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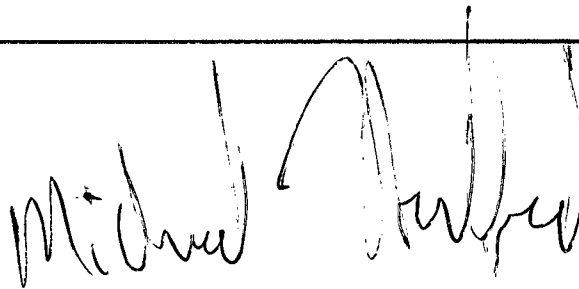
IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL HALFORD,
PETITIONER

V.
STATE OF LOUISIANA,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI



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ORIGINAL

QUESTIONS PRESENTED

Whether the denial of Petitioner's Spousal Privilege to exclude testimony at trial violated his rights against self-incrimination, due process, equal protection, and a fair trial under the Fifth and Fourteenth Amendments to the United States Constitution?

PARTIES TO THE PROCEEDING

The petitioner is Michael Halford, the defendant and defendant-appellant in the courts below. The respondent is the State of Louisiana, the plaintiff and plaintiff-appellee in the courts below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, MICHAEL HALFORD, respectfully petitions for a writ of certiorari to the Louisiana First Circuit Court of Appeal in *State v. Michael Halford*, 327 So.3d 1004 (La.App. 1 Cir. 6/4/21). *Appendix "A"*.

OPINIONS BELOW

The judgment of the Louisiana First Circuit Court of Appeal is an unpublished opinion reported at *State v. Michael Halford*, 327 So.3d 1004, 2021 La. App. WESTLAW 0221 WL 2283685, No. 2020-KA-0585 La. App. 1 Cir. 6/4/21. *Appendix "A"*. The Louisiana Supreme Court's order denying review of that decision is reported at *State v. Michael Halford*, 326 So.3d 884, 2021-K-00866 (La. 11/3/21), WESTLAW, *Appendix "B"*.

JURISDICTIONAL STATEMENT

The judgment and opinion of the Louisiana First Circuit Court of Appeal was entered on June 4, 2021. The Louisiana Supreme Court denied review of that decision on November 3, 2021. *See Appendix "A" and "B"*, respectively. This Court's jurisdiction is pursuant to 28 U.S.C § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

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

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. V

Louisiana Constitution article I, § 16 provides, in pertinent part:

Section 16. Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf. LSA-Const. Art. I, § 16

Article 504(A)(B) of the Louisiana Code of Evidence provides, in pertinent part:

(A.) Definition. A communication is “confidential” if it is made privately and is not intended for further disclosure unless such disclosure is itself privileged. **(B) Confidential communications privilege.** Each spouse has a privilege during and after the marriage to refuse to disclose, and to prevent the other spouse from disclosing, confidential communications with the other spouse while they were husband and wife. LSA-C.E. Art. 504 (A)(B)

STATEMENT OF THE CASE

The petitioner, Michael L. Halford, was charged by grand jury indictment with one count of first degree murder, a violation of LSA-R.S. 14:30(A)(5)

In a Motion In Limine filed by Defense Counsel prior to trial, Mr. Halford moved to exclude the testimony of his ex-wife,¹ invoking his Spousal Privilege under LSA-C.E. Art. 504(A)(B). The Motion was denied, as the trial judge was of the opinion that the statements purportedly made by Mr. Halford to his wife-at-the-time were “not private,” because they had been made while others were in the same room. Mr. Halford's ex-wife was allowed to testify against Mr. Halford, and Mr. Halford was found guilty as charged by a unanimous jury vote. Mr. Halford was sentenced to life in prison without parole.

With the assistance of a court-appointed lawyer, Mr. Halford appealed his case to the Louisiana First Circuit Court of Appeal. His appellate counsel argued that the trial court erred in denying challenges for cause as to certain jurors, and that the trial court erred in denying Mr. Halford's Motion in Limine to prohibit the

¹ Petitioner was married at the time of the alleged “confession” testified to as having been made by Petitioner

testimony of Jessica Raymond Nolley based on spousal privilege. Moreover, in a *pro se* supplemental appeal brief, Mr. Halford argued that the allowance of testimony by Jessica Raymond Nolley violated his constitutional rights. The Louisiana First Circuit Court of Appeals rejected the argument, concluding, “Herein, we agree with the trial court’s assessment that the communication at issue was not a ‘confidential communication’ subject to the spousal evidentiary privilege provided for in La. Code Evid. Art 504. Mr. Halford’s appellate counsel then sought review from the Louisiana Supreme Court, which denied review without reason, except for a concurring opinion by the Honorable Jefferson Davis Hughes, Judge, who stated, “While I believe the rulings of the lower courts on spousal privilege to be erroneous, the error is harmless given the other evidence.” *State v. Michael Halford*, 326 So.3d 884 (Mem), LA 2021) App. “B”

