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In The
Supreme Court of the United States
October Term, 2022

TIMMY DOUCET v. TIM HOOPER, Warden

On Petition for a Writ of Certiorari to

U. S. FIFTH CIRCUIT COURT OF APPEALS

Timmy Doucet #717020
MPEY/Cypress-3
Louisiana State Penitentiary
Angola, Louisiana 70712-9818

October 17, 2022

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QUESTION PRESENTED

1. Reasonable jurists would determine that the evidence presented during trial was insufficient to convict Doucet of Aggravated Rape beyond a reasonable doubt. *Jackson v. Virginia;* Sixth and Fourteenth Amendments to the United States Constitution.

2. Reasonable jurists could conclude that Mr. Doucet was deprived of effective assistance of counsel when: (A) Trial counsel failed to obtain Medical Expert to rebut State's Expert testimony; (B) Trial counsel failed to investigate *Brady* material; and, (C) Trial counsel failed to interview witnesses.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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.

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Gretna, LA 70053

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Tim Hooper, Warden
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RELATED PROCEEDINGS

On January 14, 2016, a Grand Jury indicted Doucet on one Count of Aggravated Rape of a Juvenile Under the Age of Thirteen, a violation of LSA-R.S. 14:42. On November 29, 2016, a three-day trial commenced before a twelve-man jury, and Doucet was found guilty as charged. On December 27, 2017, the Louisiana Fifth Circuit Court of Appeal affirmed Doucet's conviction. On October 8, 2018, the Louisiana Supreme Court affirmed Doucet's conviction. Doucet then filed Writs to the United States Supreme Court, which was denied on June 3, 2019, in Docket No.: 18-8944.

Doucet timely sought collateral review on May 29, 2020, which was denied by the district court on October 23, 2020. Doucet was timely throughout the State courts for collateral review. On February 1, 2021, Doucet filed his Petition for Habeas Corpus to the Eastern District Court of Louisiana. On March 11, 2022, United States District Judge Barry W. Ashe denied relief.

Mr. Doucet timely filed his Application for Writ of Review to the Louisiana Supreme Court on October 21, 2019, and was denied by the Louisiana Supreme Court on March 16, 2021 in Docket No. 2019-KH-1822.

Mr. Doucet filed his Petition for Habeas Corpus on April 25, 2022, which was denied on October 7, 2021. On April 25, 2022, Mr. Doucet filed his Certificate of Appealability to the U.S. Fifth Circuit Court of Appeal, which was denied on September 2, 2022. At this time, Mr. Doucet is timely filing for Writs of Certiorari to this Honorable Court, and respectfully requests that this Honorable Court exercise its Supervisory Authority of Jurisdiction over the lower courts for the following reasons to wit:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Appellant respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished (but cited at 2021 WL 4398982)

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix __ to the petition and is the Louisiana Supreme Court in Docket Number _____.

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

The opinion of the _____ appears at Appendix _____ 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 **federal courts**:

The date on which the United States Court of Appeals decided my case was September 2, 2022.

[X] 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. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from **state courts**:

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

[ ] 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. .

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

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2022

No.: _____

TIMMY DOUCET V. TIM HOOPER, Warden

Petition for Writ of Certiorari to the U.S. Court of Appeal

Pro Se Petitioner, Timmy Doucet respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the U.S. Fifth Circuit Court of Appeal, entered in the above entitle proceeding on September 2, 2022.

NOTICE OF PRO-SE FILING

Mr. Doucet requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

OPINIONS BELOW

The opinion(s) of the Louisiana First Circuit Court of Appeal was denied on October 31, 2016, and the Louisiana Supreme Court was denied on February 23, 2018.

Mr. Doucet's federal petition to the U.S. Eastern District of Louisiana was denied on November 4, 2019. Mr. Doucet's Certificate of Appealability in the U.S. Fifth Circuit Court of Appeal was denied on September 2, 2022.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE FACTS

At trial, the victim (SD)[1] testified that Doucet raped her on several different occasions, the first time allegedly occurred when she was eight (8) years old (T.Tr.p. 271). She testified that this happened for a

[1] In accordance with LSA-R.S. 46:1844(W), Doucet is utilizing the alleged victim's initials throughout these pleadings.

period of two (2) years between the ages of 8-10 years old (T.Tr.p. 283). At trial, SD described the initial incident that occurred when she was eight years old.[2] SD claimed it occurred when Doucet, his girlfriend (TP), and DP were visiting the victim and her family at their home in Carriere, Mississippi (T.Tr.p. 271).[3] She claimed she was watching television in her room when Doucet walked in and began talking with her. SD claimed that, all of a sudden, Doucet told her to take off her pants (T.Tr.p. 272).

Although SD told him "No," she alleged that he forced her pants off. She testified that she tried to cover herself with a blanket, but Doucet uncovered her, unzipped his pants, and allegedly took out his "crotch," and that she wanted to call for help but alleged that Doucet covered her mouth, slapped her, and told her to "shut up.[4]" Doucet then allegedly turned her around and pinned her against the bed and inserted his "crotch" into her "crotch." The alleged victim testified that, "[t]hen it was in there, he didn't move at all." She said it was painful. He eventually took his "crotch" out of her and allegedly threatened her that, "Tell anyone what happened and I will beat you up." Afterward SD claims that Doucet walked back into the living room.

Allegations involving the instant offense:

SD recounted another incident which allegedly occurred when she was 8 years old and visiting her grandparent's home in Louisiana. PD,[5] Doucet's father (and SD's grandfather) resided at this home. SD claimed that her and her brother were sleeping in the living room of that house (T.Tr.p. 277).[6] She was on the floor and her brother was sleeping on the couch. Early one morning, at approximately 6:00am, while she and her brother were sleeping, Doucet allegedly came into the living room and shook her

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[2] This incident is conspicuously similar to the incident that she testified about concerning DP.

[3] In SD's initial interview, she stated that Doucet had raped her multiple times at her home in Mississippi between the ages of 8 and 10, as she was born in 2003. That would be between 2011 and 2013. However, testimony adduced in trial, and stipulated by both parties, proves that SD's father banned Doucet their home in 2010; and had never returned afterwards.

[4] In SD's initial interview, she stated that Doucet asked her to let him do it again and offered her $20. However, during trial, she stated that Doucet always forced her with threats of violence.

[5] Initials throughout this pleading for witnesses whose name can lead to the alleged victim's identity. See: ***State v. Ross***, 182 So.2d 983, 985 (La. App. 5th Cir. 10/15/14).

[6] In SD's testimony, she stated that the residence where she was raped (grandparent's home) was a "small white trailer with diamond shaped windows." When the detectives arrived at the residence, they discovered that the residence in question was, in fact, a large 2 bedroom house with rectangular windows.

awake. SD did not wake up so Doucet allegedly picked her up. When she became aware that Doucet was lifting her, she struggled to get out of his grasp because she knew that he was going to abuse her.

SD testified that, on that morning, Doucet carried her into a shed in the backyard and pinned her over a barrel in the shed.[7] She testified that Doucet then took off her pants, unzipped his pants, and inserted his "crotch" inside her vagina. After it was over, she went back to where she was sleeping and hid underneath her blanket, but she did not tell anyone what happened because she was still scared. SD further testified that the sexual abuse happened more than one time at her grandparent's house, but that those occurrences were mainly in the guest room. SD explained that the sexual abuse happened a few times at her grandparent's house in Jefferson Parish. In the instance concerning the shed, SD testified that she "screamed out," but no one heard her (T.Tr.p. 278).[8] She further testified that her "maw-maw" and "paw-paw" were sleeping in the house at the time (T.Tr.pp. 277, 278). PD, who SD called "paw-paw," did not testify at trial,[9] even though he was present in the house during (and even in the same room where she was sleeping), the time SD alleged that Doucet sexually abused her. PD was not questioned by *anyone* at any time concerning the allegations.

SD stated that she was 12 years old when she first reported the alleged abuse to her mother (T.Tr.p. 283). When the State asked her why she decided to report this to her mother at this time, SD stated, "it was just a thought that popped in my head on the way home on the bus" (T.Tr.p. 283). When the State asked SD if she saw Doucet in court, she stated, "there's a blue rhinoceros who robbed a bank," instead of Doucet being there[10] (T.Tr.p. 297). After clear instructions from the State, SD ultimately identified Doucet in court (T.Tr.p. 297).

[7] In SD's initial interview, she stated that she was raped in a barn at her grandparent's house. When detectives went to that location, they discovered that there was no barn on that property; but later had changed the wording from a "barn" to a "shed"

[8] Although SD testified that she had kept yelling during this incident, but no one heard her. In her initial statement, she stated that she attempted to scream, but Doucet prevented her by covered her mouth.

