No. 23-____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES HINKLE,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether The United States Court of Appeals for the Seventh Circuit's decision was contrary to federal precedent when it held that Hinkle's federal right to confrontation was not denied when Indiana courts prevented him from impeaching the alleged victim's testimony?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, James Hinkle respectfully petitions for a writ of *certiorari* to the United States Court of Appeals for the Seventh Circuit to review the judgment against him in James E. Hinkle v. Ron Neal, No.: 21-2067.

CORPORATE DISCLOSURE

The petition is being filed by The Region Lawyers, Inc. Attorney Russell W. Brown, Jr. owns 100% of the corporation. The petition is being filed on behalf of James Hinkle, a person.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, App. A1, is published at 51 F.4th 234. The order of the United States District Court, Northern District of Indiana, App. B1, is unpublished. The opinion of the Court of Appeals of Indiana, App. C1, is published at 97

N.E.3d 654. but noted at 24 N.E.3d 1018. The order of the United States Court of Appeals for the Seventh Circuit, App. D1, denying petition for rehearing and rehearing en banc is unpublished.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit its decision on October 13, 2022. Hinkle timely filed a Petition for Rehearing and Rehearing En Banc which was denied on November 30, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(a).

RELEVANT CONSTITUTIONAL PROVISION

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right… to be confronted with the witnesses against him…"

STATEMENT OF THE CASE

James Hinkle is serving a forty-two (42) year sentence for a conviction of child molesting. Mr. Hinkle's conviction was premised on the uncorroborated testimony of the complaining witness who had a reputation of being dishonest and manipulating family members. Continuing with his manipulative personality, the complaining witness only disclosed the allegations after being confronted about his drug abuse, garnering sympathy by playing the role of a victim as opposed to facing the consequences of his bad actions. However, the jury was unable to weigh the credibility of the complaining witness because Mr. Hinkle was prohibited from presenting evidence that the complaining witness only made the allegations after he was confronted about his drug use and "locked down" by his uncle. Mr. Hinkle was prevented from

answering the rhetorical question posed by the prosecuting attorney: "if this didn't happen, why would the complaining witness lie and make up this story?" Not knowing Mr. Hinkle's very plausible answer, the jury convicted him.

The Facts Presented to the Jury

Upon analyzing the Indiana Court of Appeal's summary of the facts, which the district court quoted verbatim in its opinion and order, the "facts" include evidence that the jury heard, but also evidence the jury never heard. Thus, the "facts" as represented by the previous courts may be misleading as the issue presented herein is analyzed. Mr. Hinkle will provide a clear separation of the two.

S.B. lived in Marquette, Michigan with his mother, Alisa. (Tr. Vol 3 P. 130). Around the age of eleven, S.B. would come to Elkhart, Indiana to spend a few weeks with his grandmother, Paula. (Tr. Vol 3

P. 134). While in Elkhart, S.B. would visit with his family which included Paula, his uncle James Hinkle and his uncle Swan. (Tr. Vol 3 P. 134). In 2003 or 2004 when S.B. was twelve or thirteen years old, he came to visit with Paula and the family. (Tr. Vol 3 P. 141, 213).[1] Hinkle was staying with his wife, Donna, and their three children at a hotel in Shipshewana, Indiana for a small family getaway. (Tr. Vol 3. P. 141, 213, 215). S.B. also had a room there because Paula was working third shift at the hotel. (Tr. Vol 3 P. 215, 249-250).

S.B. testified that while at the hotel, this was the first time he and Hinkle had "sex."[2] (Tr. Vol 3 P. 140-41). S.B. defined "sex" as Hinkle performing

[1] S.B. testified that it was in 2003 when they were at the hotel in Shipshewana; however, Paula recalled it was the summer before her mother passed away, which would have been 2004. (Tr. Vol 3 P. 141, 213).

[2] Shipshewana, Indiana is outside of Elkhart County, which is the county where Hinkle was tried and convicted. There was no objection to this testimony although it was clearly an uncharged prior bad act.

oral sex on S.B. and S.B. stimulating Hinkle with S.B.'s hands. (Tr. Vol 3 P. 142). A few days after leaving the hotel in Shipshewana, S.B. visited Hinkle, Donna and their kids at their residence in Elkhart, Indiana. (Tr. Vol 3. P. 145). While Donna was at work and the kids were upstairs, Hinkle and S.B. went downstairs in the basement. (Tr. Vol 3 P. 145). Hinkle began hugging S.B. and rubbing his back. (Tr. Vol 3 P. 145). They then took off their clothes and had "sex." (Tr. Vol 3 P. 145). It lasted approximately twenty to thirty minutes. (Tr. Vol 3 P. 145).

