

No. _____

19-6171

IN THE

SUPREME COURT OF THE UNITED STATES

JORGE SANCHEZ-RODRIGUEZ

PETITIONER

VS.

ROBERT TANNER

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI FROM
THE LOUISIANA SUPREME COURT
STATE OF LOUISIANA
NO.: 2019-KO-0100

PETITION FOR WRIT OF CERTIORARI

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Jorge Sanchez-Rodriguez
Jorge Sanchez-Rodriguez, #727498
Pro se Petitioner
Rayburn Correctional Center
27268 Hwy. 21 N.
Angie, LA 70426

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QUESTIONS PRESENTED

- 1. DID THE STATE APPELLATE COURT AND THE LOUISIANA SUPREME COURT ERR IN DENYING PETITIONER'S APPEAL BECAUSE THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT HIS CONVICTION?**
- 2. DID THE TRIAL COURT ERR BY ADMITTING THE TESTIMONY OF NURSE ANN TROY, WHO IMPROPERLY INTERVIEWED A SPANISH-SPEAKING CHILD, WITHOUT ENSURING SHE FULLY UNDERSTOOD THE CHILD'S ANSWERS, AND INSTEAD MANIPULATED THE UNINTELLIGIBLE INTERVIEW THROUGH THE USE OF LEADING QUESTIONS AND TAILORED THE CHILD'S ANSWERS TO HER OWN OPINION?**

LIST OF PARTIES

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

☒ 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:

Louisiana Supreme Court
Supreme Court Bldg
400 Royal Street
New Orleans, LA 70130

Leon A. Cannizzaro, Jr.
District Attorney
Orleans Criminal District
619 S. White St.
New Orleans, LA 70019-7348

Robert Tanner, CCE, Warden
Rayburn Correctional Center
27268 Hwy. 21 N.
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APPENDIX “B”	Original Brief of Appellant, Filed on behalf of Petitioner, by the Louisiana Appellate Project, into the Court of Appeal, Fourth Circuit, State of Louisiana
APPENDIX “C”	Decision on Appellant’s Brief, from the Court of Appeal, Fourth Circuit, State of Louisiana
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TABLE OF AUTHORITIES CITED

CASE	PAGE NUMBER
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued 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 this petition and is:

☐ reported at _____ or,

☐ has been designated for publication but is not yet reported; or,

The opinion of the United States district court appears at Appendix “__” to this petition and is:

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the Louisiana Supreme Court (Denied), appears at Appendix “**E**” to the petition and is: **Denied, June 17, 2019**

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the Fourth Circuit Court of Appeal, State of Louisiana, appears at Appendix “**C**” to the petition and is: **Conviction Affirmed; Remanded for Resentencing, December 12, 2018.**

☐ reported at _____; 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. _____ A-_____.

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

☒ For cases from **state courts**:

The date on which the highest state court decided the case was **June 17, 2019**. 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. _____ A-_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V

United States Constitution, Amendment VI

United States Constitution, Amendment XIV

Louisiana Constitution of 1974, Article I § 2

Louisiana Revised Statute 14:42

Louisiana Revised Statute 14:43.1

STATEMENT OF THE CASE

Petitioner Jorge Sanchez-Rodriguez was charged by indictment with one count of aggravated rape of a juvenile under the age of thirteen, in violation of La. R.S. 14:42.

On January 24, 2014, Petitioner entered a plea of not guilty and a discovery hearing was set. After numerous continuances, the appellant elected trial by jury on August 1, 2017.

At the conclusion of the two-day trial, the jury returned a responsive guilty verdict for sexual battery, in violation of La. R.S. 14:43.1.

On November 3, 2017, Petitioner was sentenced to thirty-five years at hard labor, the first twenty-five to be served without benefit of parole, probation, or suspension of sentence. The defense orally objected to the sentence as excessive.

On December 1, 2017, a motion for appeal was filed and granted.

On December 12, 2018, the Court of Appeal, Fourth Circuit, found the evidence submitted at trial was sufficient to support Petitioner's conviction for sexual battery, in violation of La. R.S. 14:43.1. They also found that the sentence imposed falls within the legal parameters of La. R.S. 14:43.1(C)(2). However, the factual basis upon which the trial court relied to sentence Petitioner was based, in part, on an incorrect interpretation of the facts and an impermissible sentencing consideration. Therefore, the Court of Appeal, Fourth Circuit, in Docket Number 2018-KA-0578 affirmed Petitioner's conviction and remanded the matter to the trial court for resentencing in line with their opinion.

