary's shirt in the old photo. Mary's hands, which appear to be slightly suspended above her stomach at the moment the photo was taken, was proof to Dr. Welke that rigor mortis was still set in throughout Mary's body.

Since Mary was "stiff" in Dr. Welke's impression of the photo and her hands were not in a typical position for a drowning victim, then the black markings on her shirt seemed suspicious. He deduced that something dirty had been wrapped around her while her arms were in a similar position seen in the photo. Dr. Welke sent an investigator to speak with Ike Abshire, who was a nonagenarian at the time (Rec.p. 2505; Sup.Rec.p. 12). Mr. Abshire claimed to remember Mary's arms were stiff and in the bended position they are shown in the photos.

Dr. Welke conducted an experiment using his wife to show that Mary could have had something placed over the front of her body that made the markings consistent with the discoloration on her shirt in the pictures (Rec.pp. 4499-4500). Since the markings are arguably consistent with his experiment and she was not in the typical "drowning pose," he guessed that she died before being placed in the water.

The problem with Dr. Welke's theory is that there was no foreign object that could have been used

2 In fact, Dr. Welke admitted he ignored the conclusions of the autopsy report in this case, claiming it meant "diddly to [him]" (Rec.pp. 2634, 3392, 4565).

to wrap around Mary found on, at, or near her body. If she was killed before going into the water, and was wrapped up, the only way her limbs would have remained in the same position at the time she was recovered 48-72 hours later, is if rigor mortis had set in ***before*** the foreign object was removed. If, as the State speculated, she had been killed, wrapped in a blanket, driven out to the lake to be dropped off, and had the blanket removed, rigor would have not had time to set in (Rec.p. 1401).

Science shows it takes 2 hours for rigor mortis to start, and between 16-20 hours to fully set; typically, a body will "lysed" after 24-36 hours – meaning the muscle start to relax (Rec.pp. 4875-76). Her lifeless body would have moved with the current of the water, even if she was not found in the downward facing drowning pose.[3]

Because the markings were consistent with her hand placement in the photos, the markings either had to be placed there ***while*** rigor was set in, ***or*** she was not in rigor at the time of her photo and her hands were inadvertently returned to that position. In such a case, the markings could have resulted from numerous non-suspicious manners while fishing at night.

Ultimately, the status of rigor is what Dr. Welke's opinion hinges on. He based it on the memory of a ninety-year-old man, after fifty years had passed, and a "moment in time" photo. The official date of death was Sunday, October 27, 1962 (Rec.p. 4944). She was recovered on Tuesday, October 30, 1962. That is at least three full days; more than 72 hours.

As the defense's expert Forensic Pathologist, Dr. James Taylor testified, on the bell-curve time-line for rigor setting in and decomposition beginning – which releases the body from rigor gradually – 76 hours would have meant, scientifically, that Ike Abshire's memory was wrong if he said she was

3 Scientifically, we know that if Ike Abshire is correct and Mary was recovered "laying on her side or kinda on her back ... kinda up" (Supp.Rec.p. 24), she had to have flipped sides ***after*** death. The autopsy report indicates that "lividity is present over the anterior surface of the body, particularly the abdomen and chest" (Rec.p. 2398). This means, after death, Mary was facing ***downward*** when lividity set in (Rec.pp. 4901, 4926, 4959). Lividity is when your blood pools on the side of the body closest to the center of the earth because of gravity, ***Id.***; it takes place soon after death, but is readily visible within 12-15 hours after death (Rec.pp. 4881-2).

unmovably stiff (Rec.pp. 4878, 4946). If Mary's body was not in full rigor, and thus her arms could have been moved around, that impacts whether Mary's hands were, in fact, *always* folded over, or if they could have been in a "drowning pose" prior to her recovery.