[9] Due to a stroke he had suffered months prior to the commencement of trial. Although the State has argued that DD (Doucet's mother) had testified of the fact that PD was the only person who had a key to the shed, DD was not the actual person who had constant supervision of SD at the time.

[10] Doucet's "nickname."

Dr. Jamie Jackson's testimony:

The State called Dr. Jamie Jackson to testify as an expert in the field of Child Abuse Pediatrics. At trial, she did not produce any physical evidence that would prove or even corroborate SD's allegations. Dr. Jackson based much of her testimony of the mantra, "it's normal to be normal," testifying that it is normal for SD not to have physical and visible evidence of sexual penetration (T.Tr.p. 365).[11] In its Opening Statement, the State alluded to this testimony by claiming it's "fully consistent with abuse" (T.Tr.p. 239). Dr. Jackson testified that the hymen is like a donut and theorized, and that it *can* appear to be undamaged.

Dr. Jackson indicated that, "[SD] gave [her] a clear history of sexual abuse by [Doucet], involving penile-vaginal and digital penetration and also oral breast contact" (T.Tr.p. 361). When asked on cross-examination if she could say for sure that SD was sexually abused by someone, Dr. Jackson stated, "I can only speak for the statements that she told me. I cannot speak for the veracity of those things. I'm not a lie detector. I would never say to be that" (T.Tr.p. 369). However, Dr. Jackson diagnosed SD as having suffered child sexual abuse. While trial counsel cross-examined Dr. Jackson, trial counsel did not produce any form of medical evidence that would have rebutted Dr. Jackson's testimony and conclusion. Doucet's trial counsel failed call a medical expert[12] to refute Dr. Jackson's testimony.

State's Notice of Evidence:

On November 26, 2016, three days before trial, the State turned over Notice of Information which revealed that SD changed her initial statement, and now claims she was sexually abused by an additional person, her step-cousin (DP)(See: Exhibit "2"). Trial counsel moved for a continuance based upon not being able to secure an expert witness (See: Exhibit "3"). The district court had already given defense counsel months to secure an expert, but he failed to do so. Shortly before trial, trial counsel again asked for a continuance to secure an expert, and the district court denied that continuance. As a

[11] Even after several sexual encounters.

[12] Or even consult with one prior to trial.

result, trial counsel went to trial with no investigation into the State's late discovery. At trial, SD testified that she was sexually abused by another individual (DP). She stated that she ***did not want this individual to get in trouble*** for what he had done.[13] When the State questioned her, she stated, "I thought you said not to talk about [DP], only the two times that it happened, and that T-Bird abused me" (T.Tr.p. 97).[14]

SD testified she believed Doucet sent DP to abuse her, or else he would have been punished (T.Tr.pp. 319-22). However, during her testimony, nothing was presented by the State which proved, or indicated, that Doucet had knowledge of this incident until after SD's allegations against him.

REASONS FOR GRANTING THE WRIT

In accordance with this Court's ***Rule X, § (b) and (c)***, Mr. Doucet presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

LEGAL ARGUMENT

Reasonable jurists would determine that Doucet was denied a fair and impartial trial; and that his

[13] Discussing DP.

[14] SD also testified that she "thought" that T-Bird had sent this individual into the room to sexually assault her (Rec.p. 320); and that the other individual (DP) had, "like broke my heart."

conviction was obtained in violation to the United States Constitution. Reasonable jurists would agree that it appears as though the Courts have failed to closely examine the alleged victim's testimony in this matter before denying relief.

Doucet was denied effective assistance of trial counsel when defense counsel failed to consult with an/or retain an expert witness. As counsel was aware that the State was calling its own expert witness, there can be no trial strategy for failing to hire an expert to ensure Doucet a fair trial. Taken as a totality, counsel's performance fell below the objective standard of reasonableness.

WHEREFORE, for the arguments in Doucet's previous pleadings and the arguments herein, Doucet requests that this Honorable Court Grant him the necessary relief.

LAW AND ARGUMENT

1. Reasonable jurists would determine that the evidence presented during trial was insufficient to convict Doucet of Aggravated Rape beyond a reasonable doubt. *Jackson v. Virginia;* Sixth and Fourteenth Amendments to the United States Constitution.

Standard of Review:

The Fourteenth Amendment protects persons accused of a crime against conviction unless the State proves every element of the offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358 (1970).[15]

In *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 60 (1979) the United States Supreme Court reached the legal standard of review, *i.e.*, "... whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt ..." In the court's view, the factfinder's role as weigher of evidence was preserved by considering all of the evidence in the light most favorable to the prosecution: ". . . The criterion thus impinges upon 'jury' discretion only to the extent necessary to guarantee the fundamental protection of due process of law." *Jackson*, 443 U.S. at 319. This standard is applied with "explicit reference to the substantive elements of the criminal offense as defined by

[15] This type of error has been recognized as patent error preventing conviction for the offense, La.C.Cr.P. art. 920(2), see indicative listing at ***State v. Guillot***, 200 La. 935, 9 So.2d 235, 239 (1942). Quoting: ***State v. Crosby***, 338 So.2d 584, 588 (La.1976).

state law." *Id. at* 324 n. 16. *Dupuy v. Cain*, 210 F.3d 582 (5th Cir. 2000), *Herrera v. Collins*, 113 S.Ct. 853, 861 (1993).

The deferential standard of review, whereby reviewing courts must affirm a conviction if, after viewing the evidence and all reasonable inferences in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, does not permit the type of fine-grained factual parsing necessary to determine that the evidence presented to the factfinder was in "equipoise," and that therefore reversal of the conviction is warranted; abrogating *United States v. Jaramillo*, 42 F.3d 920, *United States v. Ortega Reyna*, 148 F.3d 540, *United States v. Penaloza-Duarte*, 473 F.3d 575, and, *United States v. Stewart*, 145 F.3d 273. **Criminal Law Key 110k1159.2(1); Criminal Law Key 110k1159.2(8).**

The *Jackson* standard, which has been repeatedly reaffirmed by the Supreme Court, may be difficult to apply to specific cases but is theoretically straightforward. In contrast, the "equipoise rule" is ambiguous. At one level, whether it applies only to cases ungirded by circumstantial evidence, as opposed to direct or circumstantial evidence, is not entirely clear. Moreover, no court opinion has explained how a court determines that evidence, even when viewed most favorably to the prosecution, is "in equipoise." Is it a matter of counting inferences or of determining qualitatively whether inferences equally support a theory of guilt or innocence?

The potential to usurp the jury's function in such circumstances is inescapable. *Jackson*'s "deferential standard" of review, however, "does not permit the type of fine-grained parsing" necessary to determine that the evidence presented to the factfinder was in "equipoise." *Compare*: *Coleman v. Johnson*, 132 S.Ct. 2060 (2012). *Cavazos v. Smith*, 132 S.Ct. 2 (2011).

A fair review of SD's statements and testimony, clearly proves that SD's statements substantially impeach each other. The question remains where this child obtained this fabricated story. Could this be because the alleged victim had been informed, and thoroughly believed, that Doucet had attempted to

run over her father;[16] or the fact that SD emphatically testified about her vivid imagination? SD also testified that these allegations had "popped into her head" on the way home from school one day (Rec.p. 283).[17]

In light of the overwhelming amount of inconsistent testimony, after viewing evidence in light most favorable to prosecution, any rational trier of fact ***could not*** have found every essential element of the crime beyond a reasonable doubt. U.S.C.A. Const. Amend. 14. (See: *Jackson v. Virginia*, supra; *Winship*, supra.).

Testimony of SD:

The alleged victim's testimony would indicate that SD could not be believed by a reasonable jury, as she proclaimed that she was a "great" story teller and could tell the same "story" over and over without changing it. The jury erroneously determined that SD's testimony was credible due to the fact that there were **too many** discrepancies.

First, when SD was questioned as to how the allegations were "brought to the light," she testified that, "It was just a thought that popped up in my head on the way home on the bus" (Rec.p. 283). SD testified that the stories that she conjured up to tell her friends and family also "just popped up" in her head.

A: It was just a thought that popped in my head on the way home on the bus.
Q: When you say a thought that popped up in your head on your way home in the bus, the bus from school.
Q: The thought that popped in your head, what was this thought?
A: Well, I don't really exactly - - I don't exactly remember.
(Rec.pp. 283-4)
Q: Why does that worry you?
A: Because, of course, with all the murder documentaries I've seen, everyone needs to gather evidence for every case.
Q: Why does it worry you if there's no evidence?

[16] SD testified that she overheard her father yelling about Doucet trying to "run him over with the pickup truck," and that he thought that he was going to die.
[17] SD also testified that ***all*** of her stories just "popped in her head," and that she would remember them, even after years.