On January, 2019, Petitioner filed for Writ of Certiorari in the Supreme Court of the State of Louisiana.

On June 17, 2019, under Docket Number 2019-KO-0100, the Supreme Court of the State

of Louisiana Denied Certiorari in a 6-1 decision without opinion, with the Honorable J. Hughes stating that he would grant.

Petitioner now presents this Writ of Certiorari before this Honorable Court.

REASON FOR GRANTING THIS PETITION

ASSIGNMENT OF ERROR NUMBER ONE

THE STATE APPELLATE COURT AND THE LOUISIANA SUPREME COURT ERRED IN DENYING PETITIONER'S APPEAL BECAUSE THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT HIS CONVICTIONS

Jorge Petitioner was convicted of sexual battery despite the fact that there was no physical evidence linking him to the crime, nor any physical evidence to substantiate that a crime even occurred.

The State spent more than a quarter of its time on DNA witness Julia Naylor—some 35 pages out of 131 of the transcript on the second day of trial. Ms. Naylor testified that male DNA was retrieved from a gauze that was used to swab the exterior of L.A.'s vagina and that it was positive for two male DNA profiles.

Furthermore, Ms. Naylor came to the conclusion that the DNA proved nothing as far as Petitioner's guilt. Petitioner could not be included or excluded as the donor. Specifically, there were not enough similarities to include Petitioner nor enough differences to exclude him. This is in effect a non-match. Still, the trial court incorrectly stated, during sentencing, that DNA implicating Petitioner was found on L.A.'s underwear

Second, there was no allegation that two men sexually assaulted L.A. Yet two different male DNA profiles were found on the sample taken. While Ms. Naylor testified that there could be a million different scenarios to explain how two different male DNA profiles ended up on the gauze that swabbed the exterior of L.A.'s vagina, no amount of conjecture links Petitioner to the DNA or to a sexual battery. The fact is that an equally as possible hypothetical is that two other

men touched the gauze before it was used to swipe L.A.'s vagina and thus the DNA was already on the gauze.

There is also the possibility that someone else molested L.A., such as the person L.A. referred to as Ken or the person she referred to as the *negra*, or her father, brother, or both. Unfortunately, even in the face of inconclusive DNA, that possibility was not entertained, nor investigated; no other buccal swabs were taken or submitted for DNA.

Child sex crimes are serious and an affront to society. That does not, however, justify reducing the burden of proof on someone charged with such a crime or allowing the conviction to stand based upon insufficient evidence.

To determine whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 560 (1979); *State v. Green*, 588 So.2d 757 (La. App. 4 Cir. 1991). The reviewing court must consider the record as a whole, and if a rational trier of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. *State v. Mussall*, 523 So.2d 1305 (La. 1988); *Green, supra*.

When circumstantial evidence forms the basis of the conviction, the evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. *State v. Shapiro*, 431 So.2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15: 438. This is not a separate methodology, but rather an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a

reasonable doubt. *State v. Wright*, 445 So.2d 1198 (La.1984). All evidence, direct and circumstantial, must meet the *Jackson* reasonable doubt standard. *State v. Jacobs*, 504 So.2d 817 (La.1987).

This means ultimately, all evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt. *State v. Porretto*, 468 So.2d 1142 (La.1985), *dissenting opinion*, 475 So.2d 314 (La. 1985).

In order to uphold the conviction for sexual battery, pursuant to La. R.S. 14:43.1, the State was required to present evidence that Petitioner intentionally touched the anus or genitals of L.A. with an instrumentality or part of his body, or that L.A. touched Petitioner with an instrumentality or part of her body, that she was under fifteen years old, and that Petitioner was at least three years older than her. There is obviously no question as to the age differences, but the State failed to prove that Petitioner committed this crime.

ASSIGNMENT OF ERROR NUMBER TWO

THE TRIAL COURT ERRED BY ADMITTING THE TESTIMONY OF NURSE ANN TROY, WHO IMPROPERLY INTERVIEWED A SPANISH-SPEAKING CHILD, WITHOUT ENSURING SHE FULLY UNDERSTOOD THE CHILD'S ANSWERS, AND INSTEAD MANIPULATED THE INTERVIEW THROUGH THE USE OF LEADING QUESTIONS, TAILORING THE CHILD'S ANSWERS TO HER OWN OPINION.

The only evidence that implicated Petitioner initially was the conflicting statements of L.A.'s mother, who spoke to the detective and the doctor at the Emergency Room. L.F. (L.A.'s Mother) testified that this was the first time that her daughter had ever gone to the Rodriguez'

home to play. However, her son, J.A., later testified that his sister went to the Rodriguez house to play frequently.

