

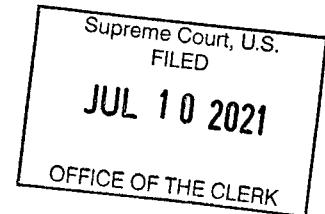
21-5315
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RAFAEL ARTURO COTO CHINCHILLA
Petitioner



VS.

STATE OF LOUISIANA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI FROM

THE LOUISIANA SUPREME COURT

STATE OF LOUISIANA

NO.: 2021-KO-00274

PETITION FOR WRIT OF CERTIORARI

Rafael Coto Chinchilla
Rafael Arturo Coto Chinchilla
#747756
Pro sé Petitioner
Rayburn Correctional Center
27268 Hwy. 21 N.
Angie, LA 70426

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QUESTIONS PRESENTED

- 1. WAS THE EVIDENCE IN THE INSTANT CASE INSUFFICIENT TO SUPPORT A GUILTY VERDICT ON ALL THREE COUNTS OF THE BILL OF INFORMATION?**

- 2. DID THE TRIAL COURT ERR IN OVERRULING THE OBJECTION DURING REBUTTAL CLOSING ARGUMENTS, WHEN THE PROSECUTOR MISCHARACTERIZED THE EMERGENCY ROOM DOCTOR'S TESTIMONY, THUS MISLEADING THE JURY AND TAINTING THE OUTCOME OF THE TRIAL?**

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

Paul D. Connick Jr.
District Attorney
24th Judicial District
Parish of Jefferson
200 Derbigny St., 5th Floor
Gretna, LA 70053

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TABLE OF CONTENTS

QUESTIONS PRESENTED.....	2
LIST OF PARTIES.....	3
TABLE OF AUTHORITIES CITED	5
OPINIONS BELOW	6
JURISDICTION.....	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	8
STATEMENT OF THE CASE	9
REASON FOR GRANTING THIS WRIT	10
• ASSIGNMENT OF ERROR NUMBER ONE.....	10
• ASSIGNMENT OF ERROR NUMBER TWO.....	16
CONCLUSION	19
VERIFICATION	20
CERTIFICATE OF SERVICE	21

INDEX TO APPENDICES

APPENDIX "A"	Original Brief of Appellant, Filed on behalf of Petitioner, by the Louisiana Appellate Project, into the Court of Appeal, Fifth Circuit, State of Louisiana
APPENDIX "B"	Original Brief of the State of Louisiana, filed into the Court of Appeal, Fifth Circuit, State of Louisiana
APPENDIX "C"	Decision on Appellant's Brief, from the Court of Appeal, Fifth Circuit, State of Louisiana, Docket No. 20-KA-60.
APPENDIX "D"	Application for Writ of Certiorari Filed by Petitioner, <i>Pro Sé</i> , into the Supreme Court of the State of Louisiana
APPENDIX "E"	Decision by the Supreme Court of the State of Louisiana, Denying Writ for Petitioner, Docket No. 2021-KO-00274.

TABLE OF AUTHORITIES CITED

CASE	PAGE NUMBER
<i>Jackson v. Virginia</i> , 443 U.S. 307	10
<i>State v. Matthews</i> , 375 So.2d 1165 (La. 1979)	10
<i>State v. Dixon</i> , 620 So.2d 904 (La. App. 1 st Cir. 1993)	10
<i>State v. Perow</i> , 616 So.2d 1336 (La. App. 3 rd Cir. 1993)	11
<i>State v. Chism</i> , 591 So.2d 383 (La. App. 2 nd Cir. 1991)	13
<i>State v. Laprime</i> , 437 So.2d 1124 (La. 1983)	13
<i>State v. Smallwood</i> , 20 So.3d 479 (La. App. 5 th Cir. 7/28/09)	17
<i>State v. Robertson</i> , 995 So.2d 650 (La. App. 5 th Cir. 10/28/08)	17
<i>State v. Jackson</i> , 880 So.2d 69 (La. App. 5 th Cir. 7/27/04)	17
<i>State v. Huckaby</i> , 809 So.2d 1093 (La. App. 4 th Cir. 2/6/02)	18
<i>State v. Francis</i> , 665 So.2d 596 (La. App. 5 th Cir. 11/28/95)	18
<i>State v. Foster</i> , 33 So.3d 733 (La. App. 5 th Cir. 6/29/10)	18
<i>Chapman v. California</i> , 386 U.S. 18, 87 S.Ct.824, 17 L.Ed.2d 705 (1967)	18
<i>Sullivan v. Louisiana</i> , 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993)	18

STATUTES AND RULES	PAGE NUMBER
La. R.S. 14:43.1	9
La. R.S. 14:81	9
La. R.S. 15:438	11
La. C.Cr.P. art. 774	17

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: **Certiorari Denied, April 27, 2021**

[✓] reported at **314 So.3d 838 (La. 4/27/21)**; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Fifth Circuit Court of Appeal, State of Louisiana, appears at Appendix "C" to the petition and is: **Affirmed in Part; Vacated in Part; Remanded**.

