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20-7649 ORIGINAL
No.

FILED

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT EARL JACKSON
PETITIONER

VS.

MARK S. INCH
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO

THE FOURTH DISTRICT COURT OF APPEAL FOR FLORIDA

PETITION FOR WRIT OF CERTIORARI

ROBERT EARL JACKSON

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OKEECHOBEE, FL 34972

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE TESTIMONY OF THE STATE'S WITNESS WHEN SHE TESTIFIED TO THE FREQUENCY ORGASMS OCCUR IN RAPE VICTIMS DURING AN ATTACK
2. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CALL CATHER JACKSON AND PRECIOUS HICKS AS WITNESSES AT TRIAL (EYEWITNESSES AND ALIBI WITNESSES)
3. WHETHER FLORIDA STATUTE § 794.022 (1) IS UNCONSTITUTIONAL AS IT SPECIFICALLY STATES THAT A DEFENDANT CAN BE CONVICTED SOLELY ON AN UNCORROBORATED STATEMENT / TESTIMONY IN SEXUAL BATTERY CASES, IN VIOLATION OF THE 5TH & 14TH AMENDMENTS TO THE U.S. CONSTITUTION

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:

RELATED CASES

1. STATE OF FLORIDA V. ROBERT EARL JACKSON
CASE NO.: 13-17734-CF-10A
17TH JUDICIAL CIRCUIT COURT, BROWARD COUNTY, FLORIDA
DATE OF DISPOSITION: April 6TH, 2020
2. ROBERT EARL JACKSON V. STATE OF FLORIDA
CASE NO.: 4D20-1091
FOURTH DISTRICT COURT OF APPEAL (FLORIDA)
DATE OF DISPOSITION: October 1ST, 2020
REHEARING/REHEARING EN BANC DENIED: December 31ST, 2020

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7 J. Wigmore, <i>Evidence</i> §§ 2030-2032 (3 rd ed 1940)	24, 25
9 W. Holdsworth, <i>History of English Law</i> 203-211 (3d ed 1944)	24
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Corroborating Charges of Rape, 67 Colum. L. Rev. 1137 (1967)	25, 26
David L. Bazelon, "Justice Stumbles Over Science", <i>Transaction</i> (July/August 1967) 8, 11	31-32
J. MacDonald, <i>Rape Offenders and Their Victims</i> 209-31 (1971)	26
Lear, Q. If You Rape a Woman and Steal Her TV, What Can They Get You For in New York? A. Stealing Her TV, <i>N.Y. Times</i> , Jan. 30, 1972, § 6 (Magazine), at 11	23
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Mary Ann Lagen, Coordinator, Rape Task Force, National Organization for Women, Letter to the <i>Washington Post</i> , August 16, 1973, p. A21, Col. 1	29
Ploscowe, <i>Sex Offenses: The American Legal Context</i> , 25 <i>Law and Contemp. Prob.</i> 217 (1960)	25
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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 issue to review the judgment below.

OPINIONS BELOW

☒ For cases from state courts :

The opinion of the highest state court to review the merits appears at Appendix A 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 17TH JUD. CIR. COURT, Broward County, FL court appears at Appendix D to the petition and is

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

JURISDICTION

☒ For cases from *state courts*:

The date on which the highest state court decided my case was October 1, 2020. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: December 31, 2020, and a copy of the order denying rehearing appears at Appendix A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1257(a)

F.S. § 787.06

F.S. § 794.011(5)(a)

F.S. § 794.022(1)

F.S. § 800.04

U.S.C.A. 5, 6, 14

STATEMENT OF THE CASE

1. Mr. Jackson was charged with two (2) counts of sexual battery of a person twelve years of age or older without her consent, contrary to Section § 794.011(5)(a), Florida Statutes, a first degree crime, punishable by up to (30) years imprisonment.
2. Mr. Jackson proceeded to trial, and a jury found him guilty as charged on both counts of sexual battery, without any corroborating evidence.
3. Mr. Jackson was sentenced on January 15TH, 2016 to two (2) concurrent life sentences, with a 25-year minimum mandatory as to each count.
4. A Notice of Appeal and Amended Notice of Appeal were filed on February 12, 2016 and February 15, 2016, respectively, commencing an appeal which argued that there was insufficient evidence to support the convictions at issue in the appeal and that the Trial Court erred in admitting expert testimony concerning the frequency of rape victims experiencing orgasm during rape.
5. The convictions were affirmed, per curiam, by the Fourth District Court of Appeals on June 27, 2017.
6. Grossly ineffective legal representation by Bruce Raticoff, Esq., the trial defense counsel, contributed significantly to Mr. Jackson's convictions. The case against Mr. Jackson was totally predicated upon the inconsistent and contradictory statements of the alleged victim. There was

absolutely no DNA or other physical evidence (torn clothing, cuts, scrapes, bruising, etc.) to corroborate the alleged victim's allegations. There were no corroborating witnesses. Moreover, what the alleged victim said or did in the immediate aftermath of the alleged assault were significantly different from what might have been expected under such alleged circumstances. Finally, it is uncontroverted that the alleged victim acknowledged experiencing enjoyable physical sensations (orgasm) during the alleged sexual battery.

