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In The  
Supreme Court of the United States

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TROY ALLEN LUCAS,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

—◆—  
ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF THE FOURTH CIRCUIT

—◆—  
PETITION FOR WRIT OF CERTIORARI

—◆—  
Mary E. Davis  
Christopher M. Davis  
*Counsel of Record*  
DAVIS & DAVIS  
1350 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 234-7300  
dcmedavis@gmail.com  
cmdavisdc@gmail.com

*Counsel for Petitioner*

*Dated: April 5, 2021*

**QUESTION PRESENTED**

Whether the Fifth and Sixth Amendments prohibit a federal court from denying, under Federal Rule of Evidence 807, the admission of testimony provided by a since deceased witness in another trial that was offered by Petitioner under a theory of third party guilt when the only reason given by the district court is there were many unspecified inconsistencies and the only inconsistency cited by the government is that a single piece of forensic evidence established that the witness's testimony was unreliable.

**PARTIES TO THE PROCEEDING**

The parties to the proceeding are Troy Allen Lucas, Petitioner and defendant/appellant below, and the United States, Respondent.

**STATEMENT OF RELATED CASES**

None.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT*

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***PETITION FOR A WRIT OF CERTIORARI***

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Petitioner Troy Lucas respectfully petitions for a writ of *certiorari* to the United States Court of Appeals for the Fourth Circuit to review the judgment against him in *United States v. Troy Lucas*, Record No. 18-4069.

**OPINION BELOW**

The opinion of the Court of Appeals is available at --- Fed. Appx. --- (4th Cir. 2020), 2020 WL 7090720.

**JURISDICTION**

The judgment of the Court of Appeals was entered on January 4, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part:

No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law[.]

The Sixth Amendment to the United States Constitution provides in relevant part:

In all criminal prosecutions, the accused shall ... have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## STATEMENT OF THE CASE

This case presents a critical issue that addresses the parameters of a district court's consideration, under Federal Rule of Evidence 807, of whether to allow a defendant to introduce evidence that another individual committed the crime for which the defendant has been accused of committing – in this case murder.

This Court has held that in order to guarantee that a criminal defendant receives a fair trial, the determination of the facts **must** rest with a jury – not the individual prosecuting the case. *See Perry v. New Hampshire*, 565 U.S. 228, 237, 132 S. Ct. 716, 723, 181 L. Ed. 2d 694 (2012) (“Our legal system ... is built on the premise that it is the province of the jury to weigh the credibility of competing witnesses. Only when evidence is so extremely unfair that its admission violates fundamental



conceptions of justice, have we imposed a constraint tied to the Due Process Clause.”  
(internal citation and quotation marks omitted).

### **FACTUAL BACKGROUND**

Demetrius Smith was arrested and charged with the murder of Robert Long in the Circuit Court for Baltimore City in case number 108218005. There were two eyewitnesses to the murder: Michelle Vicker and Mark Bartlett. Bartlett testified for the prosecution at the motions hearings on October 26, 2009 and January 11, 2010. He also testified at the trial on January 15, 2010. Smith was convicted of first-degree murder and handgun use. He was sentenced to life in prison. On October 4, 2010, Mark Bartlett died. On August 1, 2012, while Smith’s case was on appeal, State prosecutors heeded the request of federal prosecutors and moved to have Smith’s conviction vacated. On March 1, 2016, Smith’s case was expunged.

On June 7, 2016, six years after Smith’s trial and Bartlett’s death, Mr. Lucas was indicted in the instant case. The primary witness against Lucas was Jose Morales. Morales was charged with and convicted of Use of Interstate Commerce Facility in the Commission of a Murder-for-Hire and Death Results, i.e., the death of Robert Long, in violation of 18 U.S.C. § 1958(a). The other primary witness against Lucas was Stanley Needleman, Morales’s long time attorney and friend. Stanley Needleman resigned from the practice of law in August 2011 because on September 1, 2011 he entered a guilty plea to income tax evasion and money structuring as a result of a search conducted in his home that resulted in the seizure of \$1,200,00.

Prior to trial, Lucas moved pursuant to Federal Rule of Evidence 807 to admit transcripts of Bartlett's testimony at Demetrius Smith's motions hearings and trial to support a defense that a third-party had killed Long, not Lucas. Since Bartlett died well before Lucas's trial, transcripts from Smith's case were the only evidence available to Lucas of what Bartlett saw.<sup>1</sup>

The district court denied the motion stating, "Had the gentleman who died had been able to come here and testify, **I can assure you based on what the government has told me in this case** that he would face vastly different and more extensive cross-examination than took place by the defense attorney in the Circuit Court for Baltimore City. There were so many inconsistencies and inadequacies in his testimony, it is not a good commentary on the quality of the defense that was afforded to the defendant on trial that these inconsistencies were not developed or brought out." The district court never cited what those inconsistencies were. The only inconsistency raised by the government was based on a CCTV video which the government argued showed that Bartlett was untruthful - "We have a videotape, Your Honor, that demonstrably shows that Mr. Bartlett was lying. ... It's not a witness saying Mr. Bartlett was not telling the truth. It is a forensic ... tangible evidence that nobody can dispute." The court accepted the government's argument that Bartlett's testimony was not reliable and, therefore, not admissible.