The State attempted to change the time-line of Mary's death at trial. Again, the official Death Certificate, based on information from the autopsy and contemporaneous witnesses in 1962, was the Mary died sometime on Saturday night (Rec.p. 4944). Ike Abshire testified that he received a call notifying him of Mary's drowning on Sunday night (Supp.Rec.p. 20). Mr. Abshire's testimony did not say that he learned on Sunday night that Mary drowned on Sunday.

Further, Mary's brother, Will Horton, testified that for fifty years he has believed the Death Certificate time-line was correct (Rec.p. 4659)("I remember the exact day being a Saturday night, and we learned Sunday morning [of Mary's death]"). However, he testified that his aunt, also a ninety-year-old woman, recently told him it was Monday they found out about the death, not Sunday. *Id.* Mr. Horton's aunt *never testified*, and Mr. Horton claimed to not personally remember, but always thought it was Saturday (Rec.p. 4463).

When Dr. Welke was not able to determine the *manner* of death, the State had to turn to another Forensic Pathologist who was willing to fly in to offer an opinion. Dr. Michael Baden testified that in his opinion, the manner of death was a homicide by "traumatic asphyxia" (Rec.pp. 5037-8). Like Dr. Welke, Dr. Baden did no physical examination of Mary's body, clothing, or other evidence in this case. The only thing he relied on was the old photos and autopsy report. Dr. Welke did a rudimentary experiment to confirm a hypothesis he had about the case. Dr. Baden did nothing.

Dr. Baden claimed that by looking with a "magnifying glass" at the two old photos, there "appear[ed] to be a little furrow that's around the neck. Meaning the ligature was very tight (Rec.pp. 5040, 5045, 5050). Dr. Cook's autopsy report made clear that there no ligature marks on Mary's neck,

and found that her scarf was "doubled around the neck, ***loosely***, with a single loop. A portion of one end of the scarf extends into the mouth (for 4 inches). This is ***loosely***[4] lying within the oral cavity" (Rec.p. 2398)(***emphasis added***).

He went on to report the "skin underlying the previous described scarf reveals no marks, excoriation, scratches, nor other changes." *Id.* Thus, the doctor performing the autopsy shortly after the pictures were taken, had the opportunity to personally view the scarf, its tightness, and the neck below the scarf.[5]

Dr. Cook found nothing remarkable about the scarf or neck to conclude that foul play was involved. Conveniently, Dr. Baden's chosen manner of death does not always offer physical evidence of its occurrence (Rec.p. 5041). In other words, Dr. Baden's opinion that Mary was essentially strangled by the scarf could be true, even though there is no physical evidence or way to prove it.[6] *Id.*

Most cold cases are re-opened because of "new forensic evidence" or changes in new technology or new scientific knowledge that allow investigators to establish facts previously unavailable. In this case, there was no "new" method of testing that was previously impossible to conduct. Pathology observations were conducted in this case and reported in a manner consistent with modern practices.

Dr. Cook reviewed the available evidence at the time – which was vastly more than was available to Dr. Welke and Dr. Baden in this case – and he concluded that there was no evidence of foul play. The scientific evidence presented in this case was speculative and required changing time-lines of Mary's death based on witnesses who never testified. The State cannot be said to have met its burden of proof proving either manner of cause of death in this case. The State's evidence in isolation and in whole was

4 Claims that the scarf was "pushed" in is a mics-characterization (See: Rec.pp. 5037, 5080).

5 Dr. Baden claimed that the photo was essentially better evidence than the autopsy in determining the tightness of the scarf. This assumes that Dr. Cook did not have access to other photos; the photos in evidence are only two the police gave to Ike Abshire for some reason.

6 Petechiae was also ***not*** found on Mary, which is typically present any time there is a strangulation. Thus, not only did the "murderer" get lucky and not leave marks around Mary's neck, but he also lucked up and did not leave other physical indicators of the strangulation (Rec.p. 5071).

insufficient.

