18-8944 ORIGINAL

No.: _____

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SUPREME COURT, U.S.

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

TIMMY W. DOUCET — Appellant

v.

STATE OF LOUISIANA — Appellee(s)

On Petition for a Writ of Certiorari to

LOUISIANA SUPREME COURT

Timmy W. Doucet #717020
MPEY/Spruce-4
La. State Penitentiary
Angola, LA 70712

PREPARED BY:
David Constance #304580
Offender Counsel Substitute III
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Criminal Litigation Team
La. State Penitentiary
Angola, LA 70712

QUESTION(S) PRESENTED

1. **Whether reasonable jurists determine that it was reversible error for the district court to permit the jury, over defense counsel's objections, to view SD's drawings during its deliberations when these drawings amounted to testimonial evidence, which is specifically prohibited in the Louisiana Criminal Code; Sixth Amendment to the United States Constitution.**
2. **Whether reasonable jurist would debate that the State failed to meet its burden of proof of beyond a reasonable doubt that Mr. Doucet is guilt.**

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.

District Attorney's Office
Parish of Jefferson
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Angola, LA 70712

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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[ ] is unpublished.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[ ] is unpublished.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 "E" to the petition and is the Louisiana Supreme Court in Docket Number 2018-K-0077.

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[ ] is unpublished.

The opinion of the Fifth Circuit Court of Appeals appears at Appendix "C" to the petition and is

[X] reported at 237 So.3d 598 (La. App. 5th Cir. 12/27/17); or,
[ ] 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 November 18, 2016.
A copy of that decision appears at Appendix "E".

[ ] 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. Specifically, Mr. Doucet was denied the right to a fair and impartial trial with the district court allowing the jury to view the drawings (with testimonial evidence) during deliberations.

NOTICE OF PRO-SE FILING

Mr. Doucet 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. Doucet 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, § (b) and (c)*, Mr. Doucet presents for his reasons for granting this writ application that:

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.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A state court or a United States Court of Appeals 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.

The Court of Appeals properly determined that the trial court erred in allowing the jury to review SD's drawings during the deliberations.

However, the Court of Appeals erred in determining that such was "harmless error" due to the fact that the drawing failed to "depict what occurred during the crimes themselves or any other significant fact nor did it bear directly on an element of the offense."

The Court of Appeals specifically stated that:

> "In the instant case, State's Exhibit 18 is a one-page document that contains several pictures and writing on it. The bottom right hand portion contains the drawing the jury wanted to see, namely, a picture of a person behind bars. Next to that picture is written, 'You're a monster ...' Above that picture is a drawing of another person, and next to that person is written, 'I'm going to kill you when I get out of this place!' In the top right hand corner is a gavel with the words, 'Not guilty!' written next to it. In the middle of the page is a drawing of what appears to be a girl, and next to that drawing are the words, 'This is all just a bad dream ... and you're never waking up!!!' In the top left hand corner is a drawing of a girl with the words, 'We didn't gather enough evidence, so we think you have been lying to us and there was no case.' Below that picture is a drawing of a person, who it appears has cut marks on her arms. In the bottom left had corner, there is a drawing of an individual, and there are words next to it stating, 'Look at what you've done!!!' At the top of the exhibit in the middle are the words, 'Was it because of me? Yes, it was me ...'"

The Court, in its own decision, admits that the written portion of the drawings are "testimonial" due to the fact that SD explained the meaning of the drawings during her testimony. Although the drawings did not contain depictions of the actual allegation, SD did express her "thoughts" and "fears" of the possibility of Mr. Doucet being found "not guilty" as she had drawn each of these. During SD's testimony, the State was able to obtain testimony as to the reason of each individual drawing on this page. Therefore, the drawings reemphasized SD's testimony, and the jury should not have been permitted to review such during deliberations.

"The general reason for the prohibition is a fear that jurors might give undue weight to the limited portion of the verbal testimony thus brought into the room with them." ***State v. Savoy***, 916 So.2d 339, 344 (La App. 3rd Cir. 11/2/05)(quoting ***State v. Adams***, 550 So.2d 595, 599 (La. 1989); and ***State v.***

Freetime, 303 So.2d 487, 488-89 (La. 1974)). Also see: *State v. Gongre*, 503 So.2d 785 (La. App. 3rd Cir. 1987)(wherein the court found > Article 793 violated when the trial court allowed the jury to review the transcript of the defendant's oral statement for the purpose of examining its contents) and, *State v. Perkins*, 423 So.2d 1103 (La. 1982)(wherein the Supreme Court reversed the defendant's conviction and remanded the case for a new trial because the trial court allowed the jury to review the defendant's written statement after retiring for deliberations). *State v. R.W.W.*, 953 So.2d 131, 138 (La. App. 3rd Cir. 2007).

Louisiana courts have reversed many convictions where the jury viewed a defendant's confession or written statement or re-examined verbal testimony during deliberations. *State v. Adams*, supra. (jury reviewed defendant's confession to police); *State v. Buras*, 459 So.2d 756 (La. App. 4th Cir. 1984) (aggravated kidnapping reversed because during deliberations the jury was given a transcript of recorded telephone calls between the kidnappers and the victim's family); *State v. Gracia*, 527 So.2d 488 (La. App. 5th Cir. 1988)(jury reviewed the defendant's written statements). *Gracia* noted that prejudice was presumed, quoting *Freeman*, supra. *State v. Johnson*, 726 So.2d 1126, 1133 (La. App. 4th Cir. 1999).

The Louisiana Fifth Circuit Court of Appeals erred in denying Mr. Doucet relief in his Assignment of Error concerning insufficiency of the evidence.