[✓] reported at **307 So.3d 1189 (La. App. 5th Cir. 12/23/20)**; 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 April 27, 2021. 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

Louisiana Revised Statute 14:42

Louisiana Revised Statute 14:43.1

Louisiana Revised Statute 15:438

Louisiana Code of Criminal Procedure, Article 774

(Rec. pp. 1137-80). She also alleged the petitioner had kissed her breasts once before and that was the entirety of the evidence presented by the state for the second count. C.B. also alleged that some time in August 2015, the first alleged assault, and one of the few times the petitioner was ever alone with C.B., he entered her bedroom while her mother was getting some tax documents. This lie could have been contradicted and/or countered, because it is a well known fact taxes are done at the beginning of the year and not in the summer. C.B. claimed the petitioner forced himself on her and she punched and kicked him so much they fell off the bed. C.B. further testified that the petitioner forcibly took her clothes off and inserted his penis into her vagina one time and then withdrew and walked away. No one else in the household testified to any bruising, destroyed property, or torn clothing. C.B.'s testimony was all the evidence presented in the first count as well. (Rec. pp. 1279-1337).

By the time of trial, C.B.'s mother, Yamilet Perez-Rivero, no longer believed her daughter's allegations. All state witnesses agreed that Ms. Perez had fully supported and participated in the investigation of her daughter's allegations against her new husband. She brought C.B. to all appointments and took the matter very seriously. The first and most serious account was alleged to have occurred when Ms. Perez was out acquiring documents for the Internal Revenue Service in 2015. In their presentation of evidence to the jury on this very serious count, the state did not even provide any evidence from the Internal Revenue Service showing Ms. Perez needed to provide additional documentation in 2015. Even though she no longer believed her daughter's allegations, Ms. Perez had cooperated fully with the police and the state all along and it can be reasonably assumed she would have provided these documents to the state and the defense if they existed and she could have provided even the scantest corroboration of C.B.'s claims. (Rec. pp. 1016-42, 1043-98, 1112-36, 1137-80).

Unfortunately, the trial court did not see the flawed proof and lack of evidence to convict the petitioner beyond a reasonable doubt. C.B. was the only one making any claims and no evidence or corroboration was gathered beyond that. The defense introduced several lewd *Instagram*TM and *Snapchat*TM messages between C.B. and her classmate and friend Axel Salazar Garcia, which also never proved anything had happened. (Rec. pp. 1217-70, 1279-1337, 1338-45). Most telling was that Axel was a state witness in this case and had not been charged with carnal knowledge or any other crime with C.B. when she was underage based solely on social media messaging and texts because it simply does not prove anything actually happened. The jury and the trial court failed to legitimately hold the state to its burden to prove all of the elements of the crime and to prove them beyond a reasonable doubt. Any and all reasonable doubts must be decided in favor of Rafael Chinchilla, the petitioner, and not the state. The evidence was insufficient in this case to support the requisite elements beyond a reasonable doubt. The state did not meet this burden in trial, in direct appeal, and certainly not now.

Louisiana jurisprudence has long held that impeached testimony, as a general rule, is not sufficient to sustain a conviction. *State v. Chism*, 591 So.2d 383, 386 (La. App. 2 Cir. 1991) citing *State v. Laprime*, 437 So.2d 1124 (La. 1983).

The State's entire case rested on the uncorroborated allegations made by C.B. on the very day her mother married a man other than her father. However, not only were C.B.'s allegations uncorroborated, C.B. was impeached in several regards.