B. Conviction by Speculation: Random Allegations:

It is ironic the State began its Closing Arguments by saying that "nothing occurs in a vacuum" because nearly all of the State's arguments were speculation about evidence in isolation and without context (Rec.p. 5099). The speculative arguments by the State, even when viewed with the other arguments about the forensics and other "bad acts," were insufficient to prove Mr. Vail's guilt beyond a reasonable doubt.

The State speculated why Mr. Vail would kills his wife Mary based on alleged statements that Mr. Vail did not want his newborn son or more kids (Supp.Rec.p. 18). While there is nothing in the record to indicate whether Mr. Vail had other children, it was clear that his son, Bill, continued to live with Mr. Vail off and on for a long time. He did not put Bill up for adoption or immediately send him to live with family. While there was evidence that Bill lived with his paternal grandparents for a time, it was only after the incident in California where Bill called the police and said he did not want to live live like a vagabond any longer (Rec.p. 1943). Mr. Vail continued to care for Bill after Mary's death. If his motivation for killing Mary was to unburden himself of fatherhood, his actions is 1962 clearly did not accomplish that goal.

The State also speculated about a life insurance policy Mr. Vail took out on Mary. Again, the State argued there were nefarious reasons for Mr. Vail to take the policy out (Rec.p. 4435). However, evidence showed he took the policy out on Mary at or directly before the time of Bill's birth (Rec.p. 4447). They were a young married couple, having their first child. The birth of their first child is the exact time most couples would start thinking about financial planning in case of a death of one of the parents. Thus, although the policy was taken out a few months before Mary died, that was only because she died several months after Bill's birth.

The State offered the Deposition testimony of two men from California that alleged to have known Mr. Vail years after 1962. They claimed ***at the time*** he made the statements about Mary's death, ***they did not believe he was confessing*** or making expressions of guilt it was only after they were told of the reporter's story of all three women, that they "re-evaluated" the statements (Rec.p. 2697)("I didn't knew whether to believe him or not") and, (Rec.pp. 2722-29)(Thought Mr. Vail felt guilt for not ***saving*** Mary when he said, "I killed my wife").

The State also sought to make great significance of other random, innocuous evidence, none of which amounted to evidence of guilt in this case, including: whether Sharon Hensley met and sailed off with just one man or a couple (Rec.p. 5111); Annette Craver Vail leaving birth control behind even though it was not prescribed to be uses 1 to 2 months after Mr. Vail last saw her[7] (Rec.pp. 4974-76), Mr. Vail still having a "passport" photo of Annette in his belongings when it was never established that the photo was ***the photo*** on Annette's passport and not a duplicate (Rec.p. 5117), Mr. Vail's story over a period of a decade was not word-for-word the same to police about Annette leaving him,[8] (Rec.p. 4858), and Mr. Vail's similar "excuses" given to the mothers of Sharon and Annette, using an admittedly caustic tone, to blame them for their daughters leaving.[9]

Although a State can meet its burden with a series of circumstantial evidence here, all the evidence when viewed together in the best light to the State, does not exclude every reasonable hypothesis of

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7 An old pack of birth control pills was later found of Annette's, which the State argued she would never take if she were in fact "promiscuous" as Mr. Vail claimed. Annette was last seen in September or October of 1983 and the pills were dated for November 1983, meaning she was not actively taking ***that*** pack at the time she left. If she decided on their trip to leave Mr. Vail, she would not have necessarily taken future medication she left home. Refilling the prescription seems an obvious solution.

8 As an example of how this is a natural occurrence for people to not remember every detail in the first telling or reveal more later, Annette's mom gave different statements about Annette's boyfriend in Mexico, Adolpho, over time (Rec.pp. 3047-8). There is no reason to believe that she was lying, rather than remembering things gradually or as different questions were asked of her.