7. It is uncontroverted that the State's discovery responses provided no notice that the State would be qualifying Dr. Jessica Roesch, a PHD Nurse Practitioner, to testify about orgasms being reported by a percentage of rape victims. It is uncontroverted that the State's written discovery responses provided no notice that Dr. Roesch would be opining that it was not uncommon for a rape victim to experience an orgasm. Mr. Jackson does not know, and the Record on Appeal does not reflect, if Mr. Raticoff ever took the deposition of Dr. Roesch. Mr. Raticoff never advised Mr. Jackson of any deposition of Dr. Roesch. Assuming that there had been no deposition of Dr. Roesch and Mr. Raticoff had heard Dr. Roesch's "expert testimony" for the first time at trial, Mr. Raticoff, as a competent defense attorney, should have objected to Dr. Roesch's testimony, asserting a discovery violation, demanding a Richardson hearing, and then arguing that the defense had been prejudiced. Had the defense been aware of Dr. Roesch's expert testimony, the defense would have hired its own expert, who

would have rebutted Dr. Roesch's testimony.

8. Alternatively, if the trial defense counsel had taken Dr. Roesch's deposition or had, in another fashion, been aware that the state would present very uncommon expert testimony regarding rape victim orgasms, it was incumbent upon the trial defense counsel to hire a defense expert both to rebut Dr. Roesch's testimony and to assist in cross-examining Dr. Roesch. With the assistance of an expert, he could have poked holes in her uncommon theory and testimony regarding the frequency of orgasms in rape victims.

9. Apart from the conduct described in paragraphs 7 and 8 above, the trial defense counsel had been advised prior to trial by Mrs. Cather Jackson, the defendant's mother, that both she and Precious Hicks, a young woman staying overnight in Mrs. Jackson's house during the night of the alleged sexual battery, had spent the night in bed in Mrs. Jackson's bedroom with the alleged victim, and that at no time did the alleged victim leave the bedroom that night. Moreover, no time that night did Robert Earl Jackson (the petitioner) enter Mrs. Jackson's bedroom. Accordingly, two witnesses were prepared to present evidence that the alleged sexual battery, as alleged by the alleged victim, could not have occurred. Mr. Ratloff did not act on this advice. He did not present such crucial exculpatory testimony from either witness. While Cather Jackson, Mr. Jackson's mother, might have been deemed less than credible,

Precious Hicks had no motive to testify falsely to assist Mr. Jackson and was a credible witness. Moreover, it is uncontroverted that the trial defense counsel did not use information from Ms. Hicks or Ms. Jackson in cross-examining the alleged victim.

10. Cather Jackson and Precious Hicks have provided the affidavits attached hereto as Appendix H in which each swears that the alleged victim spent the entire night of December 24th, 2013, when the incident allegedly happened in the bedroom with the alleged victim. Each swears that the alleged victim did not leave the room during the night and Robert Earl Jackson (petitioner) did not enter the room. Moreover, Cather Jackson swears that she had advised Bruce Raticoff, Esq. prior to trial that she and Precious Hicks could provide testimony that the alleged sexual battery never occurred.

11. Alex Arreaza, Esq., an experienced attorney, has provided the affidavit attached hereto as Appendix I. In that affidavit, attorney Arreaza opines that Bruce Raticoff, the trial defense counsel, was constitutionally ineffective for all of the following reasons. First, when the State offered "expert testimony" from Dr. Roesch as to the frequency of orgasms in rape victims, Mr. Raticoff should have objected, asserting that the defense had been materially prejudiced by the State's discovery violation. Had the defense been advised that such expert testimony was to be offered, the defense would have engaged its own DNA expert. The affidavit adds that any of a number of potential

defense experts would knock holes in the State's contention that orgasms by rape victims are not uncommon. Mr. Raticoff should have demanded a Richardson¹ hearing to determine the Brady² violation. Mr. Raticoff's failure to do this, standing alone, constitutes ineffective assistance of counsel. However, separate and apart from this, Mr. Raticoff was constitutionally ineffective, according to attorney Arreaza, because he failed to present witnesses and exculpatory evidence on behalf of Mr. Jackson. Specifically, the trial defense counsel failed to call Cather Jackson and Precious Hicks. As is set forth in their affidavits, they would have testified that the alleged sexual battery did not occur and could not have occurred. This failure, standing alone, also constituted ineffective assistance of counsel.

12. If the trial defense counsel had demanded a Richardson hearing and presented testimony from Cather Jackson and Precious Hicks, especially in light of the absence of any physical or other corroborating evidence of guilt, it is highly likely that the outcome of Mr. Jackson's trial would have been different.

Strickland v. Washington, 104 S. Ct. 2052 (1984).

¹ Richardson v. State, 246 So. 2d 771 (Fla. 1971)

² Brady v. Maryland, 373 US 83, 83 S. Ct. 1194 (1963)

13. The very existence of Florida Statute §794.022 (1)³ is unconstitutional, in violation of the right to a fair trial under the 5TH and 14TH Amendments and violates the 6TH Amendment's guarantee of effective assistance of counsel, as its very wording renders any and all counsel in these types of cases automatically ineffective, as it infers that there are no defenses to such charges based solely on an allegation by a victim.