First, C.B. made statements and went to great lengths to try to portray the impression that her, Yamilet, ceased attempting to contact her. C.B. testified that her mother never calls her or sees her anymore. (Rec. p. 1311). C.B. further testified that she wished her mother was still in her life. (*Id.*)

However, C.B.’s mother testified that she has repeatedly tried to contact her daughter, but that her calls have gone unanswered and unreturned. (Rec. p. 1088). Yamilet has even had other people attempt to contact her daughter on her behalf, to no avail. (*Id.*)

C.B. also claimed she had no idea petitioner and her mother were getting married anytime soon. (Rec. p. 1308). Yet C.B.’s mother testified that C.B. knew at least two weeks prior to her making her allegations that she and the petitioner were getting married. (Rec. pp. 1090-91). In fact, C.B. was with the petitioner and her mother when they went to the courthouse the first time. (*Id.*)

It is also not insignificant that the person C.B. allegedly made the allegations to, her father, apparently lied at trial to conceal his animosity towards petitioner. C.B.’s father, Haile Benitez, adamantly denied ever referring to petitioner using derogatory racial slurs, such as “Indio, Palestine,” or “Guajiro.” (Rec. pp. 811-12). However, both C.B.’s mother and uncle testified that Haile often used these derogatory names when referring to the petitioner. (Rec. p. 1083; Rec. p. 1383).

C.B.’s father also apparently lied about the circumstances when he, C.B., and Yamilet ever asked him to sign a release so she and C.B. could immigrate to the United States.¹ (Rec. p. 802). According to C.B.’s father, he and Yamilet “agreed to come together to the United States and mutually help one another with the girl.” (Rec. p. 803). However, C.B.’s uncle, who left Cuba after C.B., her father, and her mother, told the jury that C.B.’s father refused to sign the release for C.B. unless he and Yamilet did paperwork that allowed him to leave Cuba as well. Rec. p. 1387). When asked how would he characterize C.B.’s father’s refusal to sign C.B.’s release, C.B.’s uncle replied, “He saw it as an opportunity to benefit himself.” (Rec. p. 1388).

Additionally, the video C.B. recorded on her phone after the alleged third incident

¹ Under Cuban law, both parents of a child must sign a release before the child can emigrate. (Rec. pp. 1386-87).

impeaches C.B.'s account more than it corroborates it. The interpreter told the jury that C.B. stated in this video, "Don't call me like that anymore, Jonathan. Leave me alone. Shut up." (Rec. p. 1164). When defense counsel asked Detective Foltz whether C.B. sounded frightened on the video or just upset, Detective Foltz responded, "It's fair to say she was just upset." (Rec. p. 1188). The point is that in the video, C.B. sounds like an emotional teenager in an argument with a parent, not someone who she just fended off an attempted molestation. C.B.'s choice of words in the video also contradicts her allegation of what transpired immediately prior. Notably, C.B. does not say, "Stay out of my room," or "Don't touch me like that/again," or "Keep your hands off me," or "I'm going to tell mom," or indeed anything that suggests she was just molested. No, instead she said, "Don't call me like that anymore Jonathan. Leave me alone. Shut up." The State would have been better off not even playing this video.

There is also the fact that none of the improper texts C.B. alleged petitioner sent to her were recovered from the petitioner's phone. C.B. claimed petitioner sent her text messages stating that he loved her and that she would kill her if her saw her with anyone else. (Rec. p. 1283). C.B. also allegedly took a screenshot of a message from the petitioner that states, "I cannot contain the needs and desires for us to make love. Erase or delete." (Rec. p. 1257). However, petitioner voluntarily turned over his phone to police. Detective Solomon Burke testified that he is the supervisor for the digital forensics unit of the Jefferson Parish Sheriff's Office. Detective Burke personally extracted the data from the petitioner's phone, but was unable to locate a single incriminating text from petitioner's phone. (Rec. pp. 1252-63).

The State got almost every single one of its witnesses to express their opinion as to C.B.'s veracity. Besides the fact that this was highly improper and defense counsel was ineffective for allowing it to go the extent that it did, these witness's opinions as to C.B.'s credibility cannot be

considered as substantive evidence of petitioner's guilt. After the persistent victim bolstering testimony is removed, all the State has left is the uncorroborated, impeached testimony of the alleged victim, C.B. Petitioner respectfully submits that under Louisiana jurisprudence C.B.'s impeached testimony is not sufficient to sustain a verdict of guilty on all three counts.