L.F. also told Detective Barnes and Nurse Anne Troy that A.S. (Petitioner's daughter) confirmed that her father touched L.A. However, L.F. also said that A.S. returned within minutes after the girls left to go to A.S.'s house. Both houses are parts of a duplex, so the distance is even less than traditional next-door neighbors. The girls walked that exceptionally short distance to A.S.'s house, and A.S. came back stating L.A. was still next door. L.F. immediately sent her son the short distance back to retrieve his sister.

It is impossible that the alleged activity took place based on the timing, proximity of the houses, and chronology of events. According to the record, (1) the girls went to A.S.'s house. (2) A.S. came back almost immediately and (3) L.F. immediately sent her son (J.A.) to pick up his sister. The State's theory was that Petitioner sent his own daughter back to L.A.'s house so he could molest L.A. without any witnesses, something that could not be proven beyond a reasonable doubt, as it was stated that L.F. immediately sent her son, J.A., to retrieve his sister from the Rodriguez house.

J.A. stated that Petitioner was on the sofa wrapped in a blanket and that L.A. was next to the television on the floor. According to J.A., Petitioner was already on the sofa, meaning he did not get up and answer the door for J.A. Additionally, M.L. (Petitioner's wife) testified that the front door was open, which is corroborated by the fact that no one had to let J.A. inside the Rodriguez home. J.A. simply walked in the house.

Finally, the alleged victim's statement (L.A.) is convoluted, in that it is comprised of a confusing mixture of Spanish and English to the extent that the Spanish interpreter and nurse practitioner (Ann Troy) could not understand much of it. In that statement, L.A. accuses no less

than five times a person she refers to as “the *negra*,” which means the black woman, of being the one who touched her. When she does implicate Petitioner, it is only at the prodding and leading of nurse Anne Troy.

This statement was never clarified because L.A. refused to discuss the case when she was called to testify. Thus, it is impossible to tell what part of the statement should be believed as well as to determine what exactly L.A. meant to say. The translator mentioned several times she could not understand what L.A. was saying. L.A.’s statements include that she *pee pees* from her booty, that Ken told her to keep a secret, that her house was crying, that her mom was at work, a “*negra*” touched her, that she ran to get her uncle with glass, and some miscellaneous gibberish, interspersed with her accusations against *Tee Tee*, which were only crafted after being carefully drawn out with leading questions and other tactics by nurse Anne Troy. The interview nurse Troy conducted was not a forensic interview following any established protocol.

When there is conflicting testimony as to factual matters, credibility of witnesses is within the discretion of the trier of fact. *State v. Richardson*, 459 So.2d 31, 38 (La. App. 1 Cir. 1984). An appellate court does not re-weight credibility of witnesses when reviewing sufficiency claims. *State v. Stowe*, 93-2020 (La. 4/11/94), 635 So.2d 168, 171.

The trier of fact may, within the bounds of rationality, accept or reject the testimony of any witness. The fact finder’s discretion may be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. *State v. Mussall, supra.*

If the translator could not understand L.A.’s statements, how could nurse Troy? Nurse Troy’s testimony should not have been allowed; her conclusions were biased and her inferences most likely interfered with further investigation of this alleged crime. The confusion over L.A.’s statements and her own testimony prove that nurse Troy did not conduct an interview following

any established protocol. Nurse Troy's conduct reflects that found in another ruling by the Louisiana Supreme Court, where her testimony was found to be biased and unprofessional. *See C.M.J. versus L.M.C., Wife of C.M.J.*, 156 So.3d 16.

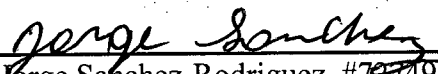
To allow her testimony in this case and further, to find Petitioner guilty based on that testimony is a violation of the fundamental protection of due process of law.

CONCLUSION

Petitioner respectfully requests that this Honorable United States Supreme Court grant his Certiorari, reverse his conviction, vacate his sentence, and/or remand for a new trial.

WHEREFORE, the petition for writ of certiorari should be granted.

Respectfully Submitted,


Jorge Sanchez-Rodriguez, #727498
Pro sé Petitioner
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27268 Hwy. 21 N.
Angie, LA 70426

VERIFICATION

I hereby verify, under penalty of perjury, that the facts set forth in this petition are true and correct to the best of my information and belief.

Executed on AUGUST 19, 2019.

Jorge Sanchez
Jorge Sanchez-Rodriguez, #727498
Pro sé Petitioner