³ which states, "The testimony of the victim need not be corroborated in a prosecution under s. 787.06, s. 794.011, or s. 800.04"

REASONS FOR GRANTING THE PETITION

1. THE DISCOVERY VIOLATION

Mr. Raticoff's failure to object to the testimony by the State's expert regarding the "frequency of orgasms" in rape victims on the grounds of the discovery violation and the prejudice to the defense case arising out of the defense's detrimental reliance on the State's articulated position throughout discovery is the essence of the trial defense counsel's failure to render constitutionally adequate legal representation. While preparing for surprises by having an expert available, if needed, might be ideal, it is inexcusable and unforgivable that, when surprised and prejudiced by such a significant change, the trial defense counsel failed to raise both the discovery violation and the surprise and prejudice to the defense arising out of that violation. Instead of doing this, Mr. Raticoff did not, in any fashion, modify the defense's presentation so as to counteract this new testimony from Dr. Roesch.

It is black letter law that failure to object to evidence, as well as failure to oppose State's motions can and does, in appropriate circumstances, constitute ineffective assistance of counsel. Brown v. State, 777 So. 2d 1131 (Fla. 4th DCA 2001); Foster v. State, 779 So. 2d 550 (Fla. 2nd DCA 2001); Daniels v. State, 777 So. 2d 1133 (Fla. 4th DCA 2001); Ethridge v. State, 766 So. 2d 413 (Fla. 4th DCA 2000); Kitchen v. State, 764 So. 2d 868 (Fla. 4th DCA 2000). More specifically, failure to object to evidence arising out of, or irrevocably connected to, a discovery violation will constitute ineffective assistance of counsel if the defense were materially prejudiced by the defense counsel's failure to object,

as in the case before this Court. Taylor v. State, 589 So. 2d 918; Major v. State, 979 So. 2d 243 (Fla. 3rd DCA 2007); Collins v. State, 671 So. 2d 827 (Fla. 2nd DCA 1996).

In Collins, supra, the Florida 2nd DCA reversed the trial Court's summary denial of the 3.850 motion and remanded the case for an evidentiary hearing on the claim that the attorney was unconstitutionally ineffective [under the 6th Amendment] by failing to object to and request an evidentiary hearing regarding a police officer's testimony that the defendant had allegedly made an inculpatory statement placing himself at the scene of the crime. While it is theoretically possible that an attorney's failure to object and request a Richardson hearing might be trial strategy, determining whether an attorney's inaction would be acceptable trial strategy can only be accomplished after the evidentiary hearing. See, Harley v. State, 659 So. 2d 1370 (Fla. 2nd DCA 1995).

The facts of this case are analogous to those presented in Major v. State, 979 So. 2d 243 (Fla. 3rd DCA 2007). In Major, supra, as in the case at hand, the trial defense counsel was faced with a State discovery violation (Brady⁴ violation), when the State presented surprise evidence. In both Major, and the case at hand, the trial defense counsel failed to specifically raise the discovery violation via objection and also failed to demand a Richardson⁵ hearing, to determine the Brady violation. In both cases, a direct appeal predicated in part upon the testimony which might have been addressed in a Richardson hearing was

⁴ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

⁵ Richardson v. State, 246 So. 2d 771 (Fla. 1971).

denied. Of immediate significance is the Third District Court of Appeal's blunt evaluation of the trial counsel's conduct. Major, supra, stated clearly and unequivocally, that failing to object to the discovery violation and request a Richardson hearing was constitutionally inadequate:

"The defendant may seek postconviction relief under Florida Rule of Criminal Procedure 3.850 for ineffective assistance of counsel. See, Collins v. State, 671 So. 2d 827 (Fla. 2nd DCA 1996) (concluding that an evidentiary hearing was required on defendant's claim that he was denied effective assistance of counsel when his attorney did not object or request a Richardson hearing upon learning of a police officer's changed testimony at trial). A better case for ineffective assistance of counsel is difficult to imagine, as the changed testimony here crippled the defense's theory of the case and would have caused a criminal defense attorney with any modicum of effectiveness to object to this new evidence and demand a Richardson hearing. Undoubtedly, the defendant's proper cause of action is to pursue a claim that his attorney was ineffective for not preserving the purported discovery error for appellate review."

Id., at 245, 246.

In Major, as in the case at hand, an appeal based upon the trial court's failure to exclude the surprise

evidence was denied. Major stressed that denial of the appeal did not, in any fashion, controvert the contention of ineffective assistance of counsel. In explaining why the State's discovery violation, together with the failure to conduct a Richardson hearing, did not justify overturning a conviction on appeal, if the trial defense counsel did not specifically object and specifically request a Richardson hearing, the Third DCA stressed the irresponsibility of such conduct by the defense. *Id.*, at 244, 245:

"In this case it is undisputed that defense counsel was surprised by and unprepared for Dr. Shuman's changed opinion, during his direct examination, defense counsel did not object. Counsel cross-examined Dr. Shuman and attempted to impeach him using a medical report that apparently reflected his inconsistent testimony.

Where a defendant fails to timely object to a discovery violation or to request a Richardson hearing, the defendant does not preserve the point for appellate review. Celestine v. State, 717 So. 2d 205, 206 (Fla. 5TH DCA 1998) (citations omitted) (finding that issue of the trial Court's failure to conduct a Richardson hearing was not preserved for appellate review because the defendant failed to make an objection when the discovery violation occurred and raised the argument for the first time on appeal).⁶

⁶ Petitioner here did not attempt to improperly raise the unpreserved issue on direct appeal. He properly raised it on postconviction.

