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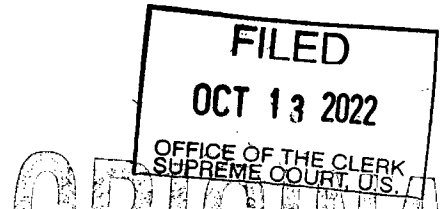

IN THE

SUPREME COURT OF THE UNITED STATES

MALACHI RODRIGUEZ,

PETITIONER,

vs.

STATE OF MINNESOTA,

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

MALACHI RODRIGUEZ

1000 LAKESHORE DRIVE

MOOSE LAKE, MN 55767

QUESTION(S) PRESENTED

1. The state failure to prove beyond a reasonable doubt that the petitioner used coercion where there was no evidence that NC communicated lack of consent or that the petitioner did anything coercive. The due process clauses of the United States Constitutions require the state to prove "each element of the crime charged beyond a reasonable doubt.

2. The district court abuse its discretion by admitting NC's out-of-court statements as prior consistent statements where the statements were not consistent with her trial testimony and the error substantially affected the verdict

3. The district court prejudicially err by admitting evidence of the petitioner's bad character relating to his so called anger issues, the state failed to show any evidence that the petitioner had an anger issue that is against woman.

LIST OF PARTIES

[x] 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:

KEITH ELLISON
Minnesota State Attorney General
1800 Bremer Tower
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St. Paul, MN 55101

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TABLE OF AUTHORITIES CITED

MINNESOTA STATUTES

MINNESOTA CASES

FEDERAL CASES

U.S. CASES:

IN THE

SUPREME COURT OF THE UNITED STATES

PETITIONER FOR WRIT OF CERTIORARI

Petitioner respetfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

There is no cases from courts, the United States court of appeals; or any report/ruling of the United States district court at this time

[x] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is [x] reported at A21-1171 .

The opinion of the state appellate court appears at Appendix B to the petition and is [x] reported at, A21-1171 .

JURISDICTION

[ ] For cases from federal courts:

The is no ruling on any federal court at this time to report.

[x] No petition for rehearing was timely filed in my case.

[x] No extension of time to file the petition for a writ of certiorari was granted.

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 September 20,2022.
A copy of that decision appears at Appendix A.

[ ] No timely petition for rehearing was filed.

[ ] No entension of time was file for a writ of certiorari.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, without due process of law; nor deny to any person within its jusisdiction the equal protection of laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Amendment is enforce by the Due Process Clause of the Fifth Amendment:

Under the Due Process Clause of the Fifth Amendment, the prosecutor is required to prove beyond a reasonablr doubt every element of the crime with a defendant is charged . The reasonable doubt requirement applies to elements that distinguish a more serious crime from a less serious one, as well as to those elements that distinguish criminal from non-crimnal conduct.

STATEMENT OF THE CASE

The petitioner's Malachi Rodriguez was charged in Broow County District Court: Count 1, third-degree criminal sexual conduct (sexual penetration, Minn. Stat. § 609.344, subd. 1 (c) (2019); Count 2, fourth-degree criminal sexual conduct, Minn. Stat. § 609.345, sub. 1 (c) (2009); and Count 3, fifth-degree criminal sexual conduct, Miin. Stat. § 609.3451, subd. 1.

The charges were based on the state's allegation that the petitioner sexually assaulted his cousin NC. There was no rape kit done on NC, she stated to the police that she was raped,but had no sign of being raped. The petitioner pleaded not guilty and had an unfair jury trial, presided over by judge Robert A.Docherty. The jury convicted the petitioner of the three counts, and found he used coercion in committing Counts 1and 2.

There is no evidence in this case that clearly shows this jury that the petitioner used coercion, NC stated in open court that they did not talk at all while they were in the same bed, or after they had sex.

The petitioner filed this petition for a writ of certiorari challenge the judgment, and the ruling of the lower Courts'.

REASONS FOR GRANTING THE WRIT

A. Conflicts with Decisions of Other Courts

1. (A). A State Court of Appeals has entered a decision in conflict with the decision of another United States Court on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. 28 U.S.C. § 2121(e).

The holding of the state Court of Appeals set out in its decision saying that, A defendant's "use of his overwhelming physical zise and strength to cause the victim to submit to penetration against her will fits squarely within the statute's prohibition of sexual assault by coercion". State v. Solberg, 882 N.W.2d 618, 627 (Minn. 2016). Further, conduct that conributes to an "atmosphere of fear" suggests coercive influence. State v. Gamez, 494 N.W.2d 84, 87 (Minn. App. 1992), rev. denied (Minn. Feb. 23, 1993); State v. Meech, 400 N.W.2d 166, 168 (Minn. App. 1987)(determining defendant used coercion to complete sexual contact where victim was "fearful

and overpowered" when defendant pushed up victim's nightgown and restrained her hands).See, (T.6).