A: Because if there's not enough evidence, then the person who might convicted of - - I mean the suspect might not actually be the suspect, the person who actually did it.

SD was unsure of herself when she testified that: (1) "There's no drugs in all that" (Rec.p. 304) when she was questioned if any of the police documentaries that she watched concerned any abuse concerning children; and then she testified that, "The shows were mainly about drug abuse" (Rec.p. 362).

During cross-examination, SD first testified that she had two (2) personalities (including the one that doesn't show up often)(Rec.p. 300). SD testified that, "It's basically my dark side." Then, SD testified that she has eight (8) or nine (9) different personalities, and proudly stated that her imagination was "bigger than everyone in the room" (Rec.pp. 301-2). During cross-examination, SD testified that:

Q: Do your parents know about these personalities?
A: Not that - - not really. ***Just me, myself, and I.***
Q: Do bad things happen to these personalities?
A: No, they're just there until they eventually pop up. That's what happens.
Q: Can you send them away?
A: Yeah, I can. I can store them all away. **I have my serious personality on right now (emphasis added).**

(Rec.pp. 301-2)

Although the State argued that SD could not have "just thought these allegations up," SD did testify that she watched quite a bit of true police documentaries, including a documentary on a child abuse case on television (Rec.p. 304). SD also testified that she was a "**great**" story teller, and that her stories had been based upon fantasy. In fact, when questioned about "things that make you unique," SD testified as:

Q: I want to ask you, also, right underneath that, Things that make you unique. You say, my imagination.
A: Yes.
Q: Do you have a big imagination?
A: Yes, bigger - - probably bigger than all of your imaginations.
Q: Than everyone in the room?
A: Yeah, probably. I'm not trying to brag or anything.
Q: That's okay. Is this how you have so many stories to tell people?

A: Yeah. (Rec.pp. 302-3)

SD was adamant about the one time that she had remembered Doucet sexually abusing her; and also testified that Doucet had sexually assaulted her on several occasions, but could not remember what had happened on any of the alleged incidents (Rec.p. 279), and that her mouth had touched Doucet's crotch, but could not really remember what had happened (Rec.p. 280). During cross-examination, SD made similar allegations against her cousin, DP:

Q: Why would DP be mad at you?
A: Well, the question you asked before, I said, "Break." He did hurt me once.
Q: One time?
A: Yeah, once.
Q: Where were you?
A: I was at my house.
Q: In Mississippi?
A: Mm-hum.
Q: Which room were you in?
A: My brother's.
Q: You don't share a room with your brother?
A: No, I do not.
Q: Did DP hurt your private area?
A: No.
Q: No?
A: No, he just - - like he broke my heart. I know that's not considered an injury, but I'm talking about like what he did, he made me feel uncomfortable and he made me sad.
Q: Did he make fun of you?
A: No, he did not.
Q: I guess I - - how did he break your heart?
A: Like I'm - - from what all this and what I've done - - what I've said in this case, it got me thinking about that part. Well, I'm not really too sure if it happened or not, but I think - - okay so, of course my brother left the room and like DP just covered me and him up with a blanket and he pulled out his crotch but I was sad. I mean like I didn't know he would do it. I mean like - - but from what I thought in the case, I think T-Bird sent him to do it or else he would have been punished, I think.
Q: To do what?
A: Abuse me.
Q: To - -

A: Yeah.

Q: I thought you said he pulled out - -

A: His crotch.

Q: Did he do something with it?

A: He made me lick it. I'm not sure if this happened, I mean I think it did. I don't exactly remember clearly.

Q: Do you have trouble remembering sometimes?

A: Yeah.

Q: When you get nervous?

A: Mm-hum.

Q: Did you tell anyone about that?

A: Well, I recently told the attorneys the last time I was here.

Q: Did you tell your mom?

A: Yeah, I told my mom. Like I remember I was talking to another set of attorneys back in Pearl River.

Q: And you told your mom about DP?

A: Yeah. I told them and my mom and my dad.

Q: Did you tell DP to stop?

A: No, I was too busy.

Q: Busy?

A: Like the - - doing the thing he wanted me to do.

Q: Sorry. Do you remember how long ago that was?

A: I was eight.[18] (Rec.pp. 319-21)

SD further testified that:

Q: Okay. You got upset when Ms. Landry asked about DP. Is that because you don't want DP to get in trouble for what happened?

A: **Yeah, plus I thought you said not to talk about DP. Only the two times that it happened and that T-Bird abused me (emphasis added).** (Rec.p. 324)

It is highly plausible that SD's testimony must been "coached" prior to trial due to this response to these questions. However, the courts have also failed to consider that inconsistent testimony may disprove the State's case in certain instances. Doucet's case is a *prime* example of the inconsistent testimony from SD, which would include:

1. SD stated that she does not remember any other times that Doucet abused her (Rec.p. 275);

[18] It must be noted that this is the EXACT same ages and location that SD stated that the abuse began with Doucet, and almost exactly the same scenarios concerning Doucet.

2. SD describes the Richland Drive residence as a small white mobile home with "diamond shaped windows." The Richland Drive residence is a large 2 bedroom house that could never be mistaken for a "small trailer" with large rectangle shaped windows (Rec.p. 275);
3. SD testified concerning the "shed" incident. She stated that Doucet was sleeping in the guest room of the Richland Drive residence before he brought her to the shed. However, multiple witnesses (Doucet, Theresa Pavlas (Doucet's fiancee), Debra Doucet (Doucet's mother)) all testified that Doucet has not lived, or slept at that residence since he moved out in between 2008 and 2010 (this incident allegedly occurred between June 25, 2011 and June 24, 2014).
4. SD then stated that Doucet woke her up from the living room by shaking her, then picked her up and carried her to the back yard shed and raped her as she screamed for help. However, in the initial report, she stated that Doucet woke up by slapping her on her face and brought her to a "barn," then assaulted her and covered her mouth and threatened her. Later in her testimony, she stated that Doucet, "didn't say anything at all" (Rec.p. 279). SD also testified that her grandma and grandpa were sleeping in their room at the time of the alleged incident. SD's grandfather (Paul Doucet) was unable to testify during trial due to a stroke he had suffered prior to the trial. However, Paul Doucet had submitted an Affidavit as to what his testimony would have entailed. Paul Doucet's Affidavit informs the Court that he wakes up every morning at 5:00am[19] and watched the news in the living room, or was in the kitchen, and remained there until late in the morning. Paul Doucet also attested to the fact that his shed stayed locked and he had the ***only*** key with him at all times;
5. SD stated that she was 10 years old when Doucet abused her last, and that was at her house in Mississippi (which would be 2013). However, in the Notice of Information from the District Attorney, SD was 10 years old when DP abused her last (and that was also at her house in Mississippi). SD stated that she "might have depression so far from what I've done." She did not state that she might have depression from what anyone else had done (Rec.p. 287);
6. SD testified that, "with all the murder documentaries I've see, everyone needs to gather evidence for every case." When SD was asked, "Why does it worry you if there's no evidence?," she replies, "because if there's not enough evidence, then the person who might be convicted of ... I mean the suspect might not actually be the suspect, the person who actually did it." She also stated that, "even if the opposing attorney comes up with something good or if there's not enough evidence or whatever, there might be a chance that T-Bird is not found guilty and he is free to go." And, "Once he gets out of jail, he probably might sneak into my house at night and kill me. I'm hoping this don't motivate him" (Rec.pp. 295-6);
7. SD testified that she had 2 personalities (Rec.p. 300); then testified that her 2 personalities were a long time ago, and she now has 8 or 9 personalities, and 1 of them is her "dark side." She also stated that her personalities were a part of her, and not of a game" (Rec.p. 301);
8. SD testified that her, "personalities are there until they just eventually pop up." She stated that she can store them all away and that she "has her 'serious personality on right now,'" and, during trial, admits that her dark side scares her and "comes out on rare occasions" (Rec.p. 302);

[19] SD stated that this incident occurred around 6:00am.