9 Mr. Vail's other, living girlfriends and wives stated that he used the same type of language with them and towards their mothers (Rec.pp. 1913, 1941)(Believes the "ego whore" in women causes a lack of monogamy). However unconventional Mr. Vail's beliefs were about mothers and daughters, they appeared to be strongly held and sincere, not "excuses" made up in the moment to cover up wrong doing. See also (Rec.p. 2201)(Ex-wife Carolyn stating Mr. Vail told her "how my mother didn't love me").

innocence. While Mr. Vail lived an odd, nomadic lifestyle, it does not make one guilty of murder.

C. Conviction by Statistician: Doctrine of Chances:

In addition to the forensic evidence and the speculation about random events that took place over fifty years of Mr. Vail's life, the State's attempt to prove guilt by offering evidence of "other bad acts" still did not meet the necessary burden of proof. As stated below – and incorporated here by reference, the State used the Doctrine of Chances to offer evidence of other "bad acts" by Mr. Vail in order to show lack of "mistake or accident." The alleged other bad acts were that he "disappeared" two other women, 11 and 22 years after the death of Mary.

There was no actual evidence that either of the women are *dead* or that Mr. Vail had anything to do with their deaths. Nevertheless, the State sought to meet its burden of proving Mr. Vail intentionally killed Mary based on probability theory and presumptions. Never has there been a case where the basis of proving the alleged prior act was based fully on hearsay and speculation. When asked, police honestly admitted to the court that they were "guessing" that either woman was dead and "guessing" that Mr. Vail caused their deaths (Rec.p. 3041).

For purposes of this argument, assuming the State met the necessary burden of proving that the other bad act and, thus, the jury could consider the evidence, still no reasonable jury could have found Mr. Vail guilty. The events of this case took place decades before the other actions. There was no connection to either one.

It is admittedly odd that two women he once intimately knew "disappeared" and broke off contact with their families. However, that fact must be looked at from the perspective that if there were ever two women more likely to do exactly what Mr. Vail claimed they did – dropped everything for a worldly adventure into the unknown – it was Sharon Hensley and Annette Craver Vail. Both had a history of leaving home, fraught relationships with their family, and were intrepid travelers.

If the probability of their disappearances was relevant to this case and helped the State to meet its burden, then equally relevant is the fact that Mr. Vail appears to have married and dated numerous women after the loss of his first wife, all of which were still living or did not disappear under suspicious circumstances, including marrying Carolyn Young (Rec.p. 2195), Alexandra Christiansen (Rec.p. 2144), and Sharon Barnett (Rec.p. 1904).[10] Mr. Vail's approach to marriage and relationships may have been flippant, but it was not criminal. Considering all of the evidence, the State failed to prove beyond a reasonable doubt that Mr. Vail was guilty of murdering Mary Horton Vail. This Court should now reverse Mr. Vail's conviction and vacate his sentence.

ISSUE NO. 2

A presumption wrapped in a probability: The State Courts erred by allowing the State to use "The Doctrine of Chances" to offer evidence of "other bad acts" where there is no proof or direct evidence the act ever occurred or Mr. Vail was the person who committed the bad act. The use of Civil Code presumptions to establish the probability an act occurred infringed upon Mr. Vail's constitutional rights to a fair trial, Due Process of Law, and the presumption of innocence.

This case offers this Honorable Court an opportunity to address a *sue generis* issue of evidentiary law in Louisiana. If this Court finds there was sufficient evidence to convict, the evidentiary ruling in this case allowing "other bad acts" evidence to be presented regarding Mr. Vail's ***possible role*** in the disappearances – and by inference, murder – of two women he was involved with decades after Mary's death, was fundamentally unfair and has to potential to open the flood gates for prosecutorial misuse. The Court should accept this Writ application on this Issue and reverse the State Courts' rulings.