S.B. testified that in 2005, he was at Hinkle's house visiting Hinkle and the kids when all of them went down into the basement to watch cartoons. (Tr. Vol 3 P. 148). Hinkle told his kids to go upstairs and play. (Tr. Vol 3 P. 149). Hinkle then began rubbing S.B.'s leg and performed oral sex on S.B. (Tr. Vol 3

P. 150). S.B. then stimulated Hinkle with his hand. (Tr. Vol 3 P. 150).

In 2008, Alisa wanted S.B. to come to Elkhart to visit with his Paula. (Tr. Vol 3 P. 192). During that visit, he was not allowed to leave his Uncle Swan's or Paula's side. (Tr. Vol 3 P. 191). Swan and Paula had a meeting with him, after which he wanted to call his mother, but Swan and Paula refused. (Tr. Vol 3 P. 192). S.B. had a reputation of playing family members against each other and had been manipulating Paula and lying to both Paula and Alisa. (Tr. Vol 3 P. 192, 194).

At the time of his testimony, S.B. had three prior convictions for crimes of dishonesty: credit card fraud, auto theft and retail fraud. (Tr. Vol 3 P. 189). His testimony was contradicted by Donna who testified that S.B. was only at Hinkle's and her house one time in 2004 with Alisa, but Hinkle was

not home while S.B. was there. (Tr. Vol 4 P. 4, 5). Additionally, Donna testified that S.B. was never at their house in 2005. (Tr. Vol 4 P. 6-8).

During closing argument, the deputy prosecuting attorney asked the jury to consider how difficult the process had to be on S.B. when considering his credibility. (Tr. Vol 4 P. 80). In doing so, the deputy prosecuting attorney suggested that S.B. did not have any motive to lie. (Tr. Vol 4 P. 80). She asked the rhetorical question of why would he subject himself to the process, embarrassment, humiliation, and ridicule when the easiest thing to do was to say nothing happened. (Tr. Vol 4. P. 80).

Hinkle was convicted on both counts and sentenced to an aggregate term of forty-two years in the Indiana Department of Corrections.

The Prohibited Testimony

During an offer of proof outside the presence of the jury, S.B. admitted that in 2008, he was sent to visit his family in Elkhart because Alisa did not think she could handle him anymore and needed help. (Tr. Vol 3 P. 175). S.B. had been doing drugs, but had Alisa pretty fooled. (Tr. Vol 3 P. 177). While in Elkhart, Paula and Swan asked Alisa why S.B. was switching schools and Alisa advised that she caught him doing drugs and did not know what to do. (Tr. Vol 3 P. 177). That is when Paula and Swan decided to sit him down. (Tr. Vol 3 P. 177).

Prior to coming to Elkhart in 2008, S.B. admitted that he was using opiates almost every day and that he was close to being "physically addicted." (Tr. Vol 3 P. 178). He was also experimenting with benzodiazepines, barbiturates, and heroin. (Tr. Vol. 3 P. 178). He had been selling his Adderall prescription to get money to buy drugs, among other

things. (Tr. Vol 3. P. 178). S.B. admitted that he would sell other drugs as well. (Tr. Vol. 3 P. 178). Additionally, Paula had suspected that S.B. was doing drugs while he was in Elkhart. (Tr. Vol 3. P. 234).

During the meeting, S.B., Swan and Paula had an open discussion about S.B.'s drug abuse. (Tr. Vol 3. P. 180). S.B. was told that Swan was going to be monitoring him very closely while he was in Elkhart. (Tr. Vol 3 P. 180). S.B. was also told that Alisa was looking into a drug rehabilitation facility/program. (Tr. Vol 3 P. 181). S.B. admitted that he was manipulating Paula and acting very deceptive with her. (Tr. Vol 3 P. 183). He further admitted that he manipulated Alisa and lied to her. (Tr. Vol 3 P. 183). At the end of the meeting, S.B. was adamant that he wanted to call and speak with Alisa, but Swan and Paula would not allow him to.