It is well settled that the State's noncompliance with discovery rules does not mandate automatic reversal and, therefore, it is essential that the defendant either raise a timely objection or request a hearing to allow the trial court to specifically rule on the issue. See, e.g., Lucas v. State, 376 So. 2d 1149, 1151 (Fla. 1979) (holding that the trial court did not err in failing to conduct a Richardson hearing where "defense counsel brought the State's noncompliance to the attention of the Court (but did not interpose an objection);" Simon v. State, 615 So. 2d 236, 237 (Fla. 3rd DCA 1993) (finding that the trial court did not err in failing to conduct a Richardson hearing where the defendant failed to object when police testified about evidence that was not admitted); Taylor v. State, 589 So. 2d 918, 919-20 (Fla. 4th DCA 1991) (concluding that the trial court did not err in failing to conduct a Richardson hearing where the defendant did not object when an unlisted witness was offered by the State). When the defendant does not raise an objection to the State's purported discovery violation, a trial court is not required to conduct a further inquiry. Lucas, 376 So. 2d at 1152. Moreover, the Florida Supreme Court noted that, under such circumstances, a reviewing court should not indulge in the presumption that the trial court judge would have made an erroneous ruling had an objection been made." *Id.*

Thus, the defendant cannot argue for the first time on appeal that the trial court erred in

failing to conduct a Richardson hearing concerning a possible discovery (Brady) violation.

The rationale articulated for denying the appeal is a clear nail in coffin for indicting such conduct, which is subsequently characterized as constitutionally unacceptable:⁷

"The defendant may seek postconviction relief under the Florida Rule of Criminal Procedure 3.850 for ineffective assistance of counsel",⁸

2. THE FAILURE TO PRESENT WITNESSES

The alleged victim's credibility was the State's entire case. The trial defense counsel relied upon contradictions in what the alleged victim had said to different people, as well as actions by the alleged victim which might be viewed as highly unlikely to be engaged in by a rape victim. The trial defense counsel ignored the opportunity to present two (2) witnesses who were ready and willing to testify that the alleged sexual battery did not occur and could not have occurred. Similarly, if it turns out that Mr. Raticoff had somehow learned prior to trial, of Dr. Roesch's expert opinion,⁹ he could have engaged a defense expert to

⁷ under the 6th Amendment & Strickland v. Washington, 104 S.Ct. 2052 (1984)

⁸ which is exactly what the petitioner here did.

⁹ on a matter that is also outside the purview of the Dr.'s expertise (frequency of orgasms). Objection was made regarding qualification.

explain the fallacies in Dr. Roesch's testimony. Again, he chose to go forward without securing such testimony. In order to determine whether Mr. Raticoff's failure to call these three (3)¹⁰ witnesses as set forth above, constitutes constitutionally ineffective assistance of counsel, it is necessary to conduct an evidentiary hearing.¹¹ Hamilton v. State, 860 So.2d 1028 (Fla. 5TH DCA 2003); Ford v. State, 825 So.2d 358 (Fla. 2002); Griggs v. State, 774 So.2d 1145 (Fla. 4TH DCA 1999); Davis v. State, 644 So.2d 1249 (Fla. 4TH DCA 1995); Futch v. Dugger, 874 F.2d 1483, 1486 (11TH Cir. 1989) (remanding for evidentiary hearing on, inter alia, counsel's failure to locate, interview, and call an eyewitness who would allegedly have suggested petitioner's version of events); Dickson v. Wainwright, 683 F.2d 348, 351-52 (11TH Cir. 1982) (reversing where district court did not conduct evidentiary hearing before denying claim that defense counsel failed to call favorable witnesses).

In the instant case, defense trial counsel only called one (1) witness - Broward County Sheriff's

¹⁰ The two alibi/eyewitnesses and the Expert (which contrary to the State's assertion (Appendix "F", pg. 14, Sect. 27, paragraph 2), the petitioner/defendant is not "required to name a specific expert witness and show that the specific expert witness would have been available to testify at trial in order to render a rule 3.850 motion legally sufficient"). State v. Lucas, 183 So.3d 1027 (Fla. 2016) (Note: The Court adopted the State's argument in full. Appendix "D").

¹¹ which the trial court refused to do.

Office Criminologist, Christopher Comar, to testify solely to the fact that the defendant's (petitioner's) DNA was not found on the victim. [Appendix "K"].

NOTE: In the State's Case-in-Chief, they called Detective Sandra Hays-Roberts, whom was assigned to the special victims' unit with B.S.O. (Broward Sheriff's Office) and investigates sex crimes. She first met the alleged victim at the SATD (now called the Nancy J. Cotterman Center) (Tt. 460-461). She took the first statement, which mysteriously was erased (Tt. 463). She met with the defendant/petitioner (Tt. 465). Cross-examination began at (Tt. 478). The detective testified there was no physical evidence to corroborate the victim's account (Tt. 479-481).¹² The defendant was originally arrested for incest. There were no injuries to the victim. The victim never said she was forced or threatened. Defense counsel asked, "Incest was the perfect charge because it got around the consent issue, right?" The detective agreed (Tt. 481-482). In the first statement, the victim only told Detective Hays-Roberts there was oral sex performed by the defendant but did not mention digital penetration (Tt. 483). No DNA was found on the victim (Tt. 487). No clothing was collected from the victim (Tt. 487-488). The State rested (Tt. 494-495).

¹² including DNA (Tt. 498-502)

The alleged victim's testimony was 100% contradictory to her deposition, especially regarding the fact that she (in deposition) once said "No," and twice said, "I don't remember" when specifically asked three separate times (at different times during the deposition) whether Mr. Jackson's fingers penetrated her vagina (a required element of sexual battery by digital penetration) (TT. 341-345).