It appears as though the Court of Appeals failed to take into consideration that SD had testified as to her eight or nine different personalities that only, "me, myself, and I" know about (Rec.pp. 301-2); SD had on her "serious" personality for the trial (Rec.pp. 301-2); SD had a bigger imagination than everyone in the courtroom (Rec.pp. 302-3); that these incidents had "popped" in SD's head on the school bus on the way home (Rec.pp. 283-4); that the stories SD conjure up, "pop" into her head; and that she could tell the same story over and over without changing anything in the story (Rec.pp. 302-3).

Mr. Doucet properly argued the fact that the physical examination failed to corroborate SD's allegations. The Court of Appeals has also erroneously determined that Dr. Jackson's testimony concerning, "the hymen was like a 'donut opening, like a ring," has merits. Dr. Jackson offered NO evidence which would support her "theory,"

The Science Community recognizes Dr. Jackson's field of expertize as "Junk Science," and that the testimony is contrary to the findings of the American Pediatrics Association (which she claims to quote from). Dr. Jackson's testimony is ONLY to improperly "bolster" the testimony of the alleged victim and to "give credibility" to the testimony given, not for substantial evidence to show proof of guilt. This testimony does not meet the criteria of *Daubert v. Dow Pharmaceuticals*, 509 U.S. 579 (1993).

The testimony of these "Expert" witnesses was recently deemed unreliable in the Louisiana Supreme Court in *State v. Ayo*, 167 So.3d 608 (La. 6/30/15), where the Court reversed the convictions of Derrick Mais, Brett Ward, Clayton King, and Michael Ayo for the charges of Aggravated Rape and Attempted Aggravated Rape.

Testimony "so unbelievable on its face that it defies physical laws" would be "incredible as a matter of law." *United States v. McKenzie*, 768 F.2d 602, 605 (5th Cir. 1989).

It appears as though the Louisiana Fifth Circuit Court of Appeal and the Louisiana Supreme Court failed to take into consideration that SD had testified as to her eight or nine different personalities that only, "me, myself, and I" know about (Rec.pp. 301-2); SD had on her "serious" personality for the trial (Rec.pp. 301-2); SD had a bigger imagination than everyone in the courtroom (Rec.pp. 302-3); that these incidents had "popped" in SD's head on the school bus on the way home (Rec.pp. 283-4); that the stories SD conjure up, "pop" into her head; and that she could tell the same story over and over without changing anything in the story (Rec.pp. 302-3).

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Testimony "so unbelievable on its face that it defies physical laws" would be "incredible as a matter of law." *United States v. McKenzie*, 768 F.2d 602, 605 (5th Cir. 1989).

Permitting the Jury to Review SD's Drawings During Deliberations:

The Court of Appeals properly determined that the trial court erred in allowing the jury to review SD's drawings during the deliberations.

However, the Court of Appeals erred in determining that such was "harmless error" due to the fact that the drawing failed to "depict what occurred during the crimes themselves or any other significant fact nor did it bear directly on an element of the offense."

The Court of Appeals specifically stated that:

> "In the instant case, State's Exhibit 18 is a one-page document that contains several pictures and writing on it. The bottom right hand portion contains the drawing the jury wanted to see, namely, a picture of a person behind bars. Next to that picture is written, 'You're a monster ..." Above that picture is a drawing of another person, and next to that person is written, 'I'm going to kill you when I get out of this place!' In the top right hand corner is a gavel with the words, 'Not guilty!' written next to it. In the middle of the page is a drawing of what appears to be a girl, and next to that drawing are the words, 'This is all just a bad dream ... and you're never

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Furthermore, the Court of Appeal, in its Ruling stated that (p. 15):

"In this case, our review reveals that the trial judge erred by permitting the jury to view the State's Exhibit 18 during jury deliberations. That exhibit contained numerous writings that duplicated the victim's testimony by written words contained on that page. As such, we find that the jury could have viewed the exhibit for its verbal contents, i.e., the victim's feelings and emotions about defendant wanting to kill her, about going to court, and about committing suicide, which she had testified about at trial. Thus, when the trial judge allowed the jury to view this document with the victim's writings, the jury was allowed "access to written evidence" for its verbal content, which is prohibited by La.C.Cr.P. Art. 793."

The Court of Appeal failed to consider that the jury deliberated for several hours before requesting to see this document. However, after viewing the document, the jury's deliberation ended quite quickly, and returning a guilty verdict. The Court *cannot* say beyond a reasonable doubt that the viewing of the drawing was harmless error.

The Court, in its own decision, admits that the written portion of the drawings are "testimonial" due to the fact that SD explained the meaning of the drawings during her testimony. Although the drawings did not contain depictions of the actual allegation, SD did express her "thoughts" and "fears" of the possibility of Mr. Doucet being found "not guilty" as she had drawn each of these. During SD's testimony, the State was able to obtain testimony as to the reason of each individual drawing on this page. Therefore, the drawings reemphasized SD's testimony, and the jury should not have been permitted to review such during deliberations.

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Louisiana courts have reversed many convictions where the jury viewed a defendant's confession or written statement or re-examined verbal testimony during deliberations. *State v. Adams*, supra. (jury reviewed defendant's confession to police); *State v. Buras*, 459 So.2d 756 (La. App. 4th Cir. 1984) (aggravated kidnapping reversed because during deliberations the jury was given a transcript of recorded telephone calls between the kidnappers and the victim's family); *State v. Gracia*, 527 So.2d 488 (La. App. 5th Cir. 1988)(jury reviewed the defendant's written statements). *Gracia* noted that prejudice was presumed, quoting *Freeman*, supra. *State v. Johnson*, 726 So.2d 1126, 1133 (La. App. 4th Cir. 1999).

However, the Louisiana Supreme Court denied relief without written opinion.

STATEMENT OF THE PROCEEDINGS

On January 14, 2016, the Grand Jury that was impaneled in Jefferson Parish indicted Mr. Timothy W. Doucet (Mr. Doucet) for Aggravated Rape, a violation of LSA-R.S. 14:42. The allegation indicated that Mr. Doucet had sexual intercourse with SD when she was eight years old and the sexual contact lasted until the minor reached the age of ten.