"The principal that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." ***Coffer v. United States***, 156 U.S. 432, 453 (1895). The presumption that Mr. Vail was

10 As further examples of Mr. Vail's non-conventional views on marriage: he married Sharon Barnett when she was 16-17 years old and they divorced soon thereafter, without consummating the marriage (Rec.pp. 1904-5); while living in California he went to Mexico to divorce one wife, only to marry the woman he brought with him, and then divorced her shortly thereafter, too (Rec.p. 2145).

innocent of this crime was lost at the onset of the prosecution. In order for the State to statutorily admit evidence relating to Sharon Hensley and Annette Craver Vail, the State had to rely on a doctrine, which could only be established by wrapping a presumption in a probability, and multiplying by speculation.

This Honorable Court may be unable to find any prior cases where the Doctrine of Chances or 404(b) evidence of other crimes has been used in a manner like it was in this case. No other Louisiana or national case could be found where the prior bad "act" was never indisputably proven to have occurred. Instead, in prior cases the "act" was conceded even when intent was not. The Sate in this case sought to use a presumption of death to establish the probability of foul play in order to secure a conviction.

The State failed to prove the evidence by clear and convincing evidence,[11] which at the time of the trail court's ruling on admissibility even the court seemed to agree it was lacking (Rec.p. 3089)(Court stating it felt the evidence of the prior incidents were of "great, great, questionable dispute"). The result was to deny Mr. Vail of a fundamental right to a fair trial, Due Process of Law, presumption of innocence. Fifth and Fourteenth Amendment to the United States Constitution; Louisiana Constitution of 1974, Art. I, §§ 2, 16. The defense raised objections on both 403 and 404(b) grounds. The trial court's admission of this evidence was an abuse of discretion.

It also cannot be said that the admission of the evidence relating to the "disappearance" of Sharon Hensley and Annette Craver Vail was in any way "harmless." There is no harmless way to "un-ring the bell" to the jury after they have heard unsubstantiated and unproven allegations that a defendant, who is on trial for the murder of one of his wives, was involved in the death and disappearance of two other wives. No one could expect to receive a fair trial under those circumstances.

11 The State conceded that the burden of proof for other bad acts evidence was clear and convincing evidence (Rec.p. 3083). Since the trial in this matter, the Louisiana Supreme Court has revisited the burden of proof issue for 404(b) evidence and ruled a showing of preponderance of the evidence is all that is necessary. See: ***State v. Taylor***, 217 So.3d 283 (La. 12/1/16). The change in the subsequent ***Taylor*** ruling should not be retroactively applied to this case.

A. Law of the Case:

In *State v. Humphrey*, 412 So.2d 507, 523 (La. 1981), the Louisiana Supreme Court held:

> When this court considers questions of admissibility of evidence in advance of trial by granting a pretrial application for supervisory writs (rather than deferring judgment until an appeal in the event of conviction), the **determination of admissibility does not absolutely preclude a different decision on appeal**, at which time the issues may have been more clearly framed by the evidence adduced at trial. Nevertheless, judicial efficiency demands that this court accord great deference to its pretrial decisions on admissibility, unless it is **apparent, in light of the subsequent trial record, that the determination was patently erroneous and produced an unjust result.**

State v. Brown, 12-1023, p. *28 (La. App. 3rd Cir. 4/3/13)(**emphasis added**).

"[T]he law of the case principle is applied merely as a discretionary guide: Argument is barred where there is merely doubt as to the correctness of the former ruling, but not in cases of palpable former error or so mechanically as to accomplish manifest injustice." *In re: Sewerage & Water Bd.*, 278 So.2d 81, 83 (La. 1973).

First, respectfully, the panel was wrong that the State met its burden to prove the other alleged acts by clear and convincing evidence. As discussed further below, the only evidence that was offered was by way of presumption, probabilities, and speculation. There was no direct evidence of death, or Mr. Vail's involvement.