9. SD admitted that she watches "true crime stories," but initially denied that she had ever viewed one which depicted sexual assault of a child; but then stated that thinks she did watch one episode (Rec.pp. 303-4);
10. SD did admit that she lies (Rec.p. 305). One must remember that, "A liar cannot be believed on the one hand, but not the other. ***Falsus en uno, falsus en omnibus***;"
11. SD was also emphatic that she did not want him (DP) to find out about anything; anything that she told, and that she did not want anyone else to be a part of this (Rec.p. 308);
12. SD had also informed the authorities that no one other than Doucet was present during any of the sexual assaults (Rec.p. 259); but she had informed Robin Bixler, MA, of Kids Hub (Mississippi) that her cousin ZR, was in the room during one of the incidents. SD actually informed the Ms. Bixler that Doucet had ZR take a picture of her (SD's) privates. Yet, in the same paragraph of the report, she informed Ms. Bixler that she (SD) was the one that had taken the picture of her own private, but she had deleted it;
13. SD also informed Ms. Bixler that even though she didn't believe it, Timmy went to jail for touching ZR's sister, Emily, when she was 13; but according to Doucet's NCIC report, this is not true;
14. SD admitted that Doucet was banned from her home in Mississippi for, "trying to kill my dad by running him over." SD believed that her dad had told her about that incident; then stated that she had overheard her dad in a conversation; and that she knew that her dad and Doucet fight a lot (Rec.pp. 317-8);
15. SD testified that she had no contact whatsoever with Doucet after the alleged incident. Yet, Amber Vito and Shalinda Cochran both affected Affidavits stating that they had witnessed SD and Doucet interacting at Amber's wedding on April 21, 2014, and were both smiling and laughing together (See: Exhibits "13 and 14");
16. SD could not even keep her testimony straight concerning DP. First, she states that DP wasn't upset with her right now about the drawing; "Yeah, he's upset about it;" and, "he doesn't know anything about it." SD stated that, "I'm not even sure if I should say it (concerning the incident with DP); then she stated that, "he did hurt me once," "at my house in Mississippi;" and stated that DP had made her give him oral sex. But, then she states, "but from what I've thought and what I've been through in this case, I think T-bird sent him to do it (abuse her) or else he would be punished, I think." Then she states, "I'm not sure if this happened; I mean I think it did." However, in the Notice of Information (Rec.p. 104) provided to defense counsel from the State one business day before trial, SD described this particular incident. And the State admits that Doucet was not in the room when this even occurred, but he was elsewhere in the house. Nothing that was said or done by either DP or Doucet, and she also indicated that Doucet had anything to do with the incident" (Rec.pp. 318-20);
17. In the Notice of Information, the State declared that SD was 10 when DP abused her. Then, according to the Notice, "that was only one time that it happened." During SD's testimony, however, she testifies that DP abused her 2 times, and that she agreed with the State's argument that Doucet had abused her multiple times, but could only remember 2 times (Rec.p. 280). The Notice of Information states that DP abuse her when she was 10. These are the same ages that she alleges that Doucet had abused her. SD also testified that she did not want DP to get involved with this case, and that she did not want DP to go to jail, believing that since DP and her brother were best friends, her brother may get mad at her (Rec.pp. 321-3);

18. As SD was testifying concerning her drawings, she informed the jury that a portion of the drawing depicted DP in jail (Rec.pp. 321);
19. On pages 323-4, SD explained that she had gotten upset about being questioned about DP because she did not want him to get into trouble for what he had done to her (**yet, her drawing depicted him behind bars**). SD also informed the State that, "*yeah, plus I thought you (district attorney) told me not to talk about DP. Only the two times that it happened, and that T-bird abused me;*"
20. When SD was questioned about her imagination, she replied that she "can always get away from reality into my mind for just like ten minutes or something." And, "Like little fantasies, like little fantasies, like my own fantasy world. Like I could see something happening or something that's going to happen next in my story." SD further agreed with the State that her imagination helps her to write her stories, and that a lot of times, she makes up all sorts of fantasy stories.

It appears that none of the courts have reviewed any of SD's testimony during the Appeal or the collateral review. It's clear that SD can concoct any type of story that she desires, and it also appears that she had concocted this entire scenario against Doucet after she discovered that her dad accused Doucet of trying to run over and kill him.

This Court must also consider the possibility that this is a case of **Perpetrator Substitution** by SD. According to the **AACAP PRACTICE PARAMETERS:** J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY, 36:10 SUPPLEMENT OCTOBER 10, 1997 (pages 50s and 51s), Perpetrator Substitution is one of the many possible explanations of false allegations of sexual abuse. Sometimes children make false accusations. Although most allegations made by children are true, the evaluator should consider the ways in which false allegations might come about. An allegation may be partly true (that the child was abused), but partly false (as to who was the perpetrator). An allegation may have a nidus of truth, but may have been inaccurately elaborated in response to repetitive questioning.

In Perpetrator Substitution, the child may actually may have been sexually abused and manifests symptoms consistent with abuse, but identifies the wrong person as the perpetrator, resulting in a false allegation. The child may do this to protect the actual offender or the child may displace the memories and accompanying affects onto another individual. It must be noted that SD's version of the incident

with Doucet was *almost* **EXACTLY** the same as it was with DP;[20] except ***she did not want DP to get into trouble***. Same exact scenario, same exact actions, etc.

SD had testified that she believed that Doucet had sent DP in to do that (abuse her) or else DP would have been punished for what he had done (Rec.pp. 319-21). But, during trial, nothing was presented which proved, or even suggested that Doucet had knowledge of this incident.

It's extremely plausible that SD had made these allegations against Doucet due to the fact that she testified that she had overheard her father discussing that Doucet had tried to run him (her father) over him with his pickup truck (Rec.p. 318).

Q: And you told us earlier that your uncle was banned from your house in Mississippi?
A: Yes, ma'am.
Q: Do you know why?
A: He tried to kill my dad by running him over, he told me, I think.
Q: Who told you?
A: My dad.
Q: Your dad told you Timmy tried to run him over?
A: Well, I heard him in a conversation. Then he told me. (Rec.pp.317-8)

To enable the State to overcome the alleged victim's lack of credibility, the State enrolled the assistance of Dr. Jamie Jackson of the Aubrey Hepburn Care Center, who had testified as an "Expert" in the field of Child Abuse Pediatrics (Rec.p. 355).

Although Dr. Jackson met with SD **one** time, and there was no physical evidence of any sexual assault,[21] Dr. Jackson was of the opinion that SD had been sexually abused. Dr. Jackson also testified to the fact that every time that she has testified, has been for the State, and that she has testified that the alleged victim was likely to have been sexually abused.

This type of testimony has been labeled as so inherently unreliable that it cannot aid decision making in the criminal justice system. The clinician observer applying their theory is simply unreliable,

[20] Including ages and location.

[21] **Note:** Although SD testified that Doucet raped her numerous times from the age of eight (8) to ten (10), Dr. Jackson testified that the hymen was "normal" and showed no signs of trauma.

and it is logical that this Court should be reluctant to allow it to be used for a purpose which it was not intended as a credibility evaluation tool, as it fails to unequivocally pass the ***Daubert*** threshold test of scientific reliability. In any capacity, it is highly unlikely that it will be useful to a jury on the issue of witness' credibility, especially as a tool for determining whether or not abuse actually occurred. See: ***Daubert v. Dow Pharmaceuticals***, 509 U.S. 579 (1993).

Even assuming that CSAAS-based testimony or expert testimony itself does indeed pass the ***Daubert*** threshold test for scientific validity, we now explore whether or not it's used to bolster the victim's credibility was improper so as to unfairly prejudice the defendant.

Testimony by an expert is not particularly helpful to a jury that must rely upon their own common sense as a barometer for the evaluation of truthfulness. The cases all seem to focus on, in the face such expert testimony, fears of the jury surrendering it's own common sense in weighing victim testimony and deferring to a diagnosis as nothing more than a subjective opinion favoring the victim.

This case gives the Court the opportunity to give concrete substance to the rule of law that contradictory testimony, such as incredible, inherently improbable or impeached testimony, is insufficient to uphold a conviction.

> Corroboration of a victim's testimony in sexual offense cases is triggered only by contradictions in the victim's trial testimony. Thus, corroboration is mandated when the victim's testimony is so contradictory and in conflict with physical facts, surrounding circumstances and common experience that its validity is rendered doubtful such that corroboration of the victim's testimony is required to sustain the conviction. 75 CJS Rape § 94

The testimony of the accusing witnesses in this case was clearly contradictory, uncorroborated, and impeached, as shown by the record. Notwithstanding the fact that the State suppressed further ***Brady*** impeachment evidence from the defense at trial, which fails to establish a corpus delicti in the first instance, and also goes to the ***Winship*** standard at trial.

While the credibility of a witness is a matter for the finder of fact, once impeached, that witness's testimony becomes suspect under the law and must be corroborated in order to be convincing evidence

of guilt or innocence. This is especially true where the credibility of the witness is paramount to the outcome of the case as it is in this case.

One great comparison of a trial of sexual abuse would be the Salem Witch Trials. When a person was alleged to have been a witch, they would be arrested, tied to a chair, and dunked in the water. If the person drowned, it was determined that she was not a witch. However, if she lived, she would be considered to be a witch, and would then be burned at the stake for her crime. In a case of sexual abuse, especially concerning a child, it is best to lock up the alleged perpetrator and throw away the key, regardless if he is innocent or not.