The State’s case against Mr. Halford is based on purely circumstantial evidence. The prosecution did not present any eyewitnesses to the crime. The only direct evidence the prosecution presented at trial was the testimony of Mr. Halford’s ex-wife, Jessica Raymond Nolley, about a “confession” Mr. Halford purportedly made to her during a private conversation she had with Mr. Halford while visiting him in the St. Helena Parish Jail. According to Jessica Ramond Nolley’s testimony at trial, she allegedly told Mr. Halford, “I know what you did.”

Mr. Halford then purportedly replied, "I know you do," and then proceeded to tell her where items of the victim's property could be found. At no time did Mr. Halford "confess" to the murder of the victim.

SUMMARY OF THE ARGUMENT

Louisiana law gives each spouse the privilege during and after the marriage to prevent the other spouse from disclosing confidential communications with the other spouse while they were married.. Under the statute, a communication is considered to be confidential "if it is made privately and is not intended for further disclosure unless such disclosure is itself privileged." *LSA-Code of Evidence, art. 504(A)(B)*.

While in the Parish Jail where Mr. Halford was confined, he was visited by his wife, 2 children, and step-father. At the conclusion of the visit, prior to leaving, while his step-father was in one corner of the room having a discussion with the guard assigned to the visiting room and his 2-children were in another area of the room, doing whatever children do, he and his then-wife, Jessica Raymond Nolle, had a private conversation. During the conversation, his wife told him, "I know what you did," at which Mr. Halford purportedly replied, "I know you do," and then proceeded to tell her where certain items belonging to the victim could be found. He then also told his wife to dispose of the property.

Even though neither Mr. Halford nor his wife were “whispering” during the conversation, they were not talking loudly, and at no time was anyone in the room within hearshot of their conversation. They were talking in a “quiet” manner, and nobody else was close enough to overhear what was being said.

Prior to trial, Mr. Halford's trial attorney filed a Motion in Limine, invoking Mr. Halford's Spousal Privilege against his wife testifying for the state. The trial judge determined that, because others were “in the room” when the conversation was held, it was not “private,” therefore, not protected under the spousal privilege statute. This ruling was erroneous, in that nobody in the room at the time had been in a position to have possibly been able to hear what was said.

Mr. Halford's 14th Amendment rights and LSA-Const. Art. I, § 16 to due process, equal protection of the law, and the right to a fair trial have been violated, as well as his right against self-incrimination, as provided for by the 5th Amendment to the United States Constitution.

REASONS FOR GRANTING THE WRIT

Communications that are considered private in the marital realm are modeled on the privilege between Clergy and penitent, attorney and client, and physician and patient. *Trammel v. United States*, 445 U.S. 40, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980)

The reason marital communications are considered the same as those of clergy and penitent, attorney and client, and physician and patient is because marital communications are regarded as essential to the preservation of the marital relationship, and outweigh the disadvantages to the administration of justice that the privilege entails. *Wolfle v. United States*, 291 U.S. 7, 54 S.Ct. 279, 78 L.Ed. 617 (1934). The *Wolfle* Court went on to state:

Communications between the spouses, privately made, are generally assumed to have been *intended* to be confidential, and hence they are privileged...
Wolfle, at 280 (*emphasis added*)

In *Trammel v. United States*, the Court determined that "Information privately disclosed between husband and wife in the confidence of the marital relationship is privileged under the independent rule protecting confidential marital communications." *Trammel v. United States*, 100 S.Ct. at 907 quoting *Blau v. United States*, 340 U.S. 332, 71 S.Ct. 301, 95 L.Ed. 306

When Mr. Halford and his then-wife Jessica Raymond Nolley were visiting at the Parish Jail in which he was confined, they believed that their conversation was private, strictly between themselves. Even though there were others within the confines of the room in which they were visiting at the time, their conversation was strictly between the two of them; all others were in various other areas of the visiting room, and were not within hearing distance of Mr. Halford and his wife.

See *State of Ohio v. Rahman*, 23 Ohio St.3d 146, 492 N.E.2d 401, 23 O.B.R. 315 (1986)

Mr. Halford filed a pre-trial motion to exclude the testimony of Jessica Raymond Nolley, claiming Spousal Privilege based on a conversation that was intended to be private. The court denied the motion, stating that he didn't believe the conversation was in fact private, because others were in the room at the time. There was no attempt to determine if those others in the room had been able to hear what Mr. Halford and his wife were saying; it was automatically assumed that the conversation was able to be overheard by others. Jessica Raymond Nolley was then allowed to testify for the state.