Had counsel called these Three (3) witnesses it would have unequivocally helped to bolster the defense position that this entire story was fabricated due to some anger Mr. Jackson's daughter was harboring towards him for his years of abandonment.

3. THE UNCONSTITUTIONALITY OF FLORIDA STATUTE § 794.022 (1)

Florida Statute § 794.022 (1) is part of the Sexual Battery Statute (§ 794.011) that specifically reads :

F.S. 794.022 (1): The testimony of the victim need not be corroborated in a prosecution under s. 787.06, s. 794.011, or s. 800.04.

* Prior to 2016 it only included 794.011.

Unlike most states or federal districts, Florida does not include the Caveat to its "corroborating evidence" statute that states :

"A conviction for [sexual offense] may be

obtained on the uncorroborated testimony of the victim, unless such testimony is inherently incredible" [which credibility would ordinarily be a question for the jury].

In Florida, as written, § 794.022 simply states that a very communistic outlook on guilt is allowed in such cases — mainly, that "finger-pointing" is simply enough to convict a man (or woman)¹³ of crimes that regularly carry sentences between 15 years and life imprisonment¹⁴ (sexual battery; aka rape¹⁵ in some states)...Crimes that also carry with them one of the worst stigmas possible (maybe even more than murder in some cases).

Although this "no corroboration necessary" issue has been raised in many state courts, and in most federal districts, the issue at conflict here, has never been settled by the United States Supreme Court (whether it is unconstitutional to convict a person of such a serious crime carrying with it the horrific stigma and extreme sentences, up to life, with absolutely no corroborating evidence to support the victim's allegation/testimony).

In such times as these, with the #metoo movement in full swing (and subject to such outrageous abuses, as the Honorable Justices Clarence Thomas and Brett Kavanaugh all too much have known and personally experienced), it is time for this very diversified Supreme Court

¹³ although rarely ever used against women defendants.

¹⁴ petitioner received two (2) life sentences based upon this statute.

¹⁵ and aka "Carnal Knowledge" in Federal terms.

to take up the constitutional issue that has long been unsettled in so many districts and states.

IN SUPPORT :

Take, for example, the position of the United States Court of Appeals, District of Columbia's position that a "Person may not be convicted of a 'sex offense' on the uncorroborated testimony of the alleged victim" ¹⁶ Bailey & Humphries v. United States, 132 U.S. App. D.C. 82, 405 F.2d 1352 (1968); Duckett v. United States, 133 U.S. App. D.C. 305, 410 F.2d 1004 (1969); United States v. Medley, 146 U.S. App. D.C. 396, 452 F.2d 1325 (1971). The corroboration requirement provides an essential safeguard in such cases where the risk of unjust conviction is high. Complainants all too frequently have "an

¹⁶ in contrast, i.e., to Arkansas' rule that rape conviction can be obtained by uncorroborated testimony of the victim. Urquhart v. State, 273 Ark. 486, 621 S.W. 2d 218 (1981); Brown v. Davis, 752 F.2d 1142, 1144 (6th Cir. 1985) ("It is true that the testimony of a single, uncorroborated prosecuting witness or other eyewitness is generally sufficient to support a conviction"); Syl. pt 5, State v. Beck, 167 W.Va. 830, 286 S.E. 2d 234 (1981) ("A conviction for any sexual offense may be obtained on the uncorroborated testimony of the victim, unless such testimony is inherently incredible; the credibility is ordinarily a question for the jury").

urge to fantacize or even a motive to fabricate". Coltrane v. United States, 135 U.S. App. D. C. 295, 418 F.2d 1131, 1135 (1969). Typically, the "innocent as well as the guilty have only their own testimony upon which to rely", and the nature of the charges "poses an unusual threat to the reliability of a judgment on credibility of the allegedly defiled vis a vis the alleged defiler". 418 F.2d 1135.

The D.C. Circuit has avoided imposing rigid rules concerning corroboration. See, United States v. Terry, 137 U.S. App. D. C. 267, 422 F.2d 704, 708 (1970). In general, the degree of corroboration required will vary according to the danger of fabrication by a particular complainant. With respect to the corpus delicti, for example, it is not always necessary to introduce independent evidence to corroborate each and every element of the offense. Rather, "independent corroborative evidence will be regarded as sufficient when it would permit the jury to conclude beyond a reasonable doubt that the victim's account of the crime was not a fabrication"¹⁷. United States v. Gray, 155 U.S. App. D. C. 275, 477 F.2d 444 (1973). The quantum of proof required will depend upon such factors as the age and impressionability of the complainant and the presence or absence of any apparent motive. U.S. v. Gray, supra. This flexible approach to the

¹⁷ which can hardly be done in the instant case, as the victim's testimony is wholly inconsistent (on the elements of the crime) when juxtaposed with her deposition.

corroboration rule focuses attention on the facts of each case. For example, scrutiny must be exercised where, as here, the complainant is a young girl.¹⁸ Courts have exhibited a "traditional skepticism" towards accusations of children. Wilson v. United States, 106 U.S. App. D.C. 226, 271 F.2d 492 (1959). In such cases, the offense may not be established by the testimony of the victim alone.