(Tr. Vol 3 P. 182). He had a habit of playing family members against each other. (Tr. Vol 3 P. 182). Once he was not allowed to call Alisa, he disclosed the allegations against Hinkle to Swan. (Tr. Vol 3 P. 183).

The Direct Appeal

Utilizing the state court's *Davis-Hatton* procedure, Hinkle stayed his direct appeal and pursued a Petition for Post-Conviction Relief. When the trial court denied his PCR petition, Hinkle then directly appealed his conviction and the denial of his PCR. While both were consolidated into one, Hinkle will discuss both the direct appeal and the PCR individually.

Hinkle appealed his conviction raising two issues: 1) Hinkle was improperly denied a meaningful opportunity to present a complete defense and 2) The trial court erred excluding S.B.'s

testimony concerning his motive to fabricate the allegations against Hinkle; therefore, Hinkle was denied a meaningful opportunity to have the jury consider those facts relating to S.B.'s credibility; further, Hinkle was denied a meaningful opportunity to present his defense. [D.E. 11-1 P. 6]. The Indiana Court of Appeals rephrased the issues as: whether the trial court abused its discretion when it excluded evidence of the victim's prior drug use. *Hinkle v. State*, 97 N.E.3d 654, 658 (Ind. Ct. App. 2018) (Short App. 31). The Indiana Court of Appeals affirmed the conviction and sentence. *Id.* The Indiana Court of Appeals specifically held that the trial court did not abuse its discretion by excluding evidence of S.B.'s prior drug use because Hinkle "did not present any bias, other than speculation, to support his assumption that S.B. had invented the allegations of molestation against Hinkle." *Id.* at 664. (Short App.

35). Hinkle petitioned for transfer to the Indiana Supreme Court; however, the Indiana Supreme Court denied transfer without comment with a 3-2 vote. [D.E. 11-11; 11-16].

The State Post-Conviction

Hinkle filed a Petition for Post-Conviction Relief in the trial court alleging that his trial counsel was ineffective for several reasons: 1) she did not object to the State's day-of-trial amendment to the charging information; (2) she did not call witnesses who would have called S.B.'s credibility into doubt; (3) she did not object to S.B.'s testimony at trial of uncharged acts of molestation Hinkle had allegedly committed; (4) she did not present an objection under Criminal Rule 4 for a denial of Hinkle's speedy-trial rights; (5) she failed to properly investigate Hinkle's case; and (6) she failed to request a jury instruction on unanimity. The trial

court denied his Petition and the Indiana Court of Appeals affirmed the denial in all respects.

Hinkle filed a Petition to transfer to the Indiana Supreme Court, reasserting his claims of ineffective assistance of counsel. The supreme court denied his Petition without comment.

The Habeas Proceedings in District Court

Having failed in state court, Hinkle filed his federal habeas petition, raising the following claims: 1) the Indiana courts violated his right confront the complaining witness and to present a complete defense when it prohibited him from eliciting testimony about the complaining witness's motive to lie; 2) he was denied the effective assistance of counsel; 3) violation of due process when he was denied discovery in the PCR proceedings and 4) the state committed a *Brady* violation by failing to

disclose that there was a third interview of the complaining witness.

In its Opinion and Order denying Hinkle's petition, the district court first analyzed whether the Indiana Court of Appeals addressed Hinkle's constitutional claim. (App B1 at. Pages 6-11). Relying on the strong presumption that a state court adjudicated a claim on the merits, the district court held that Hinkle's claims would be reviewed under the deferential standard set forth in 28 U.S.C. § 2242(d). (App B1 at Page 11).

Using that deferential standard of review, the district court held that it was not unreasonable for the state court to find that Hinkle was not denied his right to present a complete defense because "[t]his case doesn't involve a murder conviction or the death penalty, and Mr. Hinkle sought to use the intervention solely for purposes of impeachment."

(App B1 at Page 21). Similarly, the district court rejected all of Hinkle's ineffective assistance of counsel claims. (App B1 at Page 26). The district court granted a certificate of appealability on whether Hinkle's right to present a complete defense was violated. (App B1 at Page 26).