Second, the panel wrongfully characterized these alleged incidents as having the same "result." Since there was no direct evidence of Mr. Vail's guilt to introduce for 404(b) purposes, the State attempted to use the Doctrine of Chances. Every case known to utilize the Doctrine of Chances dealt with an undisputed action that was either conceded or had independent evidence to verify the fact at issue. There is no actual evidence of death at the hands of Mr. Vail in this case. No jury would convict Mr. Vail of the murder of either Sharon Hensley or Annette Craver Vail, which is why he was never tried in those cases. Only probability statistics could be offered.

Despite basing its argument that the "results" were the same, and thus the Doctrine of Chance could

apply, the State and the courts constantly disregarded factors of the doctrine when doing so made admissibility easier. In order to get to the question of admissibility under this theory, however, one must follow the factors of the doctrine. They were not followed in this case.

Finally, "in light of the subsequent trial record," and discussed further in the next Assignment of Error, the jury was never informed of the burden of proof the State was required to establish regarding the prior "bad acts" before they could consider the evidence for purposes of mistake or accident. The Doctrine of Chances requires a jury instruction on this burden and none was provided. The failure to do so calls into question the prejudicial effect of admitting this evidence. This Court should review the Writ-panel's ruling.

B. Death by Civil Code:

The trial court erred by allowing the State to use Civil Code presumptions, never before used in any other criminal case, to establish the element of intent, when the State sought to introduce evidence regarding Sharon Hensley's and Annette Craver Vail's alleged death (Rec.p. 2930). ***Because the State had no actual proof of death, the Civil Code presumptions were the only way the State could prove a similar "result" occurred to the three women.*** The Court allowed the State to receive the benefit of civil presumption, without making it comply with the requirements to receive that presumption.

LSA-C.C. Arts. 30 and 54 allow a presumption of death when the conditions prescribed by the code articles are met. However, LSA-C.E. Art. 301 explicitly states that presumptions, which are inferences a fact finder must draw if it finds the existence of the predicate fact, "apply only to civil cases." Critical to Mr. Vail's case, LSA-C.C. Arts. 30 and 54 do not prove actual death, nearly a presumption of death. See: ***Callan v. Mutual Life Ins. Co.***, 147 So. 110 (La. App. 1933)(Plaintiff could not recover money under a life insurance policy when the policy required actual death – presumption of death was insufficient).

This presumption, as opposed to actual death, is precisely why the Civil Code also prescribes

avenues for absent persons who have been presumed dead to recover property after they re-appear. See: LSA-C.C. Arts. 57-59. These Civil Code articles relating to presumption of death have never been used in another criminal case to establish presumptions of death and murder.

The trial court disregarded the fact that presumptions are only to be applied in civil cases and erroneously allowed the State to use Civil Code articles to skirt the requirement of actual proof of death. Notably, the court shifted the burden of proof onto Mr. Vail to prove the women were not deceased in order to prove his innocence – requiring Mr. Vail to prove the current existence of a person from fifty years prior, who the State contended were unable to be found (through its own diligent efforts). While LSA-C.C. Arts. 30 and 54 create rebuttable presumptions, this was only intended to be applied in the civil context; the court's burden shifting in a criminal case was an abuse of discretion and a violation of Due Process, fair trial, and presumption of innocence rights under the Federal and State Constitutions.

Unlike every other case that has employed the Doctrine of Chances to prove a defendant's intent based on a prior bad act, Mr. Vail disputes that the very existence of the bad act. Every prior case involved a matter or *mens rea*, not the added element of *actus rea*, ***the central of this case***. The State had ***zero*** proof, which is why it had to "prove" "death" through a presumption.

Utilizing LSA-C.C. Art. 30, the State got around the fact that no proof of death existed by receiving a presumption of death if the disappearances were "under circumstances that such that [their] death[s] seems certain." However, such presumptions are utilized in circumstances where a person disappeared under a perilous circumstance like a ship sinking in a hurricane – not when they are merely absent.[12]

The State also utilized LSA-C.C. Art. 50 for a presumption of death when the person has been absent for five years. The trial court permitted this presumption and the Writ-panel of the Louisiana

12 See also: ***Jones v. State ex rel. Dep't of Health and Hospitals***, 671 So.2d 1074 (La. App. 3rd Cir. 3/28/96)(***Civil tort wrongful death claim*** where presumption was used to establish death of a mentally disabled child who went missing while in the care of the hospital – not a criminal allegation).