So, now the question is: has the State met their burden even though *all* of the evidence, as a totality, has either been impeached or contradicted? According to the standards set forth in *Jackson v. Virginia*, this Court should determine that the State has failed to meet their burden.

WHEREFORE, for the foregoing reasons, reasonable jurists would determine that the State has failed to meet its stringent burden of proof beyond a reasonable doubt, and this Court should Grant Certiorari in this matter.

ISSUE NO. 2

Doucet was deprived of effective assistance of counsel when: (A) Trial counsel failed to obtain Medical Expert to rebut State's Expert testimony; (B) Trial counsel failed to investigate *Brady* material; and, (C) Trial counsel failed to interview witnesses.

Law and Argument:

The Sixth and Fourteenth Amendments provides that "the accused shall have the assistance of counsel in all criminal prosecutions;" *Strickland v. Washington*, *United States v. Cronic*.

The Standards of Strickland and Cronic

A claim of ineffective assistance of counsel is analyzed under the standards enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984) and in many cases, *United States v. Cronic*, 466 U.S. 648, 662 (1984). The difference between the ineffectiveness of counsel in cases governed by *Strickland* and those governed by *Cronic* is a difference in "kind" other than simply "degree" and the

Cronic standard applies only if counsel's failure to test the prosecution's case is "complete." See *Bell v. Cone*, 535U.S. 685 (2002).

Doucet submits that based upon the facts and circumstances presented, this was akin to having no counsel at all. Trial Counsel "**completely failed**" to subject the prosecution's case to meaningful adversarial testing. Counsel's failure was "complete" from the onset of the proceedings and thereafter.

Doucet submits that he has established that counsel was incompetent and the performance fell below an objective standard of reasonableness measured by prevailing professional norms meeting the two prongs of *Strickland* and the additional standards enunciated in *Padilla v. Kentucky*, 559 U.S. 356 (2010), and *Hernandez v. United States*, 778 F.3d 1230, 1234 (11th Cir. 2015). Doucet further submits that he has met the standard enunciated in *United States v. Cronic*, supra.

Trial counsel, Jerome Matthews, executed an Affidavit conceding that he was lead counsel defending Doucet at trial (See: Exhibit "4"). Trial counsel specifically conceded that "he was not adequately prepared for trial due to the denial of his Motion for Continuance (See: Exhibit "3") and late disclosure of *Brady* evidence." Reasonable jurists would agree with Mr. Matthews.

Trial counsel's performance was not within the wide range of effective representation. He conducted no investigation whatsoever into the nature of the State's medical testimony; nor did he investigate whether medical opinions existed which refuted such testimony; much less a "reasonable investigation" as required by the Sixth Amendment.

Dr. Jack McCubbin, a medical expert in forensic gynecology, has since reviewed SD's and Dr. Jackson's testimony (See: Exhibit "5," CV). He concluded that Dr. Jackson's testimony presented *only one side* of the medical debate. Dr. McCubbin's report directly undermines Dr. Jackson's premise such that the likelihood of a different outcome is *SUBSTANTIAL*.

Dr. McCubbin's Report:

In Dr. McCubbin's report attached to this pleading, he directly addresses Dr. Jackson's testimony by

stating:

> "The phase (sic) "it's normal to be normal" appeared in 1994 when Dr. Joyce Adams published an article "Examination findings in legally confirmed child sexual abuse: It's normal to be normal." Pediatrics 1994: 94:310-7. The phase (sic) is premised on the fact that genital tissues heal rapidly, and the vast majority of sexual assault/abuse genital examinations are normal. So, some pediatricians and many sexual assault nurse examiners believe (and testify) that penile penetration of the hymen can occur – even in prepubescent girls – and still manifest a normal genital examination. Thus, a mantra of "it's normal to be normal" has materialized. **Indeed, the State's expert witness, Dr. Jamie Jackson, used that exact phrase during her testimony** (Exhibit "6;" **emphasis added**).

Dr. Jack McCubbin cited the "Hariton Study" which concluded, "the result of the study both from the medical literature and an understanding of the human anatomy and histology of the unestrogenized genitalia of the pre-pubertal girl makes it clear that if there has been forceful penile penetration of the hymen, there will be both a history of pain and bleeding and healed evidence of this forceful penetration" (Exhibit "6;" Dr. McCubbin report, p. 3).

AV, SD's adult cousin, executed an Affidavit stating that her godchild, SD, "started her period" while staying at her house "for a couple days." AV "automatically called SD's mother." This occurred "sometime between April 2014 and June 2014" (See: Exhibit "7"; Affidavit of AV).[22]

Dr. McCubbin further states, "gynecological expertise contradicts the 'normal to be normal' premise where there is forceful penetration of a pre-pubescent hymen (Exhibit "6," Dr. McCubbin Report, p. 3).

Dr. McCubbin also states, "Non-gynecologists healthcare providers can muse about the elasticity of the pre-pubescent hymen, but only Gynecologists experienced in examinations under anesthesia and/or sedation can testify definitely about the small diameter and the delicate inelasticity of such human tissue" (*Id.*, at 6).

Dr. McCubbin further states, "Had SD experienced forceful penetration of her hymen during prepubescence at age eight to ten, there should be a history of pain and bleeding as well as ***healed evidence of this forceful penetration***" (*Id.*: ***emphasis added***).

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[22] Which would have occurred ***after*** the allegations.

Trial counsel's failure to investigate and failure to obtain an expert does not fall within the discretionary realm of simply being a strategic trial decision. Had he done such, he would have been able to present to the jury expert testimony that completely rebuts Dr. Jackson's conclusions; and would have cast substantial doubt on Dr. Jackson's testimony and supported an inference of Doucet's innocence, as no penetrating sexual activity, as described by SD, had occurred.

A defense backed by expert medical testimony not only would have rebutted Dr. Jackson's unchallenged testimony, but would have also cast **substantial doubt** and disbelief of SD's testimony. *Unquestionably, Dr. McCubbin's medical opinion undermines the State's medical testimony, thereby casting substantial doubt to SD's credibility, and thus, the State's entire case.* As a result, trial counsel's inadequate performance prejudiced Doucet to the extent that the trial was rendered unfair and the verdict suspect.

Doucet is entitled to relief absent a showing of deficiency or prejudice when counsel fails to subject the prosecution's case to a meaningful adversarial testing, and when circumstances surrounding a trial prevent his attorney from rendering effective assistance of counsel. ***Bell v. Cone***, supra.

Here, trial counsel had months to secure an expert witness, but asked for a continuance shortly before the trial to do so. Clearly, the circumstances surrounding the trial prevented counsel from rendering effective assistance. Trial counsel failed to consult with and/or hire a medical expert, and Dr. Jackson's testimony was not subjected to a meaningful adversarial testing as required by ***Cone***. As a result, it went unconditionally embraced by the jury.

The courts have failed to consider that Doucet's defense counsel had requested a continuance in order to obtain an expert for this matter, and that he was awaiting funds for the expert.

Prior to trial, Doucet's parents had an agreement with Mr. Matthews that he would obtain an expert, and Mr. Matthews later informed Doucet's parents that he would need a $1,500.00 retainer for the expert to testify in his behalf. At that time, Shannon Gros (Timmy's sister) immediately paid Mr.

Matthews the retainer fee.

Ms. Gros has affected an Affidavit which informs the Court that she has written a check for the retainer fee (See: Exhibit "11"), which is the amount that Mr. Matthews had informed the Doucets would be required. Doucet's mother (Debra Doucet) and his father (Paul Doucet) affected an Affidavit which informs this Court that they had obtained a loan prior to trial in order to pay the balance of the expert's fees (See: Exhibit "12").

On October 18, 2016, Doucet's parents informed Mr. Matthews that they had received the money from the loan for the expert witness. Mr. Matthews then informed Doucet and his parents that, "everything was under control," until November 28, 2016, when he informed them that he would need the retainer (which was paid immediately).[23]

In *Gersten v. Senkowski*, 299 F.Supp.2d 84 (E.D.N.Y. 2004), the Court held that "counsel's performance was constitutionally deficient for failure to consult with or call expert medical witness to rebut testimony of examining physician who stated that the examination results highly suggested that the victim suffered from penetrating vaginal trauma and anal tearing; and (2) counsel's performance was constitutionally deficient for counsel's failure to consult with or call psychological expert to rebut testimony of child psychologist."

In sexual abuse cases, because the centrality of medical testimony, the failure to consult with or call a medical expert is often indicative of ineffective assistance of counsel. See: *Eze v. Senkowski*, 321 F.3d 110, 127-8 (2nd Cir. 2003). This is particularly so where the prosecution's case, beyond the purported medical evidence of abuse, rests on the credibility of the alleged victim, as opposed to direct physical evidence such as DNA, or third-party eyewitness testimony. *Pavel v. Hollins*, 261 F.3d 210, 224 (2nd Cir. 2001).