Mr. Doucet entered a plea of not guilty to the charge, and he completely denied before and after trial that he raped SD. Mr. Doucet indicated that he and SD's father have been having a series of verbal

and physical conflicts long before the instant allegation. In fact, the evidence showed that Mr. Doucet and his brother's wife were having an affair, which may have culminated into Mr. Doucet being targeted as the person who allegedly raped SD. It was the sexual affair that Mr. Doucet was having with his brother's wife that resulted in the family tension between Mr. Doucet and his brother. Mr. Doucet further argued that SD's false allegation of rape was simply an escalation of the brewing conflict between himself and SD's father.

Following the conclusion of all discovery matter, the prosecution and defense counsel selected a twelve-member jury. The State then presented evidence from several witnesses, including the pre-teen minor who testified that Mr. Doucet had sexual intercourse with her, starting when she was eight years old and continuing until she was ten years old. SD happened to be visiting with her grandparents in Jefferson Parish at the time of the allegation.

Defense counsel presented to the jury that SD suffered from Asbergers Syndrome (it was stated that SD's conditions makes her hyper-focused and sometimes disruptive), and lived with her parents who had frequent sex parties with other couples. Given the promiscuous behavior of SD's parents, Mr. Doucet argued before the jury that if SD had been sexually assaulted, it was more likely by one of the men who participated in her parents' sex parties.

Also, during questioning, SD testified that she had 8 or 9 different personalities and that this allegation had "popped up in my head on the way home on the bus." SD further testified that, "My imagination is bigger than everyone in the room," and that she could tell the same fictional story over and over.

During its deliberations, the jurors requested access to the drawings that SD drafter during the time she was undergoing therapy following the alleged rape. Defense counsel strenuously objected to the jury having access to these drawings, arguing that SD's drawings were equivalent of hearing her

testimony a second time. The district court disagreed, ruling that the jury could have access to her drawings while deliberating. Shortly thereafter, the jury returned with a unanimous verdict against Mr. Doucet for Aggravated Rape. Defense counsel filed Motions for a New Trial and a Post-Verdict Judgment of Acquittal, alleging the district court committed reversible error in allowing the jury to view SD's drawings while in deliberations.

The district court denied all post-trial motions, and the district court sentence Mr. Doucet to life imprisonment at hard labor without the benefit of Probation, Parole, or Suspension of Sentence, to be served with the Louisiana Department of Public Safety and Correction.

On June 1, 2017 Mr. Doucet, through counsel appointed by the Louisiana Appellate Project timely filed his Original Brief on Appeal. Mr. Doucet filed his Motion for Leave to Supplement Appeal, and to Review the Record. Upon receipt of the Court of Appeals Record, Mr. Doucet observed the that the Record failed to include the Voir Dire proceedings. On June 22, 2017, Mr. Doucet filed a Motion for Production of Additional Records and Request for Extension of Time to File Brief.

Mr. Doucet's motion was granted, and the district court was ordered to forward the Voir Dire in its entirety. Mr. Doucet was informed that he would have twenty (20) days after receiving his Voir Dire transcript to file his Pro-Se Supplemental Brief.

On August 17, 2017, Mr. Doucet received the Voir Dire transcript from the Louisiana Fifth Circuit Court of Appeals, and was notified that his deadline for filing his Pro-Se Supplemental Brief is September 5, 2017.

On August 25, 2017, Mr. Doucet timely filed his Pro-Se Supplemental Brief on Appeal.

On December 27, 2017, the Louisiana Fifth Circuit Court of Appeals affirmed Mr. Doucet's conviction and sentence, and remanded the matter to the district court in order to correct the Uniform Commitment Order to reflect hard labor, and Sex Offender Registration Notification.

Mr. Doucet timely filed Writs to the Louisiana Supreme Court, which was denied on October 8, 2019 without written opinion.

STATEMENT OF THE FACTS

SD, a thirteen-year old middle-school student, reported to her parents and then to the police that she had been raped by an adult relative when she was eight years old. SD indicated that she was made to have sex with this male relative several times while she was visiting with her grandparents in Jefferson Parish.

SD also testified to the "exact" same incident concerning her cousin, which allegedly occurred in the State of Mississippi, informing the jury that she did not want her cousin to get into trouble for his actions.

ISSUE NO. 1

Reasonable jurists would determine that it was reversible error for the district court to permit the jury, over defense counsel's objections, to view SD's drawings during its deliberations when these drawings amounted to testimonial evidence which is specifically prohibited in the Louisiana Criminal Code.

According to La.C.Cr.P. Art. 793, a jury may be permitted to have access to view any document or object received in evidence if a specific request is made by the jury foreperson and the document or object is necessary to enable the jury to arrive at a verdict.

In this case, the drawings were the equivalent of testimony, and the statute specifically indicates that "[t]estimony shall not be repeated to the jury." These drawings at issue came from SD's thoughts, feelings and emotions – all of which she had already testified to during the trial. Not long after receiving SD's drawings, the jury returned with a unanimous verdict against Mr. Doucet. Therefore, the district court committed reversible error when it overruled defense counsel's objections and permitted the jury to have access to these drawings during jury deliberations.

As mentioned earlier, the jury is not to inspect any written evidence or have said evidence read to

the jury; however, the object that was involved in this case was several drawings or sketches that pertained to the alleged victim's thoughts, beliefs, feelings or emotions. The State attempted to show that SD's drawings were nothing more than photographs which were drawn in conjunction with her testimony thereby making the photographs nothing more than harmless error. See: ***State v. Calloway***, 781 So.2d 849, 853 (La. App. 5th Cir. 2/28/01).