Third Circuit Court of Appeal acknowledged the State's argument without expressly endorsing it, other than by the inference drawn in Mr. Vail's Application for Review. See: *Vail*, 14-0436, p. 19 (La. App. 3rd Cir. 11/5/14).

The trial court erred in its ruling when it stated that because of LSA-C.C. Art. 54, the presumption the women are dead occurs "by operation of law" (Rec.p. 3089). To the contrary, the declaration of death does not occur automatically, rather "[u]pon petition by an interested party, the court shall render judgment declaring the death of the absent person and shall determine the date ..." The Civil Code only allows a judge to declare someone dead if the court is petitioned to make such a declaration. "Nobody has ever instituted the proceedings to have [Annette or Sharon] presumed dead" under Louisiana Law or the Law of any other state (Rec.p. 3055).[13]

The trial court's ruling allowing the State to argue – and the jury to be instructed – that Sharon and Annette can be presumed dead under Louisiana Law was an abuse of discretion. Since the Doctrine of Chances requires as a threshold issue that there be a similar "result," without the improper ruling by the court, the 404(b) evidence would never have been admissible. It is an impermissible leap to use civil presumptions of death, to seek a criminal conviction for murder.

C. Factors of the Doctrine:

At its core, the Doctrine of Chances seeks to offer supporting evidence when there is a contested issue of "intent," and where a defendant's prior actions doing similar acts may tend to prove the defendant's intent to act in the present case. **Professor Wigmore's Doctrine of Chances** requires four things: (1) a similar act; (2) a similar result; (3) the acts must have occurred within a limited period of time;[14] and, (4) the act must be admissible to the jury (Rec.pp. 3067-8).

13 In order for court to declare such a presumption of death, the absent person must be a Louisiana domiciliary or own property interest in Louisiana. See: e.g. LSA-R.S. 13:3421. In this case, the trial court acknowledged it would not have jurisdiction to make such a determination, even if someone had petitioned the court, as neither Annette or Sharon were domiciled in Louisiana nor did they have property interest (Rec.pp. 3060-1). There was also no conflicts-of-law analysis done here.

14 As another example of bending the rules of the doctrine, the trial court ignored this requirement by finding that the

Initially, the trial court and the Writ-panel of the Louisiana Third Circuit Court of Appeal both stated there was a genuine issue of intent in this case. While murder is the "intentional" killing of someone and thus is an element of the crime, Mr. Vail's defense was clear from the beginning. He was not challenging the element of intent – the reason *why* he would have killed his wife – he was denying that he was the *cause* of her death. He denied an *actus reus* of the act, making the *mens rea* irrelevant. See: *State v. Nelson*, 357 So.2d 1100, 1103 (La. 1978)(Even though Aggravated Burglary required a showing of specific intent, that was not a real and genuine contested issue at trial; thus, the other crimes evidence should not have been admitted). Therefore, the State repeatedly claimed it was not offering this evidence for intent, but rather for absence of mistake or accident – *actus reus*. However, the doctrine only has been applied to establish intent in the past. See: **2 Wigmore on Evidence, § 302 (3d ed. 1940)**("To prove intent ..." the Doctrine of Chances can be utilized).

As discussed above, because there is no physical evidence that Sharon or Annette are dead, at best there was a probability that similar "results" occurred in this case. The lack of physical evidence of foul play is also unique in this case. While there have been no criminal prosecutions before where the suspected deceased person was never found, in those cases there has been other physical evidence that greatly inferred the missing person was deceased and the defendant was responsible. See e.g.: *State v. Dorsey*, 796 So.2d 135 (La. App. 2nd Cir. 9/26/11).