[23] This contradicts Mr. Matthews informing the Court that he did not have the available funds for the expert due to the Doucet's financial hardships.

Here, the State's case *did* rest entirely on the victim's credibility and Dr. Jackson's testimony regarding the absence of any physical evidence. Medical evidence can provide convincing proof of child sexual abuse, and courts are comfortable with expert testimony describing the lack of medical evidence. When there is no medical evidence, as is in this case, courts allow expert testimony to help the jury understand the State's theory that absence of physical findings is consistent with sexual abuse.

However, it is a miscarriage of justice when defense counsel fails to retain an expert that would directly undermine that entire theory. The absence of such testimony deprived the jury of defense's expert opinion and imputed upon them the notion that the State's expert must be correct.

Dr. McCubbin concludes that if SD's allegations were true, there would be evidence of physical scarring, which directly undermines Dr. Jackson's claim that absence of physical findings is "consistent with" sexual abuse. His report directly calls into question Dr. Jackson's medical methods used to make a diagnosis and expertise relating to gynecology. Such testimony casts substantial doubt on Dr. Jackson's conclusions and ultimately undermines the confidence of the jury's verdict. It is clear that trial counsel's ineffectiveness deprived the jury of hearing this testimony. As such, the newly discovered evidence is fit for a new jury's consideration.

Expert testimony that a child's symptoms are "consistent with" sexual abuse:

Despite the tendency of courts to admit "consistent with" testimony, there are three problems with such testimony. **First**, although testimony that a child's symptoms are consistent with sexual abuse is not an opinion in so many words that a child was sexually abused, the testimony is offered precisely for that purpose. The testimony invites the following reasoning: because the child has symptoms consistent with sexual abuse, the child was sexually abused. Thus, "consistent with" testimony is really an opinion regarding whether the child was abused.

"Consistent with" testimony is the functional equivalent of a direct opinion on abuse. As mentioned previously, there is considerable controversy surrounding "direct opinion" testimony. "Consistent with"

testimony masks the controversy behind the innocuous term "consistent with." If the testimony in the form of a direct opinion on sexual abuse is excluded because of doubts about reliability, the same should be true for testimony that a child's symptoms are "consistent with" sexual abuse.[24]

A Second Concern about "consistent with" testimony is that many symptoms consistent with sexual abuse are also consistent with non-abuse.[25] Expert testimony that a child's symptoms are consistent with sexual abuse is likely to inflate the probative value of the symptoms and consequently mislead the jury into believing that those signs are only related to sexual abuse.

Finally, "consistent with" testimony masks the twin issues of symptom frequency and population size. When an expert testifies that a child's symptoms are consistent with sexual abuse, the jury takes the testimony as proof that the child was sexually abused.

Given the shortcomings of "consistent with" testimony, such testimony should be excluded unless the proponent addresses two issues during the expert's direct examination. **First**, the expert should explain *why* the symptoms tend to *prove* sexual abuse. It is simply not enough for the expert to state that a child's symptoms are consistent with sexual abuse. **Second**, the expert should explain the impact of symptom frequency and population size on probative value. Only when explanations of symptom frequency and population size are added to "consistent with" testimony is the jury equipped with the information it needs to give "consistent with" testimony its proper weight. Absent this information, "consistent with" testimony is inherently misleading.

The analysis is also relevant to medical evidence of child sexual abuse. Medical experts often testify that the findings of a physical examination are consistent with sexual abuse. The concerns about "consistent with" testimony from mental health experts apply with equal vigor to "consistent with" testimony from medical experts.

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[24] Expert testimony that a child's symptoms are consistent with sexual abuse should be subjected to analysis under ***Daubert*** or ***Frye***. See: ***Hadden v. State***, 690 So.2d 573 (Fla. 1997)(consistent with testimony subject to ***Frye***.).

[25] See: ***Daniels v. State***, 4 So.3d 745 (Fla. Ct. App. 2009)(nurse testified she had never seen a child react as the victim did to the physical examination; there was no basis to conclude that the child's reaction suggested sexual abuse.

Convictions without physical evidence:

Our prisons are full of persons who have been convicted of sex abuse against minors without any physical evidence ever introduced against them at trial. In other words, the typical evidence in which the State offers to convict a defendant, such as body fluids, blood, semen, hair, DNA, are not introduced at trial to link the accused to a crime.

Medical nurses (mainly SANE nurses) and employees whose livelihoods depend on their contracts with Child Advocacy Centers will give opinions that a child was abused. Failure to give the right opinion will mean the contract is not renewed. These opinions from medical "*experts*" will say the findings are "*consistent with*" sexual abuse. Of course, "*consistent with*" is not a true medical diagnosis. This testimony, as demonstrated by a competent defense attorney will reveal the findings given as "consistent with abuse" are just as "*inconsistent with abuse*."

An attorney must prepare a vigorous defense for trial. If the Grand Jury indicts, then the case must be prepared for trial. It is rare for the State to dismiss a case once they have a Grand Jury Indictment.

Selection of the jury is critical for a child sexual abuse case. Potential jurors come into the case with strong emotional feelings regarding the allegation of abuse to a child. The attorney must overcome the strong emotions the jury panel must have against child abuse and focus their attention on being fair and acknowledging that false allegations are made. The jury panel must see that the only thing worse than child abuse is being falsely labeled as a child molester.

The State, instead of relying on physical and medical evidence, rely upon theories, inferences, and speculation in order to obtain convictions. Prosecutors secure convictions by ***manipulating the jury's fear of releasing a child molester back into the community***. This fear will be combined with hearsay, expert witness "syndrome evidence," misleading testimony, and the biased opinions of the Child Advocacy investigators. To support this speculation, a biased Child Protective Services worker (or Child Advocacy worker) will produce a video taped interview of this child. This biased interview will

use leading, suggestive, and coached questions to easily obtain an "**admission**" from a child. Many times the child does not make a statement that abuse occurred, but merely agrees with the adult authority figure who informs the child of the abuse.

Failure to investigate Brady:

In addition to trial counsel's aforementioned ineffectiveness and resulting prejudice, which independently warrants a new trial, trial counsel was also ineffective for failing to investigate the State's disclosure of new evidence (See: Exhibit "2"). **Three days before trial** (one business day), the State provided notice to Doucet that ***SD accused another individual of committing sexual abuse upon her person***, which is her step-cousin (DP: Doucet's step-son)(See: Exhibit "2"). Instead of requesting a continuance in order to investigate the information which had just been turned over by the State for potential *Brady* material, he requested one due to "lack of funds" for the expert.

> The Notice of Information informed the parties that:
>
> NOW INTO COURT, through the undersigned Assistant District Attorney, comes Paul D. Connick, Jr., in and for the Parish of Jefferson, State of Louisiana, who respectfully provides notice of the following:
>
> On Wednesday, November 23, 2016, the undersigned Assistant District learned the following:
>
> When SD[26] was approximately 10 years old, she was in her brother Anthony's room watching television. "DP" (sic), the young teenage son of Theresa Pavlas, came into the room and covered them both with a blanket. Devin (sic) then asked the (sic) SD to "lick his crotch," which SD briefly did. The conduct then stopped.
>
> Timmy Doucet was not in the room when this even occurred, but was elsewhere in the house. Nothing was said or done by either Devin (sic) or Timmy Doucet indicated that Timmy Doucet had anything to do with this incident, although SD believes Timmy Doucet 'put Devin (sic) up to it.'[27]

(See: Exhibit "1, enclosed).

While the district court certainly had the discretion to deny Doucet's Motion for a Continuance, counsel was nonetheless, rendered **ineffective**. See: *Cone*, supra. The State will agree that the State's constitutional obligation to disclose exculpatory evidence does not relieve the defense of its obligation

[26] Redacted for the purposes of LSA-R.S. 46:1844(W).

[27] Doucet would like this Court to note that he has just received this document which was not included in the Record when he was allowed to review such. At the time of the filing of this pleading, Doucet was not aware that this document was available.

to conduct its own investigation and prepare a defense for trial as the State is not obligated under ***Brady*** or its progeny to furnish the defendant with information that he already has or can obtain with reasonable diligence. ***United States v. Newman***, 849 F.2d 156, 161 (5th Cir. 1988)); see also, ***Michigan v. Harvey***, 494 U.S. 344, 348 (1990)("The essence of [defendant's] right [to assistance of counsel for his defense] ... is the opportunity for a defendant to consult with an attorney to have him investigate the case and prepare a defense for trial.").