Yet, these drawings were not based on a reproduction of a physical location or object, but rather, it was a depiction of the alleged victim's feelings and emotions resulting from the allegation. See: ***State v. Perkins***, 423 So.2d 1103 (La. 1982).

These however, were sketches and drawings of her feelings and thoughts about the alleged incident that were done to help her cope with what she alleged to have happened since she already had difficulty communicating with others; thus, these drawings were testimonial. See: ***State v. Lyles***, 858 So.2d 325 (La. App. 5th Cir. 9/16/03).

The drawings were dark in nature because the drawings reflected her anxiety, fears and nightmares. Thus, allowing the jury to view these images a second time in the deliberation room was synonymous to SD coming into the deliberation room and repeating her testimony to the jurors. See: ***State v. Lewis***, 590 So.2d 1266, *writ denied*, 600 So.2d 634 (La. 1992)(stating that it is automatic reversible error for the jury to hear testimony repeated to them; see also ***State v. Hart***, 467 So.2d 1366 (La. App. 5th Cir. 1985); ***State v. Baham***, 151 So.3d 698 (La. App. 4th Cir. 10/1/14), *writ denied*, 178 So.3d 138 (La. 9/18/15)(stating that a jury is prohibited from bringing the transcript of the witness' testimony into the deliberation room).

In ***State v. Malbrough***, 138 So.3d 65 (La. App. 5th Cir. 3/12/14), "Trial court acted within its discretion in not allowing jury, during deliberations, to view the certified packet for a prior driving while intoxicated (DWI) conviction that was to serve as a predicate offense for third offense DWI,

where packet contained written information, the jury did not indicate why it wanted to view packet, it appeared that the jury wanted to view packet to determine whether defendant's lack of a signature on the 'Certificate' at end of guilty plea form rendered his prior guilty plea invalid, and all of State's exhibits, including packet, were published to the jury prior to the deliberations." La.C.Cr.P. Art. 793. **110k858(3).**

Furthermore, in ***Malbrough***, the Court of Appeals had held that, "Generally, a jury is not allowed to inspect written evidence during deliberations except for the sole purpose of a physical examination of the document itself to determine an issue which does not require the examination of the verbal contents of the document." See also: ***State v. Davis***, 131 So.3d 1002 (La. App. 5th Cir. 12/19/13), *writ denied*, 147 So.3d 703, *habeas corpus dismissed by*, ***Davis v. Cain***, 2016 WL 4529877.

In the case of ***State v. Tammetta***, 624 So.2d 433 (La. App. 5th Cir. 9/15/93), Mr. Tammetta had complained of the Judge permitting the jury to take into the deliberations, the written statements of the girls made when they first reported Tammetta to school officials. Mr. Tammetta argued that, "during its deliberations, the jury asked for and was allowed to examine the evidence, including the girls' written statements, which is a violation of La.C.Cr.P. Art. 793, which mandates that a jury must rely on its memory in reaching a verdict.

In the case of ***Tammetta***, during deliberations, while both counsels were out of the courtroom, the judge allowed the statements to go into the jury room. He advised counsel of this later, and Tammetta's attorney objected.

The Court could not say that this was harmless error and that there is no reasonable probability it might have contributed to Tammetta's conviction. See: ***State v. Green***, 493 So.2d 1178 (La. 1986); ***State v. Gracia***, 527 So.2d 488 (La. App. 5th Cir. 1988); ***State v. Ray***, 577 So.2d 354 (La. App. 1st Cir. 1991). This error violated substantial rights and is reversible. ***Tammetta***, supra.

La.C.Cr.P. Art. 793 states in pertinent part:

Art. 793. Use of evidence in jury room; reading of recorded testimony; jurors' notes.

A. Except as provided in Paragraph B of this Article, a juror must rely upon his memory in reaching a verdict. He shall not be permitted to refer to notes or to have access to any written evidence. Testimony shall not be repeated to the jury.

This Court cannot conclude that this article had been sent to the jury room during deliberation in order to compare a signature or to see or feel it with its regard to its actual existence. ***State v. Malbrough***, 138 So.3d 65 (La. App. 5th Cir. 3/12/14).

Reasonable jurists could argue that the trial court erred in allowing the "drawings" in the jury room. As the "drawings" consisted of "written" testimony which had been presented during SD's testimony concerning her thoughts at the time of competing such, this Court must find that the written portions of the "drawings" have to be considered as "testimony," and improperly allowed in the jury room pursuant to La.C.Cr.P. Art. 793.

In the case before the Bar, Mr. Doucet contends that the trial court's decision to allow the State's Exhibit of the drawing (which included SD's thoughts) cannot be considered "harmless error," and this Court cannot say that there is no reasonable probability it might have contributed to Mr. Doucet's conviction.

The drawings depicted not only who she believed sexually assaulted her, but also how the assault impacted her physical and emotional well being. These drawings greatly impacted the jury's impression of whether Mr. Doucet was guilty of the alleged offense; thus, the ruling violated his Sixth Amendment to the United States Constitution right to a fair and impartial trial, and Mr. Doucet requests that this Court vacate and set aside his conviction based on the district court's reversible error.

ISSUE NO. 2

Reasonable jurists would argue that the evidence presented during trial was insufficient to convict Mr. Doucet of Aggravated Rape beyond a reasonable doubt. *Jackson v. Virginia;* Sixth and Fourteenth Amendments to the United States Constitution.

After a thorough review of the evidence, Mr. Doucet contends that jurists of reason would not have found him guilty of Aggravated Rape beyond a reasonable doubt due the alleged victim's testimony. The actual evidence in this case indicates that **no one** other than Devon had sexually abused the alleged victim in this case.