Applying this standard to the present case, this High Court should find that this is just one of those cases where there was not sufficient corroboration (or any at all, for that matter) to warrant submission of the case to the jury.¹⁹ See, especially Appendix "F", pg. 7 where the State themselves point out (in this postconviction action) that there was absolutely no corroborating evidence in this case. Although the State's evidence may corroborate the occurrence of some event, it does not corroborate sexual battery (by oral to vaginal, or actual digital penetration). The most effective corroboration in this case would have been medical evidence (cuts, bruises, scarring, or DNA), of which there was absolutely none (II. 346, 366, 370, 498-502). Medical evidence may not be an indispensable prerequisite to conviction where

¹⁸ The alleged victim in this case was 23 years old at the time.

¹⁹ Digital penetration was a required element in the one charge, and it was testified to at trial (by the victim) that she had not showered or wiped herself clean to remove any DNA from saliva (II. 366).

other independent evidence is introduced to corroborate sexual battery (including sexual intercourse).²⁰ But in the instant case, no such evidence was presented. As a practical matter, the State's case rested almost exclusively on the testimony of the daughter. Any inference that sexual battery (oral or digital) occurred must be based on her bare accusation. In these circumstances, the traditional purpose of the corroboration requirement - avoidance of fabricated charges - requires reversal of the petitioner's conviction. Even when the evidence is viewed in the light most favorable to the prosecution, it is clear that there was insufficient corroboration proved in this case to show that sexual battery was committed by the petitioner.

As Chief Judge, BAZELON, opined in his concurring opinion in U.S. v. Wiley, 492 F.2d 547 (1973):

"The requirement of corroboration in sex offenses, particularly rape (referred to as "sexual battery" in Florida), has come under sharp attack in recent years²¹. Feminists have found the requirement unjust to women²² and

²⁰ See, Bailey & Humphries v. United States, supra (carnal knowledge); Coltrane v. United States, supra (sodomy); U.S. v. Green, 139 U.S. App. D.C. 75, 429 F.2d 754 (1970) (rape).

²¹ See, e.g., Report of the District of Columbia Public Safety Committee Task Force on Rape, at 51-55 (July 9, 1973) [hereinafter Task Force Report]; Note: The Rape Corroboration Requirement: Repeal Not Reform, 81 Yale L.J. 1365 (1972) [hereinafter Repeal Not Reform].

²² See, e.g., Lear, Q. If you Rape a Woman and Steal Her TV, What Can They Get You For in New York? A. Stealing Her TV, N.Y. Times, Jan. 30, 1972, § 6 (Magazine), at 11.

prosecutors have argued that it makes convictions too difficult to obtain²³.

These criticisms forced the D.C. Court of Appeals to examine the origins of the current views on corroboration, as follows:

The notion that the testimony of a single witness is inadequate to prove a crime is an ancient one. The Code of the Emperor Justinian provided that on any important issue the testimony of one witness was insufficient.²⁴ Ecclesiastical law refined this approach by requiring, for example, that against the Word of a Cardinal, forty-four witnesses were required.²⁵ But the common law gradually moved toward other modes of inquiry into the truth. Ultimately the common law rejected the requirement of corroboration for all crimes except perjury.²⁶ Thus there was

²³ See, e.g., Ludwig, The Case For Repeal of the Sex Corroboration Requirement in New York, 36 Brooklyn L.R. 378 (1970) [hereinafter Ludwig].

²⁴ Younger, The Requirement of Corroboration in Prosecutions for Sex Offenses in New York, 40 Fordham L. Rev. 263 (1971) [hereinafter Younger]. Younger relies on 7 J. Wigmore, Evidence §§ 2030-2032 (3rd ed. 1940) [hereinafter Wigmore] and 9 W. Holdsworth, History of English Law 203-211 (3d ed 1944). Justinian's general principle was called the rule of number.

²⁵ Younger, Id. at 263

²⁶ Younger, Id. at 264

no common law requirement of corroboration for any sex offense.²⁷

In 1974, thirty-five states had similarly rejected the corroboration requirement for rape.²⁸ Of those jurisdictions that retained the requirement, about half, including The District of Columbia, did so in the absence of legislation.²⁹ The substance of corroboration requirements varies enormously from State to State, ranging from a requirement of corroboration for force,³⁰ penetration,³¹ and identity, to minimal corroboration of any part of the complainant's testimony.³²

Numerous justifications, though, have been advanced for the requirement of corroboration in sex cases. An examination of these rationales reveals a tangled web of legitimate concerns, out-dated beliefs, and deep-seated prejudices.

The most common basis advanced for the requirement is that false charges of rape are more prevalent than false charges of other crimes.³³ A statement such as this

²⁷ See, 7 Wigmore § 2061, at 342. The statement to the contrary in People v. Friedman, 139 App. Div. 795, 796, 124 N.Y.S. 521, 522 (2d Dep't. 1910) is unsupported by authority.