The reason trial counsel is responsible for conducting an investigation for ***Brady*** material is that the State vitiates a defendant's rights to Due Process of Law when it suppresses evidence material to guilt or innocence in advance of trial "and perhaps during the course of a trial." ***United States v. Agurs***, 427 U.S. 97 (1976).

In ***Brady v. Maryland***, 373 U.S. 83 (1963), the Supreme Court held that the suppression by the prosecution of evidence favorable to the accused violates a defendant's Due Process rights under the Fourteenth Amendment to the United States Constitution, where the evidence is material to either guilt or punishment, without regard to the good or bad faith of the prosecution. The ***Brady*** rule encompasses evidence which may be determinative of guilt or innocence.

Though the State alleged that it had first learned of the information six days before trial, the State informed defense three days prior to trial. The State turned this information over to trial counsel one business day prior to trial. The circumstances further prevented him from requesting an *in-camera* inspection for ***Brady*** material that may exist on the CAC tapes, interviewing, and subpoenaing this individual to testify at Doucet's trial. As trial had no knowledge of SD's claim until 3 days before trial, he had no telepathic knowledge to request specific audio/video recordings wherein SD may have implicated this individual well before trial. Even so, trial counsel simply cannot rely upon the State's representations without conducting his own independent investigation into evidence he could have obtained through reasonable diligence.

It is clear Doucet did not have the benefit of a meaningful ***Brady*** investigation as required by the Sixth Amendment. SD alleged that someone other than Doucet had sexually abused her. SD testified that she did not want that individual to get in trouble. Trial counsel failed to investigate this individual, or was an inquiry made to determine if SD was protecting this individual by falsely accusing Doucet of committing the other person's actions.[28] See: Perpetrator Substitution.

Trial counsel failed to ask for a continuance on the basis to investigate new evidence and the district court denied Doucet's continuance on the basis of seeking a medical expert. Trial counsel, while ineffective, did not have the opportunity to even demonstrate "reasonable diligence." Even so, he did nothing in the three days before trial to determine whether such evidence existed and whether the State violated ***Brady***. See: ***United States v. Bagley***, 473 U.S. 667, 676 (1985); ***Giglio v. United States***, 405 U.S. 150, 154 (1972). Such a failure does not result in a verdict worthy of confidence. See: ***Kyles v. Whitley***, 514 U.S. 419, 434 (1995).

Failure to investigate and interview witnesses:

Trial counsel was ineffective for failing to secure the testimony of Doucet's father, PD. PD resided, and was present at **during the alleged rape in this case**. PD was slated to testify for Doucet at trial, he suffered a stroke which prevented him from doing so (See: Exhibit "8;" Affidavit of PD).

The deposition of witnesses, whether or not a party, may be used by any party for any purpose if the court finds: (a) That the witness is unavailable. LSA-C.E. Art. 804(A) defines unavailability, in pertinent part, as follows:

> Except as otherwise provided by this Code, a declarant is "unavailable as a witness" when the declarant cannot or will not appear in court and testify to the substance of his statement made outside of court. This includes situations in which the declarant: (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness, infirmity, or other sufficient cause. LSA-C.E. Art. 804 (A)(4).

Trial counsel failed to declare this witness unavailable and failed to take his deposition or sworn

[28] This Court must note that the statement against the "other individual" was exactly the same as it was with Doucet.

Affidavit pursuant to LSA-C.E. Art. 804 (A)(4). The determination of whether a witness is unavailable "is a preliminary question for the trial court." See also: LSA-C.E. Art. 104(A). A trial court's finding as to whether a witness is unavailable is "reviewed for manifest error and will not be overturned, absent an abuse of the trial court's discretion. *Id.* A witness is not "unavailable" unless a "diligent and good faith effort to obtain his presence at trial" has been made.

PD was slated to testify, but unfortunately suffered a stroke (well before trial), preventing him from being physically able to testify at trial. He has since recovered from the stroke and has retained complete memory of the facts in this case. PD's testimony could not be secured because of **trial counsel's ineffectiveness**, which resulted in **actual prejudice** and is **also considered newly discovered evidence** for purposes of collateral review.

A trial judge making such a determination should not weigh the new evidence as if he or she were a jury deciding guilt or innocence, but should ascertain whether new material is fit for a new jury's judgment. In order to obtain a new trial based on newly discovered evidence, the defendant has the burden of showing: (1) the new evidence was discovered after trial; (2) the failure to discover the evidence at the time of trial was not caused by lack of diligence; (3) the evidence is material to the issues at trial; and, (4) the evidence is of such a nature that it would probably have produced a different verdict.

PD has since executed an Affidavit and is willing to truthfully testify that he is the *only* person who was in possession of his shed key at that time. He will also truthfully testify that during SD's stay at his residence, "[Timmy] was not there when they (SD)(sometimes with D (DP)) stayed over at my house so it was impossible for this to have happened." (*Id*; Affidavit of PD).

He further states:

> Timmy never came over to my house earlier that (sic) 10:00am. He lived almost 100 miles away in Mississippi.[29] It would have been impossible for Timmy to have come into my living

[29] It must be noted that Detective Judd Harris testified (during the Probable Cause hearing) that SD stated that Doucet lived

room unnoticed, wake up "SD" around 6:00am by slapping her in the face (as stated in the original report),[30] physically remove her from my living room, bring her to a locked shed, assault her, and return her to the living room while I was there.[31] (See: Exhibit "8;" Affidavit of PD).

PD stated in his Affidavit that the "shed's door stayed locked and (PD) had the only key on (him) at all times." *Id.*

Such testimony is not merely cumulative, and/or corroborative. It is testimonial evidence not presented at trial that directly undermines and rejects the alleged victim's testimony of what she alleged Doucet did to her at PD's residence.

Applying these factors to the applicable law regarding newly discovered evidence, it is clear that PD's testimony (Affidavit) rises to the level of being heard as it is fit for a new jury's judgment. First, this new evidence was discovered ***after*** trial since trial counsel failed to memorialize PD's testimony ***before*** trial. Second, the failure to discover the evidence at the time was caused by trial counsel's ineffective assistance of counsel; particularly, his failure to secure his testimony in anticipation of trial. Trial counsel's performance, again, cannot be construed as a discretionary strategic decision, considering this witness offers testimony, if believed by a jury, changes the verdict to not guilty. PD was an unavailable witness as defined by LSA-C.E. Art. 804 (A)(4), which would have permitted his sworn statement or Deposition being taken and introduced as evidence at trial.

The benchmark for judging any claim of ineffectiveness of counsel must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Sixth Amendment to the United States Constitution. Because PD's testimony casts substantial doubt upon the alleged victim's testimony, the evidence is of such nature that it is fit for a new jury's judgment.

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at 5049 Richland Drive. Evidence proves that Doucet lived in Mississippi during this time.

[30] Although SD's original statement provided that Doucet had "slapped her awake;" but, during the course of her testimony at trial, she stated that he woke her up by picking her up.

[31] In SD's initial interview, she stated that she was sleeping in the living room of her grandparent's home when she was awaken around 6:00am by Doucet. However, PD was in the living room at that time, watching television while SD and her brother slept.

In ***Bryant v. Scott***, 29 F.3d 1411, 1418 (5th Cir. 1994), the defense counsel did not interview two eyewitnesses and limited his pretrial investigation to examination of the prosecutor's file, discussions with the accused, and a review of the Indictment. *Id.*, at 1418. The federal Fifth Circuit observed that "information relevant to [the] defense might have been obtained through better pretrial investigation of the eyewitnesses, and a reasonable lawyer would have made some effort to investigate the eyewitnesses' testimony." *Id.*

In ***Anderson v. Johnson***, 338 F.3d 382, 391 (5th Cir. 2003), the federal Fifth Circuit held that a trial counsel's failure to interview an eyewitness rose to the level of constitutionally deficient performance, given the gravity of a burglary charge, and the fact that there were only two adult witnesses to the crime and that counsel relied solely on the investigative work of the State, basing his own pretrial "investigation" on "assumptions divined from a review of the State's files." *Id.*

In this case, Trial counsel utterly failed to make an independent investigation into medical expert testimony, the State's "notice of information," and PD's testimony; and failed to interview Doucet's father, who was present in the home and at the time SD was allegedly abused. Clearly, trial counsel did not perform his own pretrial investigation and relied upon the State's assertions. Had trial counsel known what PD would state, no reasonable attorney would elect not to call him as a witness and preserve his testimony if illness seemed imminent. As such, a new trial is warranted so that a new jury could have the benefit of hearing PD's testimony.

SUMMARY

SD claimed that Doucet had sexual intercourse with her when she was eight years old. She claimed that Doucet had taken her into the shed in the back of her grandparents' home and have sexual intercourse with her during the early morning hours while everyone else was asleep. However, during the course of the trial, the ***only evidence*** presented was the testimony of the alleged victim and the State's "Expert" witness (whose testimony was only introduced to "***bolster***" SD's testimony).