The Due Process Clause of the Fourteenth Amendment protects persons accused of a crime against conviction unless the State proves every element of the offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L. Ed. 2d 368 (1970).[1]

In *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), the United States Supreme Court reached the legal standard of review, *i.e.*, "... whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt ..." In the court's view, the factfinder's role as weigher of evidence was preserved by considering all of the evidence in the light most favorable to the prosecution: ". . The criterion thus impinges upon 'jury' discretion only to the extent necessary to guarantee the fundamental protection of due process of law." *Jackson*, 443 U.S. at 319, 99 S.Ct., at 2790, 61 L.Ed.2d at 573-574. This standard is applied with "explicit reference to the substantive elements of the criminal offense as defined by state law." *id. at* 324 n. 16, 99 S.Ct. at 2791 n. 16. *Dupuy v. Cain*, 210 F.3d 582 (5th Cir. 2000).

The deferential standard of review, whereby reviewing courts must affirm a conviction if, after viewing the evidence and all reasonable inferences in the light most favorable to the prosecution, any

1 This type of error has been recognized as patent error preventing conviction for the offense, La.C.Cr.P. art. 920(2), see indicative listing at ***State v. Guillot***, 200 La. 935, 9 So.2d 235, 239 (1942). Quoting: ***State v. Crosby***, 338 So.2d 584, 588 (La.1976).

rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, does not permit the type of fine-grained factual parsing necessary to determine that the evidence presented to the factfinder was in "equipoise," and that therefore reversal of the conviction is warranted; abrogating *United States v. Jaramillo*, 42 F.3d 920, *United States v. Ortega Reyna*, 148 F.3d 540, *United States v. Penaloza-Duarte*, 473 F.3d 575, and, *United States v. Stewart*, 145 F.3d 273. **Criminal Law Key 110k1159.2(1).**

Courts reviewing a conviction are empowered to consider whether the inferences drawn by a jury were rational, as opposed to being speculative or insupportable, and whether the evidence is sufficient to establish every element of the crime. **Criminal Law Key 110k1159.2(8).**

The *Jackson* standard, which has been repeatedly reaffirmed by the Supreme Court, may be difficult to apply to specific cases but is theoretically straightforward. In contrast, the "equipoise rule" is ambiguous. At one level, whether it applies only to cases ungirded by circumstantial evidence, as opposed to direct or circumstantial evidence, is not entirely clear. Moreover, no court opinion has explained how a court determines that evidence, even when viewed most favorably to the prosecution, is "in equipoise." Is it a matter of counting inferences or of determining qualitatively whether inferences equally support a theory of guilt or innocence?

In any event, when appellate courts are authorized to review verdicts of conviction for evidentiary "equipoise," they must do so on a cold appellate record without the benefit of the dramatic insights gained from watching the trial. The potential to usurp the jury's function in such circumstances is inescapable. *Jackson*'s "deferential standard" of review, however, "does not permit the type of fine-grained parsing" necessary to determine that the evidence presented to the factfinder was in "equipoise." *Compare*: *Coleman v. Johnson*, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012).

Jackson also "unambiguously instructs that a reviewing court, 'faced with a record of historical

facts that supports conflicting inferences must presume - - even if it does not affirmatively appear in the record - - that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." *Cavazos v. Smith*, 132 S.Ct. 2, 6, 181 L.Ed.2d 311 (2011).

When, as here, the conviction rests upon circumstantial evidence, that evidence must exclude every reasonable hypothesis except guilt. LSA-R.S. 15:438. Whether circumstantial evidence excludes every reasonable hypothesis of innocence presents the following question of law:

> **In all cases where an essential element of the crime is not proven by direct evidence, LSA-R.S. 15:438 applies.** As an evidentiary rule, it restrains the factfinder [in the first instance, as well as the reviewer on appeal, to accept as proven all that the evidence tends to prove and then to convict only if every reasonable hypothesis of innocence is excluded. **Whether circumstantial evidence excludes every reasonable hypothesis of innocence presents a question of law.** *State v. Hammontree*, 363 So.2d 1364, at 1373 (La. 1978); *Smith v. Schwander*, 345 So.2d 1173, at 1175 (La. 1977); *State v. Smith*, 339 So.2d 829, at 833 (La. 1976). **In applying LSA-R.S. 15:438, all the facts that the evidence variously tends to prove on both sides are to be considered, disregarding any choice by the factfinder favorable to the prosecution.** The reviewer as a matter of law can affirm the conviction only if the reasonable hypothesis is one favorable to the State and there is no extant reasonable hypothesis of innocence.[2]

However, this statutory rule is not a purely separate test from the Jackson standard to be applied instead of an efficiency of the evidence test whenever the state relies on circumstantial evidence to prove an element of the crime. *State v. Wright*, 445 So. 2d 1198 (La. 1984); *State v. Eason*, 460 So.2d 1139 (La. App. 2nd Cir. 1984), *writ denied*, 463 So.2d 1317 (La. 1985). Although the circumstantial evidence rule may not establish a stricter standard of review than the more general reasonable juror's reasonable doubt formula, it emphasizes the need for careful observance of the usual standard and provides a helpful methodology for its implementation in cases which hinge on the evaluation of circumstantial evidence. *State v. Chism*, 436 So.2d 464 (La. 1983)); *State v. Sutton*, 436 So. 2d 471 (La. 1983). Ultimately, all evidence, both direct and circumstantial, must be sufficient under *Jackson* to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. *State v. Wright*, supra;

2 *State v. Shapiro*, pp. 19-20, 431 So.2d 372 (La. 1982)[emphasis added].

State v. Eason, supra. *State v. Copes*, 566 So.2d 652, 654 (La. App. 2nd Cir. 1990).

A fair review clearly proves that the statements substantially impeach each other. The question remains were these child got this fabricated story. Could this be because the alleged victim believed that Mr. Doucet had attempted to run over her father; or the fact that SD emphatically testified about her imagination? SD also testified that these allegations had "popped into her head" on the way home from school one day (Rec.p. 283).