²⁸ Repeal NOT Reform at 1367

²⁹ Id. at 1367, 1368, notes 14-18

³⁰ the victim here stated there was no restraints (367), no force or threat (479-482)

³¹ the victim's entire testimony regarding digital penetration contradicted her deposition and what she told the police (341-345)

³² Repeal NOT Reform at 1368-1370

³³ See, e.g., Note, Corroborating Charges of Rape, 67 Colum. L. Rev. 1137 (1967) [hereinafter Corroborating Charges]; Ploscowe, Sex Offenses: The American Legal Context, 25 Law and Contemp. Prob. 217 (1960).

is extremely difficult to prove. However, there is a general consensus that unfounded rape charges have become increasingly more common. It is argued, first, that women often have a motive to fabricate rape accusations and second, that women may fantasize rapes.³⁴ It is contended that a woman may fabricate a rape accusation because, having consented to intercourse she is ashamed and bitter, or because she is pregnant and feels pressured to create a false explanation,³⁵ or because she hates the man she accuses³⁶ or wishes to blackmail him.³⁷ It is said to be relatively easy to create a false description of rape in convincing detail.³⁸

³⁴ See, e.g., Coltrane v. United States, 135 U.S. App. D.C. 295, 298-299, 418 F.2d 1131, 1134-1135 (1969) ("We know from lessons of the past that all too frequently such complainants have an urge to fantasize or even a motive to fabricate...").

³⁵ the victim here, in this case, was not pregnant at the time she alleges this occurred. She was single (unwed) and homeless too. Note too, that petitioner was originally only charged, based upon her statement, with "Incest" (not sexual battery (479-482). She also never mentioned digital penetration to the police (483), and refused to give the police her clothing for examination (487, 488). No DNA was ever found on the victim (487).

³⁶ See, (297, 301-302) (He was an absentee father and would regularly make inappropriate comments towards her).

³⁷ See, e.g., Corroborating Charges at 1138; J. MacDonald, Rape Offenders and Their Victims 209-31 (1971).

³⁸ 3 Wigmore § 924a. (492 F.2d-35½)

In addition to fabricated rapes, it has been suggested that women may report fantasized rapes.³⁹ Both the causes and prevalence of rape fantasies have been hotly disputed and it is not established any specific number of rape charges that have arisen out of fantasies (Repeal NOT Reform at 1376-1378). However, even one false accusation of any sex crime is too many. With both fabricated and fantasized rapes it appears well-established that what dangers do exist are greatest when the complainant is younger (but not necessarily a juvenile). *Id.*

In addition to the problem of false charges, the corroboration requirement is justified on the theory that rape is a charge unusually difficult to defend against. In 1680 Lord Chief Justice Hale wrote, in one of the most oft-quoted passages in our jurisprudence, that rape "is an accusation easily to be made and hard to be proved, and harder to be defended by the

³⁹ See, e.g., 3A Wigmore §924(a), at 736-746; Wedmore v. State, 237 Ind. 212, 227-239, 143 N.E. 2d 649, 656-662 (1957) (Emment, J. dissenting). The Wedmore opinion quotes the following statement of Dr. Karl A. Menninger: "...fantasies of being raped are exceedingly common in women, indeed one may almost say that they are probably universal. By this I mean that most women, if we may judge from our clinical experience, entertain more or less consciously at one time or another fleeting fantasies or fears that they are being or will be attacked by a man. Of course, the normal woman who has such a fantasy does not confuse it with reality, but it is so easy for some neurotic individuals to translate their fantasies into actual beliefs and memory falsifications that I think a safeguard should certainly be placed upon this type of criminal charge. Wedmore, *supra* at 658.

party accused, tho never so innocent." 1 M. Hale, Pleas of the Crown 636 (1680). The same theme has been echoed by modern commentators and courts. Corroborating Charges at 1139. The usual absence of eyewitnesses damages the defendant as well as the complaintant. Juries are said to be unusually sympathetic to a woman wronged, this weakening the presumption of innocence. *Id.* However, as technology has advanced by scores, even in the last 20-30 years, rarely can a person rape another without leaving some trace of evidence to corroborate a victim's accusatory testimony. With advances in DNA analysis (where even microscopic DNA can be detected, and pinpointed to within 640 persons on the planet (out of billions), a fresh look at this very serious and prevalent issue is needed. For "it is better that 100 guilty men go free than one innocent suffer."

Another justification for the corroboration requirement is the prevalence of the severe penalties for rape. For many years rape was punishable by death in many states. Task Force Report at 6. Today rape is still among the most severely punished of crimes. *Id.* (Now 15 years to life in Florida). One result has been the development of rules such as the corroboration requirement. Proposals that the corroboration requirement be abandoned are at times coupled with proposals that penalties for rape be reduced. *Id.* at 9. Reformers are subject to certain tensions on this issue. On the one hand, they seek to bring standards of proof and punishment for rape in line with those for other crimes of violence. Thus, it is argued that "As long as rape is viewed primarily as a sexual crime rather than as a crime of violence and power, society will continue to

react to rape as it has in the past. The goal... is to normalize the crime of rape." *Id.* at 35. On the other hand, reformers note that rape is an unusually traumatic experience.

Special procedures are suggested for rape victims. *Id.* at 14. We are told that "rape is considerably more than mere physical assault. It is a psychic violation also, a serious injury against the victim's emotions and spirit that may cause mental torment difficult or impossible to be eased."⁴⁰ In light of this there may well be resistance to lowering the penalties.

Still another basis for the corroboration requirement lies in "the sorry history of racism in America". Task Force Report at 5. There has been an enormous danger of injustice when a black man accused of raping a white woman is tried before a white jury. Repeal NOT Reform at 1380. Of the 455 men executed for rape since 1930, 405 (89%) were black. *Id.* at note 103.