ASSIGNMENT OF ERROR NUMBER TWO

THE COURT OF APPEAL AND THE LOUISIANA SUPREME COURT ERRED WHEN THEY DID NOT REVERSE THE TRIAL COURT'S JUDGMENT FOR OVERRULING THE OBJECTION DURING REBUTTAL CLOSING ARGUMENTS, WHEN THE PROSECUTOR MISCHARACTERIZED THE EMERGENCY ROOM DOCTOR'S TESTIMONY, THUS MISLEADING THE JURY AND TAINTING THE OUTCOME OF THE TRIAL

The prosecutor in rebuttal closing arguments was refuting the defense argument that the first doctor to see C.B. found no evidence of sexual abuse, but since the allegation was made, she had to report it to police as a matter of law. The state mischaracterized the evidence presented by saying Dr. Hue who was the defense's expert who diagnosed C.B. as having child sexual abuse. This was misleading to the jury and an overreach by the prosecutor mischaracterizing the testimony. The trial court failed to sustain the defense's objection. Dr. Hue had to report this as child sexual abuse because an allegation was made. It was a forgone conclusion mandated by law before her exam and expertise was ever applied to the case. Dr. Mehta, the expert in child abuse at Children's Hospital, also found no physical evidence that had any "medical or forensic value" but based on other factors in her expertise she found a valid claim was made. Her testimony was vastly different from what Dr. Hue found yet had to report by law. The prosecutor mischaracterized

the testimony of Dr. Hue and clearly mislead the jury. (Rec. pp. 911-81, 1346-76, 1464-6).

La. C.Cr.P. art. 774 requires that closing arguments at trial be confined “to evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case.” *State v. Smallwood*, 20 So.3d 479, 489 (La. App. 5 Cir. 7/28/09). *State v. Robertson*, 995 So.2d 650, (La. App. 5 Cir. 10/28/08). Closing arguments shall not appeal to prejudice. *Id at 659*. A prosecutor has considerable latitude in making closing arguments. *State v. Jackson*, 880 So.2d 69 (La. App. 5 Cir. 7/27/04). However, prosecutors may not resort to personal experience or turn their arguments into a referendum on crime. *Robertson*, *at 659-60*.

The trial judge has broad discretion in controlling the scope of closing arguments. *Robertson at 660*. A conviction will not be reversed due to improper remarks during closing arguments unless the reviewing court is thoroughly convinced that the remarks influenced the jury and contributed to the verdict. *Id. (citing Jackson*, 04-293 at 5-6, 880 So.2d 69 at 73). In making its determination, the appellate court should give credit to the good sense and fair-mindedness of the jury that has seen the evidence and heard the argument, and has been instructed that the arguments of counsel are not evidence. *Id.*

In addition, assuming the prosecutor’s argument was improper, reversal is not required when such error was limited and did not show significant impact on the outcome of the case. *State v. Huckaby*, 809 So.2d 1093 (La. App. 4 Cir. 2/6/02), *State v. Francis*, 665 So.2d 596, 604, (La. App. 5 Cir. 11/28/95); and *State v. Foster*, 33 So.3d 733, 741-3 (La. App. 5 Cir. 6/29/10).

The trial court should have stemmed the damage by sustaining the objection. (Rec. pp. 1464-6). Once the jury heard this misleading comment from the prosecutor, the nearly unavoidable inference made a fair trial and fair assessment of the evidence unlikely since the petitioner was

accused of a sex crime against a juvenile.

The error was not harmless because the verdict was not solely unattributable to the error. Louisiana adopted the federal test for harmless error enunciated in *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). The test in Chapman is whether it appears “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” 386 U.S. at 24; 97 S.Ct. at 828. *Chapman* was refined in *Sullivan v. Louisiana*, 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993). The *Sullivan* inquiry “is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.” *Id.*, 113 S.Ct. at 2081.

In the present case, the error in not sustaining the objection was not harmless because it was so prejudicial and depicting the petitioner as a child sex abuser. The state implied to the jury that since “all” experts diagnosed sexual abuse they can therefore find the petitioner a sex abuser based on all of these doctor’s expertise. Dr. Hue only testified she had to report and diagnose the claims because a claim was made by a juvenile. Her investigation showed no evidence of sexual abuse. Perhaps this was why the state did not call the first doctor to see C.B. as a witness. The state tried to mitigate her testimony after the fact by mischaracterizing it in rebuttal closing arguments, when the defense can no longer correct the mislead. The jury’s verdict can not be considered “unattributable” to this error.

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,


Rafael Arturo Coto Chinchilla
DOC No. 747756
Pro sé Petitioner
Rayburn Correctional Center
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 July 9, 2021.

Rafael Chinchilla
Rafael Arturo Coto Chinchilla,
#747756