In light of the overwhelming amount of inconsistent testimony, after viewing evidence in light most favorable to prosecution, any rational trier of fact could not have found the essential element of the crime beyond a reasonable doubt. U.S.C.A. Const. Amend. 14. (See: *Jackson v. Virginia*, 99 S.Ct. 2781, 443 U.S. 307 (U.S. 1979); *Winship*, supra.).

Testimony of SD:

The alleged victim's own testimony during the course of this trial would indicate that SD could not be believed by a reasonable jury. SD proclaimed that she was a "great" story teller and could tell the same "story" over and over without changing anything in the story.

The jury erroneously determined that SD's testimony was credible due to the fact that there were **too many** discrepancies in her testimony.

First, when SD was questioned as to how the allegations were "brought to the light," she testified that, "It was just a thought that popped up in my head on the way home on the bus" (Rec.p. 283). SD testified that the stories that she conjured up to tell her friends and family also "just popped up" in her head.

Q: What made you tell your mom when you were 12?
A: It was just a thought that popped in my head on the way home on the bus.
Q: When you say a thought that popped up in your head on your way home in the bus, the bus from school.
Q: The thought that popped in your head, what was this thought?

A: Well, I don't really exactly - - I don't exactly remember.

(Rec.pp. 283-4)

Q: Why does that worry you?

A: Because, of course, with all the murder documentaries I've seen, everyone needs to gather evidence for every case.

Q: Why does it worry you if there's no evidence?

A: Because if there's not enough evidence, then the person who might convicted of - - I mean the suspect might not actually be the suspect, the person who actually did it.

(Rec.pp. 295-6)

SD was unsure of herself when she testified that: (1) "There's no drugs in all that" (Rec.p. 304) when she was questioned if any of the police documentaries that she watched concerned any abuse concerning children; and then she testified that, "The shows were mainly about drug abuse" (Rec.p. 362).

During cross-examination, SD first testified that she had two (2) personalities (including the one that doesn't show up often)(Rec.p. 300). SD testified that, "It's basically my dark side. Then, SD testified that she has eight (8) or nine (9) different personalities, and proudly stated that her imagination was "bigger than everyone in the room" (Rec.pp. 301-2). During cross-examination, SD testified that:

Q: Do your parents know about these personalities?

A: Not that - - not really. Just me, myself, and I.

Q: Do bad things happen to these personalities?

A: No, they're just there until they eventually pop up. That's what happens.

Q: Can you send them away?

A: Yeah, I can. I can store them all away. **I have my serious personality on right now (emphasis added).**

(Rec.pp. 301-2)

Although the State argued that SD could not have "just thought these allegations up," SD did testify that she watched quite a bit of true police documentaries, including a documentary on a child abuse case on television (Rec.p. 304). SD also testified that she was a "**great**" story teller, and that her stories had been based upon fantasy. In fact, when questioned about "things that make you unique," SD testified as:

Q: I want to ask you, also, right underneath that, Things that make you unique. You say, my imagination.

A: Yes.

Q: Do you have a big imagination?

A: Yes, bigger - - probably bigger than all of your imaginations.

Q: Than everyone in the room?

A: Yeah, probably. I'm not trying to brag or anything.

Q: That's okay. Is this how you have so many stories to tell people?

A: Yeah.

(Rec.pp. 302-3)

During SD's testimony, she was adamant about the one time that she had remembered Mr. Doucet sexually abusing her. However, SD also testified that Mr. Doucet had sexually assaulted her on several occasions, but could not remember what had happened on any of the alleged incidents (Rec.p. 279), and that her mouth had touched Mr. Doucet's crotch, but could not really remember what had happened (Rec.p. 280).

Also, during the cross-examination, SD made similar allegations against her cousin, Devon with the following testimony:

Q: Why would Devon be mad at you?

A: Well, the question you asked before, I said, "Break." He did hurt me once.

Q: One time?

A: Yeah, once.

Q: Where were you?

A: I was at my house.

Q: In Mississippi?

A: Mm-hum.

Q: Which room were you in?

A: My brother's.

Q: You don't share a room with your brother?

A: No, I do not.

Q: Did Devon hurt your private area?

A: No.

Q: No?

A: No, he just - - like he broke my heart. I know that's not considered an injury, but I'm talking about like what he did, he made me feel uncomfortable and he made me sad.

Q: Did he make fun of you?

A: No, he did not.

Q: I guess I - - how did he break your heart?

A: Like I'm - - from what all this and what I've done - - what I've said in this case, it got me thinking about that part. Well, I'm not really too sure if it happened or not, but I think - - okay so, of course my brother left the room and like Devon just covered me and him up with a blanket and he pulled out his crotch but I was sad. I mean like I didn't know he would do it. I mean like - - but from what I thought in the case, I think T-Bird sent him to do it or else he would have been punished, I think.

Q: To do what?

A: Abuse me.

Q: To - -

A: Yeah.

Q: I thought you said he pulled out - -

A: His crotch.

Q: Did he do something with it?

A: He made me lick it. I'm not sure if this happened, I mean I think it did. I don't exactly remember clearly.

Q: Do you have trouble remembering sometimes?

A: Yeah.

Q: When you get nervous?

A: Mm-hum.

Q: Did you tell anyone about that?

A: Well, I recently told the attorneys the last time I was here.

Q: Did you tell your mom?

A: Yeah, I told my mom. Like I remember I was talking to another set of attorneys back in Pearl River.

Q: And you told your mom about Devon?

A: Yeah. I told them and my mom and my dad.

Q: Did you tell Devon to stop?

A: No, I was too busy.

Q: Busy?

A: Like the - - doing the thing he wanted me to do.

Q: Sorry. Do you remember how long ago that was?