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<sup>1</sup> Michelle Vicker, the other witness in Smith's trial, recanted.

## REASON FOR GRANTING THE PETITION

This Court has long recognized, “Whether rooted in the Due Process Clause of the Fourteenth Amendment or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), citing *California v. Trombetta*, 467 U.S. 485 (1984). This Court also has acknowledged that there are instances where evidence proffered by a criminal defendant that someone else committed the offense with which the defendant is charged is admissible at trial.

In *Holmes v. South Carolina*, 547 U.S. 319 (2006), the Court held that exclusion of defense evidence of third party guilt denied the defendant a fair trial. In that case, the evidence was excluded based on a South Carolina Supreme Court rule that “the critical inquiry concerns the strength of the prosecution’s case: If the prosecution’s case is strong enough, the evidence of third-part guilt is excluded even if that evidence, if viewed independently, would have great probative value and even if it would not pose an undue risk of harassment, prejudice, or confusion of the issues.” *Holmes*, 547 U.S. at 329. The South Carolina Court evaluated the prosecution’s forensic evidence and determined it to be “strong” and therefore justified the exclusion of the defendant’s third-party guilt evidence. *Id.*

The *Holmes* Court cited with approval 40A Am. Jur. 2d, Homicide § 86, pp. 136-138 (1999) which states, “[T]he accused may introduce any legal evidence tending to prove that another person may have committed the crime with which the defendant is charged .... [Such evidence] may be excluded where it does not sufficiently connect

the other person to the crime, as, for example, where the evidence is speculative or remote, or does not tend to prove or disprove a material fact in issue at the defendant's trial." *Holmes*, 547 U.S. at 327.

In this case, the proffered evidence was excluded because, based on the government's arguments, the district court believed that the cross-examination of Bartlett in the Smith trial was inadequate and there were many inconsistencies in Bartlett's testimony. But, again, the district court failed to say what those inconsistencies were and the only inconsistency cited by the prosecution focused on its forensic evidence – the videotape of the area that disputed Bartlett's testimony as to the time of the murder and failed to show Bartlett's presence in the area at the time of the murder. The Fourth Circuit found no abuse of discretion.

But the forensic evidence in Lucas's case pales in comparison to the forensic evidence in *Holmes*. The forensic evidence in *Holmes* included a palm print inside the front door of the victim's home, fibers consistent with a sweatshirt owned by the defendant found on the victim's sheets, matching blue fibers on the victim's nightgown, the defendant's and victim's DNA on the victim's underwear, and blood on the defendant's shirt that contained a mixture of the defendant's and the victim's blood. But despite this evidence, this Court determined it was error to exclude evidence of third-party guilt.

Lucas submits that this case presents an issue that addresses the relation between the holding in *Holmes* and FRE 807. Both cases consider a third party guilt defense which was essentially denied admission based on the prosecution's forensic

evidence arguments. This case considers that issue in the context of FRE 807, which provides in relevant part:

**(a) In General.** Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:

- (1) the statement has equivalent circumstantial guarantees of trustworthiness;
- (2) it is offered as evidence of a material fact;
- (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
- (4) admitting it will best serve the purposes of these rules and the interests of justice.

The proffered evidence satisfied each criteria for admissibility. The testimony was given under oath and the witness was thoroughly cross-examined, save on the issue of the video recording, which the parties in Smith's case stipulated had an incorrect time stamp on it. It was unquestionably offered as evidence of a material fact, that is, Lucas did not commit the murder. There was no other evidence available to Lucas to present on this issue. And, finally, admitting the evidence best serves the interests of justice because this Court has held that a criminal defendant has a constitutional right to present a defense.

Nor was this evidence remote or lacking a connection with the crime; it was not speculative, and it was offered to prove a material fact at trial. *Holmes*, 547 U.S. at 327. It is an abuse of discretion and a denial of Lucas's constitutional rights for a court to deny the admission of evidence that forms the basis of the defendant's defense, based solely on the prosecutor's argument that its single piece of forensic evidence renders the proffered evidence untrustworthy.

**CONCLUSION**

Petitioner submits that this case presents the perfect vehicle for this Court to address the implications of the *Holmes* decision on FRE 807. As such, Petitioner respectfully requests that this Petition be granted.

Respectfully Submitted,

/s/ Mary E. Davis

Mary E. Davis

/s/ Christopher M. Davis

Christopher M. Davis

Davis & Davis  
1350 Connecticut Ave., NW  
Suite 202  
Washington, DC 20036  
(202) 234-7300