The Seventh Circuit

The Seventh Circuit found that because Hinkle failed to "very clearly" show that the Indiana Court of Appeals ignored his constitutional claim, the presumption is that it was decided on the merits. Therefore, the Seventh Circuit applied the AEDPA deference standard. (App. A1 at Page 11). The majority then found that the Indiana Appellate Court's application was not unreasonable. (App. A1 at Page 15). However, the dissent found that the Indiana Appellate Court's unreasonably applied Supreme Court precedent as it relates to the

confrontation clause, which the majority found that Hinkle waived. (App. A1 at Pages 16, 43). The Petition follows.

REASONS FOR GRANTING THE WRIT

I. The United States Court of Appeals for the Seventh Circuit's decision was contrary to federal precedent when it held that Hinkle's federal right to confrontation was not denied when Indiana courts prevented him from impeaching the alleged victim's testimony.

"The Sixth Amendment of the Constitution guarantees the right of an accused in a criminal prosecution to be confronted with the witnesses against him." *Davis v. Alaska*, 415 U.S. 308, 315 (1974) (internal quotations omitted). The primary interest secured by this right, is the right of cross examination. *Id.* at 316. On cross-examination, *potential* biases, prejudices, and ulterior motives of witnesses may be revealed as they pertain to issues

in the case. *Id*. (*emphasis* added). Supreme Court precedent is clear that defendants must be allowed to present evidence of an accuser's motive for testifying against them. *See*, *e.g. Olden v. Kentucky*, 488 U.S. 227, 231; 109 S.Ct. 480 (1988); *Delaware v. Van Arsdall*, 475 U.S. 673, 1435; 106 S.Ct. 1431 (1986); *Davis v. Alaska*, 415 U.S. 308, 316; 94 S.Ct. 1105 (1974). "A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing *possible* biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial and is always relevant as discrediting the witness and affecting the weight of his testimony." *Davis*, 415 U.S. at 316 (*emphasis* added).

In *Davis*, the state presented Richard Green as a witness. *Id*. at 310. Green testified that he saw Davis with a crowbar and had also seen Davis near the area of where the stolen safe was found. *Id*. At the time of Green's identification to police and trial, he was on juvenile probation for burglary. *Id*. Davis was prohibited from presenting evidence that Green was on probation for burglary at the time he identified Davis. *Id*. at 311. Davis argued that the purpose presenting said evidence was to argue that Green acted out of fear or concern of facing a possible probation revocation. *Id*. The Supreme Court held that Davis was denied the right of effective cross-examination:

> In the instant case, defense counsel sought to show the existence of *possible* bias and prejudice of Green, causing him to make a faulty initial identification of petitioner, which in turn court of affected his later in-court identification of petitioner.

> *We cannot speculate as to whether the jury, as sole judge of credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it.* But we do conclude that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgement as to the weight to place on Green's testimony which provided a crucial link in the proof… of petitioner's act."

Id. at 317, 318 (*emphasis* added).

Like the petitioner in *Davis*, Hinkle was prohibited from presenting evidence of his theory on why his accuser may have falsely accused him. Had Hinkle been able to present the evidence, the jury would have heard that:

> "S.B. first accused Hinkle of molestation during a family meeting years after S.B. said the molestations took place. The jury would have heard how S.B. learned for the first time during this meeting that his mother was looking into rehab options for him. The jury also would have heard how, after learning this information, S.B. immediately asked to call his mother. Only when S.B.'s other family members denied him access to a phone did S.B. disclose Hinkle's actions to those present."

Hinkle, 51 F.4th at 256 (Jackson-Akiwumi, dissenting).

Courts cannot speculate whether a jury would have accepted the potential evidence. "We cannot speculate as to whether the jury, as sole judge of credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it." *Davis*, 415 U.S. at 317. The jury could infer from the sequence of events, the timing and context of S.B.'s initial accusation, that S.B. wanted to deflect attention away from himself. Therefore, Hinkle was denied his constitutional right to confront his accuser and this Court should grant his writ of certiorari.