A: I was eight.[3]

3 It must be noted that this is the EXACT same age that SD stated that the abuse began with Mr. Doucet, and one of the

(Rec.pp. 319-21)

On Re-Direct Examination, SD testified that:

Q: Okay. You got upset when Ms. Landry asked about Devon. Is that because you don't want Devon to get in trouble for what happened?

A: **Yeah, plus I thought you said not to talk about Devon. Only the two times that it happened and that T-Bird abused me (emphasis added).**

(Rec.p. 324)

This testimony elicited from SD would appear as though SD had been "coached" prior to her testimony in this case.

After reviewing this testimony above, this Court must also consider the possibility that this is a case of **Perpetrator Substitution** by SD. According to the **AACAP PRACTICE PARAMETERS:** J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY, 36:10 SUPPLEMENT OCTOBER 10, 1997 (pages 50s and 51s), Perpetrator Substitution is one of the many possible explanations of false allegations of sexual abuse. Sometimes children make false accusations. Although most allegations made by children are true, the evaluator should consider the ways in which false allegations might come about an allegation may be partly true (that the child was abused), but partly false (as to who was the perpetrator). An allegation may have a nidus of truth, but may have been inaccurately elaborated in response to repetitive questioning.

In Perpetrator Substitution, the child may actually may have been sexually abused and manifests symptoms consistent with abuse, but identifies the wrong person as the perpetrator, resulting in a false allegation. The child may do this to protect the actual offender or the child may displace the memories and accompanying affects onto another individual. It must be noted that SD's version of the incident with Mr. Doucet was **EXACTLY** the same as it was with Devon. Same exact scenario, same exact actions, etc.

SD had testified that she believed that Mr. Doucet had sent Devon in to do that or else Devon

exact same situation concerning Mr. Doucet.

would have been punished for what he had done (Rec.pp. 319-21). But, during her testimony, nothing was presented by the State which proved that Mr. Doucet or any other adult had knowledge of this incident until **after** SD made allegations against Mr. Doucet.

Although SD had testified that Mr. Doucet had threatened her in order to prevent her from reporting these indiscretions, she had informed Dr. Jamie Jackson that Mr. Doucet had offered her twenty (20) dollars (Rec.p. 361).

It's sad, but quite possible, that SD had made these allegations against Mr. Doucet due to the fact that during her testimony, SD stated that her father, Michael Doucet, had told her that Mr. Doucet tried to run him over with his pickup truck previously. SD also testified that she had overheard her father discussing that Mr. Doucet had tried to run him over (Rec.p. 318).

Q: And you told us earlier that your uncle was banned from your house in Mississippi?
A: Yes, ma'am.
Q: Do you know why?
A: He tried to kill my dad by running him over, he told me, I think.
Q: Who told you?
A: My dad.
Q: Your dad told you Timmy tried to run him over?
A: Well, I heard him in a conversation. Then he told me.
(Rec.pp.317-8)

To enable the State to overcome the alleged victim's lack of credibility, the State enrolled the assistance of Dr. Jamie Jackson of the Aubrey Hepburn Care Center, which is part of Children's Hospital through LSU. Dr. Jackson had testified as an "Expert" in the field of Child Abuse Pediatrics (Rec.p. 355).

Although Dr. Jackson met with SD **one** time, and there was no physical evidence of any sexual assault.[4] Dr. Jackson was of the opinion that SD had been sexually abused by Mr. Doucet. Dr. Jackson

4 **Note:** Although SD testified that Mr. Doucet raped her numerous time from the age of eight (8) to ten (10), Dr. Jackson testified that the hymen was "normal" and showed no signs of trauma.

also testified to the fact that every time that she has testified, she has testified that the child (alleged victim) was likely to have been sexually abused.

Recently, the testimony of these "Expert" witness have been criticized by the Courts. The Louisiana Supreme Court, in *State v. Ayo*, 167 So.3d 608 (La. 6/30/15), reversed the convictions of Derrick Mais, Brett Ward, Clayton King, and Michael Ayo for the charges of Aggravated Rape and Attempted Aggravated Rape. In that case, the Louisiana Supreme Court held that, "reports of alleged victim's pretrial statements to witnesses that she had not been raped, but had instead been injured in an accident on a four-wheeler, constituted newly discovered evidence and that warranted new trial."

In the case of *Ayo*, "experts" in the field of forensics had testified that:

> "[D]elayed piecemeal revelations of sexual abuse are common with younger victims, who usually make their first disclosure to peers instead of to a parent or to authorities 'because they are concerned about getting into trouble, family problems, and embarrassment,' and also because they 'often consider trying to forget about such events or pretend like they never happened.' according to Rickles, RP appeared to fit that pattern: she disclosed the rapes for the first time to Devon Radecker on the night they happened; she then made only the partial disclosure of a beating and attempted rape to her mother, the authorities, and forensic interviewers, [JoBeth] Rickles and [Dr.] Atzemis, eventually adding the detail of the attempted oral intercourse; and she finally made full disclosure to her mother, the Attorney General's Office, and then to jurors at trial. Dr. Atzemis also opined that the bruises on RP's body could have stemmed from blunt force trauma but were more likely caused by a laying-on of hands during sexual assault.

(FN6.) *State v. Ayo*, 2014-1933, 167 So.3d 608 (La. 2015).

In the case of *Ayo*, supra, the alleged victim **lied** about what had happened. These alleged perpetrators of the horrible crimes had their lives destroyed from June of 2008 to June of 2015, when the Louisiana Supreme Court granted relief in their cases. These individuals were sentence to life imprisonment without the benefit of Probation, Parole, or Suspension of Sentence and were considered "Sex Offenders" during their incarceration. The State had relied heavily on the testimony of its two "Expert" witnesses, JoBeth Rickles and Dr. Atzemis to obtain these convictions. Then the State has the audacity to continuously consider this type of testimony as credible.