The right to prohibit the testimony of a spouse by the other spouse regarding confidential, i.e., "private" conversations, is provided for by Louisiana's Code of Evidence, Article 504, and states:

(A.) Definition. A communication is "confidential" if it is made privately and is not intended for further disclosure unless such disclosure is itself privileged. **(B) Confidential communications privilege.** Each spouse has a privilege during and after the marriage to refuse to disclose, and to prevent the other spouse from disclosing, confidential communications with the other spouse while they were husband and wife. LSA-C.E. Art. 504 (A)(B)

The exceptions to this rule are:

(1) In a criminal case in which one spouse is charged with a crime against the person or property of the other spouse or of a child of

either.

(2) In a civil case brought by or on behalf of one spouse against the other spouse.

(3) In commitment or interdiction proceedings as to either spouse.

(4) When the communication is offered to protect or vindicate the rights of a minor child of either spouse.

(5) When the communication is offered to protect or vindicate the rights of a minor child of either spouse. LSA-C.E. Art. 504(C)

None of the exceptions found in LSA-C.E. Art. 504(C) apply to Mr. Halford's case.

When the court denied Mr. Halford's motion in limine based on spousal privilege and allowed Jessica Raymond Nolley to testify for the state, Mr. Halford's rights against self-incrimination under the 5th amendment, his rights to due process, equal protection, and a fair trial under the 14th amendment and Louisiana's constitution, LSA-Const. Art. I, § 16 were violated. This violation was in no way "harmless;" it was the *only* direct evidence presented by the state, and this most likely was the "deciding factor" in the jury's minds to convict Mr. Halford.

Being married, Mr. Halford and his wife, Jessica Raymond Nolley, were considered to be "one." As such, when his wife was allowed to testify against Mr. Halford as to a conversation that had been intended to be private, it was equal to

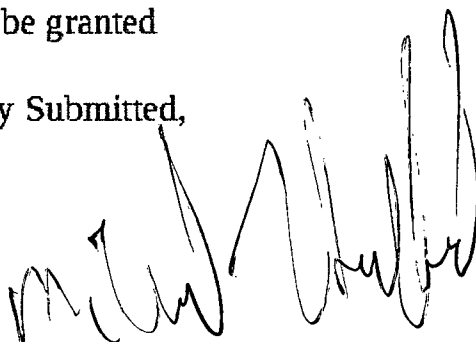
Mr. Halford testifying against himself, violating his right against self-incrimination as afforded by the 5th amendment. Without her testimony, it is unlikely Mr. Halford would have ever been convicted, as there was no other evidence to connect him to the murder of the victim.

Mr. Halford's conviction and sentence should be reversed, and he should be afforded a new trial.

CONCLUSION

The petition for writ of certiorari should be granted

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michael Halford', written in a cursive style.

Michael Halford, pro se
#538503, MPWY, Hickory 4
Louisiana State Penitentiary
Angola, LA 70712

Dated:

CERTIFICATE OF SERVICE

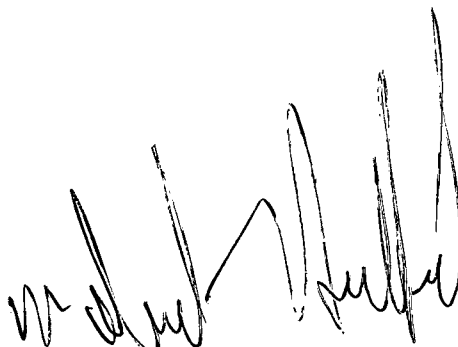
I, Michael Halford, pro se, certifies that on this date, the 26th day of JAN, 2022, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed in *forma pauperis* and petition for a writ of *certiorari* was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by placing an envelope containing these documents in the hands of the Classification Officer assigned to my unit, properly addressed to each of them, for mailing via the United States mail, as per the Legal Mailing Policy of the Louisiana State Penitentiary.

The names and addresses of those served are as follows:

Scott M. Perrilloux, District Attorney
P.O. Box 639
Amite, LA 70422-0639

AND

Colin Clark
Assistant Attorney General
Louisiana Department of Justice
P.O. Box 94005
Baton Rouge, Louisiana 70804

A handwritten signature in black ink, appearing to read 'Michael Halford', is written over the printed name and number below.

Michael Halford, #538503, pro se