Furthermore, the state court's violation of Hinkle's right was not harmless. "Federal habeas relief is appropriate only if the prosecution cannot

demonstrate harmlessness." *Armfield v. Nicklaus*, 985 F.3d 536, 543 (7th Cir. 2021) (quoting *Davis v. Ayala*, 576 U.S. 257, 267 (2015)). On collateral proceedings, habeas relief is granted if the trial error resulted in "actual prejudice." *Brecht v. Abrahamson,* 507 U.S. 619, 637; 113 S.Ct. 1710 (1993). Harmless error analysis does not assess whether there was enough evidence to support a verdict. *Jensen v. Clements*, 800 F.3d 892, 902 (7th Cir. 2015). Rather, "[t]he question here is whether the error had or reasonably may be taken to have had a substantial influence on the jury's decision." *Armfield*, 985 F.3d at 543 (quoting *Kotteakos v. United States*, 328 U.S. 750, 764 (1946). The court looks at the overall evidence, not just the evidence favorable to the verdict. *Jensen*, 800 F.3d at 906. As the Supreme Court explained in *O'Neal*:

> If, when all is said and done, the [court's] conviction is sure that the error did not influence the jury, or had but a very slight effect, the verdict and the judgment should stand. … But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgement was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected.

O'Neal v. McAninch, 513 U.S. 432, 437-38; 115 S.Ct. 992 (1995) (quoting *Kotteakos*, 328 U.S. at 776).

In the present case, the significance of S.B.'s motivation to fabricate the allegations cannot be overstated. S.B. only made the allegations against Hinkle after his mom sent him to visit his family in Elkhart because she was having trouble controlling him. After being confronted with his extensive drug use and advised that he was essentially going to be "locked down" by his Uncle Swan, S.B. attempted to manipulate his family and play family members

against each other. A characteristic trait his mother and grandmother knew too well. Fabricating the allegations against Hinkle was a perfect manipulation to turn the attention of the family away from S.B.'s drug addiction to being sympathetic towards him as a perceived "victim."

The impact on the trial court's refusal to permit this evidence was exacerbated by the deputy prosecuting attorney's rebuttal argument during closing. There, the deputy prosecuting attorney clearly intended for the jury to focus on the humiliation and embarrassment S.B. endured by prosecuting this case and question, if the allegations were not true, why would S.B. put himself through this? The prohibited evidence clearly answered that question.

In finding that any error was harmless, the panel's majority relied upon evidence that

corroborated irrelevant portions of S.B.'s testimony. *Hinkle*, 51 F.4th at 247. S.B.'s testimony was the only evidence that the crime took place. "Other witnesses could corroborate that Hinkle – a family member – at times had access to S.B. But outside S.B.'s testimony, no additional testimonial or physical evidence as presented to show that S.B. had been molested." *Id*. at 257 (Jackson-Akiwumi, dissenting).

When weighing the uncorroborated testimony of an admitted liar and manipulator with the excluded evidence, it is clear that the trial court error "had or reasonably may be taken to have had a substantial influence on the jury's decision. *Armfield*, 985 F.3d at 543. Therefore, the constitutional violation was not harmless.

Finally, Hinkle did not relinquish his confrontation argument. The majority of the Seventh

Circuit found that Hinkle waived his argument under the Confrontation Clause and; therefore, analyzed his claim only under the Supreme Court's precedent on the right to present a complete defense. However, as Judge Jackson-Akiwumi stated in her dissent, "the gravamen of Hinkle's argument to this court is that he should have been allowed to confront S.B. with evidence of S.B.'s motive to lie. This is arguably *the* quintessential right protected by the Confrontation Clause." *Hinkle v. Neal*, 51 F.4th 234, 254 (7th Cir. 2022) (Jackson-Akiwumi, dissenting). In fact, Hinkle was denied the right to present this evidence during *cross examination* of S.B. "When a petitioner's complete-defense claim challenges the exclusion of evidence that invokes another constitutional right, our court looks at Supreme Court precedent establishing the right to present that type of evidence." *Id*. (citing *Fieldman v.*

Brannon, 969 F.3d 792, 802 (7th Cir. 2020) ("analyzing complete-defense claim by assessing whether excluded evidence fell within defendant's clearly established right to testify in his own defense"). As applied, the right to present a complete defense encompasses other constitutional rights, including the right to confrontation.

Additionally, the state has "waived waiver" by interjecting precedent applying the Confrontation Clause into this appeal as relevant to determining which evidence falls within the right to present a complete defense. *Hinkle*, 51 F.4th at 254 (Jackson-Akiwumi, dissenting) (citing *Gilbreath v. Winkleski*, 21 F.4th 965, 982 n. 15 (7th Cir. 2021).

CONCLUSION

Based upon the foregoing law and analysis, this writ should be granted.

Respectfully submitted,

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