The State has been continually using the testimony of these "experts" who have consistently testified on behalf of the victim in order to obtain convictions for innocent persons accused of sexual misconduct. Mainly, the purpose of this testimony is to overcome the State's lack of evidence (physical, DNA, or eyewitness). When it comes to a case of credibility between the alleged victim and defendant, this "Expert" testimony "tips the scale" to ensure the State a conviction, even if it means sentencing an innocent person to incarceration for the remainder of their lives for a crime that they have not committed. **This practice MUST come to an end.**

This type of testimony has been labeled as so inherently unreliable that they cannot aid decision making in the criminal justice system. The clinician observer applying his or her own theory is simply unreliable. It is logical that this Court should be reluctant to allow it to be used for a purpose which it was not intended a credibility evaluation tool.

Therefore, the courts have found that this type of evidence is of highly questionable scientific validity, and fails to unequivocally pass the ***Daubert*** threshold test of scientific reliability. In any capacity, it is highly unlikely that it will be useful to a jury on the issue of witness' credibility, especially as a tool for determining whether or not abuse actually occurred. See: ***Daubert v. Dow Pharmaceuticals***, 509 U.S. 579 (1993).

Even assuming that CSAAS-based testimony or expert testimony itself does indeed pass the ***Daubert*** threshold test for scientific validity, we now explore whether or not it's use to bolster the victim's credibility was improper so as to unfairly prejudice the defendant.

Testimony by an expert is not particularly helpful to a jury that must rely upon own common sense as a barometer for the evaluation of truthfulness. The cases all seem to focus on, in the face such expert testimony, fears of the jury surrendering it's own common sense in weighing victim testimony and deferring to a diagnosis was nothing more than a subjective opinion favoring the victim.

In this case, the State had called Dr. Jackson to the stand as an "Expert" witness in order to corroborate SD's testimony due to the fact that the State understood from the onset of these proceedings, SD would not be credible to the jury.

Furthermore, This case gives the Court the opportunity to give concrete substance to the rule of law that contradictory testimony, such as incredible, inherently improbable or impeached testimony, is insufficient to uphold a conviction.

> Corroboration of a victim's testimony in sexual offense cases is triggered only by contradictions in the victim's trial testimony. Thus, corroboration is mandated when the victim's testimony is so contradictory and in conflict with physical facts, surrounding circumstances and common experience that its validity is rendered doubtful such that corroboration of the victim's testimony is required to sustain the conviction.

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There is no corroborating evidence in this case. The testimony of the accusing witnesses in this case was clearly contradictory and impeached, as shown be the record, notwithstanding the fact that the State suppressed further ***Brady*** impeachment evidence from the defense at trial ...

Further, incredible, contradictory, or impeached testimony fails to establish a corpus delicti in the first instance, and also goes to the ***Winship*** standard at trial.

The State produced no physical evidence which would establish that anyone had committed Aggravated Rape on SD at anytime, at any place. Indeed, even the question of venue of a crimes rests upon the establishment that an actual crime happened in the first place. The corpus delicti in the instant case is not satisfied by testimony of the prosecutrix without any corroborating circumstances. There is not even a doctor's report in evidence that establishes the possibility of sexual activity of kind.

The fact that impeached testimony, standing alone, cannot uphold a conviction under the law is predicated upon the fact that impeached testimony, standing alone, fails to establish a corpus delicti in the first instance ...

While the credibility of a witness is a matter for the finder of fact, once impeached, that witness's testimony becomes suspect under the law and must be corroborated in order to be convincing evidence of guilt or innocence. This is especially true where the credibility of the witness is paramount to the outcome of the case.

Impeached testimony, as a general rule, cannot stand alone to convict. ***State v. Chism***, 591 So.2d 383, 386 (La. App. 2nd Cir. 1991), *citing*, ***State v. Laprime***, 437 So.2d 1124 (La. 1983); ***State v. Lott***, 535 So.2d 963 (La. App. 2nd Cir. 1988).

In ***State v. Kennedy***, 803 So.2d 916 (La. 2001), in Justice Traylor's dissenting opinion, it is stated that the Louisiana Supreme Court has found that, "The victim's testimony, standing alone, can prove that the act occurred, ..." but is qualified in FN9, "However, we have also ruled post-trial that impeached testimony of a witness, standing alone, cannot prove the offense."

WHEREFORE, for the foregoing reasons, the State has failed to meet its stringent burden of proof beyond a reasonable doubt, and this Court, after a careful review of the Record, must invoke its Supervisory Authority of Jurisdiction over the lower courts and Grant the necessary relief.

SUMMARY

The State Courts have erred in failing to address these properly filed Issues concerning the reversible error of the trial court in allowing the jury to view SD's drawings (with written testimony) during the course of the deliberations. This is clearly a violation of Mr. Doucet's Sixth and Fourteenth Amendments to the United States Constitution, and a denial of Mr. Doucet's constitutional right to a fair and impartial trial of Lack of Jurisdiction, and have denied erroneously Mr. Doucet relief.

Furthermore, no reasonable jurists could determine that the testimony of SD was credible after the fact that she had testified about her "multiple" personalities; the fact that her imagination was "bigger than everyone's in the courtroom;" and, her story was "exactly" the same concerning the incident in

which she testified Mr. Doucet's son had abused her (but, she did not want Mr. Doucet's son to be in trouble).

Let's not forget that SD testified to the fact that her stories just "pop" into her head (as this incident had), and that she could tell the same story years later without any variances.

CONCLUSION

For the reasons stated above and in the previous filings in the State of Louisiana Courts, Mr. Doucet's Writ of Certiorari should be granted, and this matter be remanded to the district court for a new trial. Mr. Doucet 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,

Timmy W. Doucet

Timmy W. Doucet

Date: December 5, 2018