In *Dorsey*, no body of the victim was found, but police found the victim's car and purse with blood on them and rummaged through, blood trails, drag marks, blood in/on the defendant's car, house, and clothing, as well as prior threats from the defendant to the victim. *Id.* Notably in that case, the State did not use Civil Code presumptions to establish death. Additionally, the defendant was on trial for the murder of the missing person; the evidence of the missing victim was not being offered in *another trial*

nature of "elimination of a spouse or significant other" take more time than the doctrine allows (Rec.p. 3091). Instead of ruling the doctrine cannot apply to this case, the factor was removed from consideration.

under lower standards of proof as speculation of the defendant's intent in the other case (Rec.p. 3805) (State admitting speculating about the reasons why Mr. Vail may have "disappeared Sharon and Annette).

Additionally, other cases cited by the State are likewise distinguishable. In ***State v. Monroe***, 364 So.2d 570 (La. 1978); ***State v. Galliano***, 839 So.2d 932 (La. 1/10/03); and, ***People of Michigan v. Mardlin***, 790 N.W.2d 607 (2010), each case revolved around the issue of the defendant's intent in the immediate case; the prior "result" the government sought to admit was never in dispute or had been conceded. In ***Monroe***, a defendant stood trial for killing a man in a manner strikingly similar to the way he killed another man the night before. In ***Galliano***, the defendant's prior action of injuring a child was relevant to the immediate case, despite the nature of the injury being different. In ***Mardlin***, the Michigan Supreme Court declared prior insurance claims for fire damage by a defendant charged with arson were relevant to determine if the immediate fire was intentionally set.

Unlike here, there was no dispute that Mr. Monroe killed two men, or Mr. Galliano physically hurt the child twice, or the Mr. Mardlin had previous fire insurance claims. These cases provide guidance on the use of the Doctrine of Chances in general, but not on the admissibility of allegations where the similar "result" is questionable and can only be presumed.

To let stand the trial court's ruling in this case, considering the disputed issues of fact and scarcity of physical evidence to support the State's allegation, would be to create a slippery slope in the area of criminal law. Convictions must be based on hard evidence of proof, not statistical mathematical formulas of probability that a crime "may have" occurred. The trial court's ruling abused its discretion and infringed on Mr. Vail's constitutional rights. It must be reversed.

SUMMARY

The State's prosecution of Mr. Vail for the death of his wife, Mary Horton Vail, fifty years after her death was insufficient and speculative. The State's only evidence was testimony by their expert witness that Mary was murdered. The experts supposed a homicide occurred without doing an autopsy. Their findings were directly contradicted by the doctor who originally performed the autopsy in 1962: who had concluded there was no foul play and Mary died of an accident. The State's expert ignored those findings and relied exclusively on two grainy, black and white photos taken during the recovery of Mary's body in 1962.

Additionally, the State Courts' conclusions that statements Mr. Vail may have made in the years after Mary's death were "confessions," and thus direct evidence, is legally in error and must be reversed. Even if the statements were believable, they were not confessions because they only admitted to "killing" his wife, not to intentionally killing her, which is why both men who claim they were told this by Mr. Forrest did not believe he meant it was an intentional killing but rather an accident.

Finally, the State's misuse of the Doctrine of Chances and Civil Code presumptions of death to introduce evidence Mr. Vail may have caused the death of two other women was patently unfair and prejudicial.

CONCLUSION

For the reasons stated above and in the previous filings in the State of Louisiana Courts, Mr. Vail's Writ of Certiorari should be granted, and this matter be remanded to the district court for a new trial. Mr. Vail has shown that this conviction is contrary to clearly established federal law as established by the United States Constitution and the United States Supreme Court.

Respectfully submitted,

William Felix Vail

William Felix Vail

Date: January 8, 2019.