State witnesses' testimony clearly contradicted each other to such an extent that the result of the trial cannot be deemed as reliable, or as producing a just verdict. Given the fact that Doucet was convicted by testimony alone, he should be granted Certiorari in this matter.

Furthermore, there was ***no physical evidence*** presented to the jury. Surely, a prepubescent child that had been violently raped multiple times between the ages of eight and ten would have, at a minimum, damage to the hymen and/or surrounding tissue. Although the experts testify that the hymen would have healed (without any type of scarring), there are no clinical studies to show such according to Dr. McCubbin.

It must also be noted that testimony from Doucet's brother, RD, who was at the victim's residence the ***day before the allegations were reported***, testified that he was recounting a rape story that he had previously read about in the newspaper with SD's parents, when SD was discovered by her mother, BD, sitting behind RD's chair, listening to his story (Rec.pp. 491-3). RD also testified that while at the residence, he was informed multiple times by MD that he would do harmful things to Doucet due to an affair Doucet was having with his wife BD (Rec.p. 530).[32]

There was insufficient evidence presented in this case to find Doucet guilty beyond a reasonable doubt of Aggravated Rape of SD. SD's testimony could not be considered credible to jurists of reason due to the **major** discrepancies which were presented throughout these proceedings.

Doucet was convicted by a "story" that had "popped" in SD's head while she was on the bus on the way home from school (even though she could not remember what thought had "popped" into her head (Rec.p. 283), from an alleged victim that "bragged" that her imagination was "bigger than everyone in the courtroom, and that she was a ***great story teller***" (and could consistently remember the stories that she told) (Rec.p. 302); and has eight (8) or nine (9) personalities (and she had ***bragged*** she had on her **serious** personality on the day of the trial)(Rec.p. 301-2). SD also testified that one of her personalities

[32] It must be noted that MD, Timmy's brother, had an active felony charge during these trial proceedings stemming from an assault on Timmy Doucet (Rec.pp. 411, 412, 508, 509).

is her "Dark Side," and that her personalities were "Not part of a game;: that they were a part of her (Rec.pp. 301-2). SD firmly believed that Doucet had attempted to kill her father by trying to run him over with his truck (Rec.p. 318).

SD also testified that she had been sexually assaulted by her cousin, DP, during this "exact same" time period, and testified that she did not want DP to get into trouble for the things that he had done to her (Rec.p. 324). In SD's initial statements, she stated that Doucet is the *only* person that abused her, and 14 months after those interviews, she changed those stories, and named another person of abusing her. Her "new" statement stated that her step-cousin, DP, abused her once when she was 10 years old; and, in Doucet's trial, SD stated that the abuse started when she was also 8 years old, and it happened more than once. Once again, the same allegation that she had informed the authorities about Doucet.

The testimony presented by the State from the alleged victim, SD, would not have been believed by jurists of reason. Therefore, with the lack of any other corroborating evidence, the State failed to meet their burden of proof.

The State also relied heavily on the testimony of their "Expert" witnesses, Dr. Jackson and Robin Bixler in order to obtain this conviction. Dr. Jackson met with SD *one time* and was of the opinion that SD had been sexually abused. Dr. Jackson also testified to the fact that every time that she has testified, she has testified that the child (alleged victim) was likely to have been sexually abused.[33]

This type of testimony has been labeled as so inherently unreliable that they cannot aid decision making in the criminal justice system. The clinician observer applying his or her own theory is simply unreliable. It is logical that this Court should be reluctant to allow it to be used for a purpose which it was not intended as a credibility evaluation tool.

Trial counsel's performance was so deficiently ineffective and the resulting prejudice was so substantial that the trial cannot be relied upon as having produced a just result. Moreover, each claim

[33] This appears to be a "Smoking Gun" for the State.

made herein warrants a new trial based on its own merits. In this case, trial counsel (in an Affidavit) admitted he was ineffective. His ineffectiveness led to actual prejudice, but trial counsel's errors are so egregious that Doucet is entitled to relief even absent a showing of deficiency or prejudice because trial counsel entirely failed to subject the prosecution's case to meaningful adversarial testing and the circumstances surrounding the State's prejudicially-timed discovery which prevented trial counsel from rendering effective assistance of counsel. See: ***Bell v. Cone***. When each claim is taken in its totality, it is clear that Doucet was denied effective assistance of counsel at every stage and in every aspect of this case.

First, trial counsel failed to investigate the State's medical testimony. He did not engage with his own medical expert to challenge Dr. Jackson's findings and conclusion. Her testimony went unchallenged and the jury was deprived of hearing medical testimony that directly refutes Dr. Jackson's conclusions (See: Exhibit "6").

Dr. McCubbin would have testified at a new trial, and his testimony would have directly refuted Dr. Jackson's testimony, and her relied upon mantra "it's normal to be normal." He stated that he would testify that if SD's allegations are true, then there would be a history of pain and bleeding as well as healed evidence of such forceful penetration. His opinion is based on his extensive education, training and experience and is given with a reasonable degree of medical certainty. As such, trial counsel's failure to secure a medical expert fell below the standard that ***Strickland*** demands and such deviation clearly resulted in prejudice which calls into question, the verdict.

Second, trial counsel failed to investigate the State's "notice of information," which revealed the victim was sexually abused by another individual, but she did not want that individual "to get in trouble" (See: Exhibit "2"). Counsel failed to investigate potential ***Brady*** issues which would have ultimately exonerated Doucet. Doucet is entitled to the benefit of effective assistance of counsel including the obligation to investigate any and all ***Brady*** issues which could have discovered through

investigation. Relying on the State's assertions is not sufficient. See: ***Johnson***, 338 F.3d 382, 391 (5th Cir. 2003).

Third, trial counsel failed to secure PD's (SD's grandfather, and the one responsible for her supervision at that time) testimony, the resident of the home where the assault allegedly occurred.[34] This case did not have a single eyewitness other than the victim's own testimony. The only person to have been in the home with the key to the shed where the alleged assault occurred was PD. Yet, trial counsel did not secure his testimony and there is no evidence in the record that counsel even interviewed him. Had counsel known what PD would state, it would be beyond the realm of conscientious to not call him as a defense witness. Trial counsel's failure to secure his testimony resulted in SD's testimony going unchallenged without adversarial testing which was embraced by the jury. Should this Court grant a new trial and/or evidentiary hearing, PD will offer testimony that directly refutes the victim's testimony (See: Exhibit "8").

It is highly probable that SD's testimony concerning DP meets/fits the criteria for ***Perpetrator Substitution*** because it clearly explains why SD would implicate Doucet as the perpetrator as opposed to DP. SD also believed that Doucet would kill her father if given another opportunity. As SD is a "***Great Story Teller,***" she concocted a story of abuse and implicated Doucet to protect her father from any further harm from Doucet; and to prevent DP from getting into trouble for what he had done to her (Rec.pp. 219-21, 324).

SD testified that Doucet abused her multiple times, but could only remember two incidents, which SD coincidentally testified that DP abused her two times; and, at the ***very same ages*** that DP abused her. SD had also testified that Doucet had assaulted her at her home in Mississippi (in the exact same house that DP had assaulted her). Her "story" concerning Doucet was almost ***exactly the same*** as the

[34] PD was the only resident awake and present in the same room when this incident allegedly occurred.

incident she had described with DP (Rec.pp. 319-20, 324).[35]

As the State surely reminds each jury, a burden of proof is not insurmountable when the evidence is clear. The independent claims and its cumulative prejudice to Doucet deprived him of effective assistance of counsel and led to an unreliable verdict. In this case, Doucet respectfully submits to this Court that he has met his burden of proof. Trial counsel's performance was constitutionally deficient and such ineffectiveness resulted in actual prejudice. The evidence that trial counsel would have uncovered casts substantial doubt on the jury's verdict. The claims presented herein are all fit for a new jury's determination.

WHEREFORE, for the reasons above, Mr. Doucet has shown this Honorable Court that the State knowingly presented perjured testimony to the jury during this trial; and this Court must determine that Mr. Doucet was denied his right to a fair trial in accordance with the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and remand this matter for a new trial.

CONCLUSION

As Mr. Doucet was denied the right to a fair and impartial trial, this Court should grant the petition for Writ of Certiorari.

Timmy Doucet #717020

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served by First Class United States Mail this 17th day of October, 2022. upon counsel of record for Respondent, pursuant to Rule 29 at the following address: District Attorney's Office, 200 Derbigny St, 5th Floor, Gretna, LA 70053.

Timmy Doucet

[35] Although SD only described one incident with DP, she testified that it had happened twice.