⁴⁰ Coleman McCarthy, the Crime of Rape, The Washington Post, August 8th, 1973, p. A18, col. 3. See also, Mary Ann Lergen, Coordinator, Rape Task Force, National Organization for Women, Letter to the Washington Post, August 16, 1973, p. A21, Col. 1 ("The emotional trauma of a rape victim is seldom, if ever, understood by the police, doctors and courts. Likewise, it is seldom understood by the woman's family, friends, and society in general").

In the vast majority of these cases the complainant was white.⁴¹

All of the safeguards that developed in this context should not be automatically applied today. Juries are more integrated than in the past and racial prejudice may be at a somewhat lower level. Numerous rape victims are black and their interests, as well as those of white women, may have been slighted by the concern for black defendants.

A final theory of the corroboration requirement is that it stems from discrimination against women. It is said that traditional sex stereotypes have resulted in rape laws that protect men rather than women.

Penalties are high because a "good" woman is a valued possession of a man. Corroboration is required because to a "good" woman rape is "a fate worse than death" and she should fight to the death to resist it. If no such fight is put up, the woman must have consented or at least enticed the rapist, who is therefore blameless. Task Force Report at 3-4. In sum, it is said to be the "male desire to 'protect' his 'possession' which results

⁴¹ See, Ronald Goldfarb, Rape and Law Reform, *The Washington Post*, August 2, 1973, p. A24, col. 2. Goldfarb reported the estimate that, although capital punishment was available for crimes other than rape, the single category of rapes of whites by blacks accounted for most sentences to capital punishment in the United States. And, although capital punishment for rape has been found to be unconstitutional, those numbers continue in the context of disproportionate punishment for blacks accused of rape in today's society.

in laws designed to protect the male - both the "owner" and the assailant - rather than protecting the physical well-being and freedom of movement of women."

Mary Ann Lergen, *supra*, FN 40.

This point of view, which has been expressed by men as well as women,⁴² may well have some validity. It would be surprising if entrenched notions of sexuality did not play a role in the law of crimes dealing with sexual violations. Corroboration rules may be structured, for example, to protect male rather than female defendants. This could explain the fact that conviction for soliciting for homosexual purposes, in the past, required corroboration while soliciting for heterosexual prostitution did not. Cf. Kelly v. United States, 90 U.S. App. D.C. 125, 194 F.2d 150 (1952); and Price v. United States, 135 A.2d 854 (D.C. Ct. App. 1957).

Ultimately, modern notions of sexual equality may help breakdown those aspects of rape laws which stem from unjust discrimination against women.

Analyzing all of these justifications in order to separate the valid from the invalid is no easy task. As Chief Judge Bazelon has said in another context, "We are in that terrible period known as 'meanwhile'. We know enough to be troubled but not enough to know how to resolve our troubles". (David

⁴² See, e.g., Younger at 276, note 105 ("When all is said and done, it just might be that the requirement of corroboration in prosecutions for sex offenses (where, remember, the complainant is usually female and the defendant almost always male) is nothing more than an illustration of the laws unequal treatment of women.").

L. Bazelon, "Justice Stumbles Over Science," Transaction (July/August 1967) 8, 11). As evidence, moves, and attitudes change we too must remain open to change. Next year or twenty years from now available information may require a different approach. But at least for the immediate present, Chief Justice Bazelon, found that the flexible corroboration rule developed by the D.C. Circuit Court provided the best accommodation of numerous conflicting considerations. These may still be the possibility of special fabrication problems relating to rape, particularly where, as in this case, the complainant is relatively young. There are still severe penalties for rape (life sentences in this case). There is still racism in our society and that racism may be particularly likely to surface in a case involving alleged sexual violations.

CONCLUSION

In order to guard against these possible dangers, this High Court should settle this conflict amongst the 50 states and the federal jurisdictions by finding in favor of the constitutional requirement (of the right to due process and a fair trial) that a corroboration rule which provides that "independent corroborative evidence will be regarded as sufficient [only] when it would permit the jury to conclude beyond a reasonable doubt that the victim's account of the crime was not a fabrication." United States v. Gray, 155 U.S. App. D.C. 275 at 276, 477 F.2d at 445 (1973). It wouldn't be necessary to require adherence to absolute tests or concrete guidelines, Bailey v. United States 132 U.S. App. D.C. 82, 88, 405 F.2d 1352, 1358 (1968), but should require evidence of the crime of probative value outside of

the complainant's testimony. United States v. Jones, 135 U.S. App. D.C. 328, 477 F.2d 1213, 1218 (1973). In cases such as this one, where that evidence is lacking, the dangers to the defendant/petitioner far outweigh the difficulties created for the prosecution.

The net effect of such an approach does not appear to make convictions for rape (sexual battery) difficult in such a technological age. Available statistics have indicated that the conviction rate for rape in jurisdictions that require corroborative evidence is actually higher than it is for the United States as a whole,⁴³ and most states (and federal jurisdictions) do not require corroboration.

Thus, as this case presents absolutely zero evidence to corroborate the fabricated testimony of the alleged victim, the petitioner's conviction should be reversed.

Furthermore, this High Court should once and for all settle the law concerning enacting rules/laws that must require corroboration in these kinds of sexual offenses, as is required in all other crimes, to meet the requirements of the U.S. Constitution.

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

 663011

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⁴³ e.g., 45% of those charged with rape in the District of Columbia were convicted of rape (120 convictions of 269 tried). The comparable figure for the United States as a whole was 36.1%. Repeal NOT Reform at 1370, note 38.