The Court of Appeals' error in concluding that the state proved beyond a reasonable doubt that the petitioner used coercion to accomplish the sexual acts. Under the Due Process Clause of the Fifth Amendment, the prosecutor is required to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. See, In re Winship, 397 U.S. 358, 364 (1970); U.S. v. O'Brien, 130 S. Ct. 2169, 2174 (2010) (distinguishing between " [e]lements of a crime [that] must be charged in an indictment and proved to a jury beyond a reasonable doubt".

The Winship "beyond-a-reasonable doubt" standard applies in both state and federal proceedings. See, Sullivan v. La., 508 U.S. 275, 278 (1993). The standard protests three interests. First it protects the defendant's liberty interest. See, Winship, 397 U.S. at 363. Second, it protects the defendant from the stigma of conviction. Id. Third, it encourages community confidence in criminal law by giving "concrete substance" to the presumption of innocence. Id at 363-64.

The government's failure to meet its burden of proof results in the defendant's acquittal. See, Winship, 397 U.S. at 363; Petez-Melendez, 599 F. 3d. 31, 46 (1st. Cir. 2010)(prosecutor's failure

to prove beyond a reasonable doubt that defendants knew or deliberately avoided learning that pallets of reams paoer contained controlled substance required reversal of conviction for possession with intent to distribute): U.S. v. Broxmeyer, 616 F.3d 120, 125-27 (2n Cir. 2010) (prosecutioner's failure to prove beyond a reasonable doubt that defendant "persuaded, induced, or enticed" 17-year-old girl to take 2 sexually enticit photos of herself required reversal of conviction for production of child pornography).

The petitioner must also be acquitted if the court defines reasonable doubt in a way that impermissibly eases the prosecution's burden of proof. Cage v. La., 498 U.S. 39, 41 (1990).

The omission from the jury instructions of any element that the prosecution must prove beyond a reasonable doubt require reversal of the defendant's conviction. U.S. v. Gaudin, 515 U.S. 506, 522-23 (1995)(court's failure to submit issue of materiality to jury in prosecution for making false statements deprived defendant of right to demand that jury find him guilty of every element of crime charged).

The evidence was insufficient to prove beyond a reasonable doubt that the petitioner used coercion to accomplish the sexual acts.

The jury convicted the petitioner of third-

and-fourth-degree criminal sexual conduct accomplished by coerion. The state failure to show any evidence that the petitioner did anything to cause NC to submit to the sexual encounter. The prosecutor failed to prove that the petitioner's committed this crime of rape in the third-and-fourth-degree criminal sexual conduct require reversal of the petitioner's conviction and sentence.

The due process clauses of the United States Constitutions requires that the state to prove "each element of the crime charged beyond a reasonable doubt". Winship, 397 U.S. v. 354 (1970); U.S. *v.* O'Brien, 130 S. Ct. 2169, 2174 (2010).

Under Minn. Stat. § 609.345, subd.1 (c), require proof beyond a reasonable doubt that the petitioner engaged in sexual penetration or contact with NC, without her consent, and that he used coercion to accomplish the penetration or contact. Id.

Coercion is defined as

> the use by the actor of words or circumstances that cause the complainant reasonably to fear the infliction of bodily harm upon the complainant or another, or the use by the actor of confinement, or the use by the actor of confinement, or superior size or strength, against the complish the act. Proof of coercion does not require proof of a specific act or threat.

Minn. Stat. § 609.341, subd. 14.

The state failure to presented any evidence that the petitioner inflicted or threatened to inflict bodily harm on NC or used confinement or

strength to cause NC to submit against her will . On the contrary, NC testified that the petitioner did not threaten her, physically harm her, hold her down, or in any way prevent her from avoiding sexual contact with him. Clearly NC wanted to have sex with the petitioner, that's why there is no evidence of rape in this case, or the fact that she did not call out for help, there were two more girls in the room with her WHILE she was having sex with the petitioner, at anytime she could have done something to stop this inaccuracy of having sex with her first cousin, but she did nothing to stop this.

The Court of Appeals' error in concluding that the petitioner's "use of his overwhelming physical size and strength to cause the victim to submit to penetration against her will fits squarely within the statute's prohibition of sexual assault by coercion". State v. Solberg, 882 N.W.2d 618, 627 (Minn. 2016).

It is unconstitutional to make such a conclusion knowing that the Court of Appeals has never ween the petitioner or hear about what size, or the weight of the petitioner, or the height of the petitioner without first seeing the petitioner first hand. The Court of Appeals violated the petitioner rights to due process of law, in violation of 5th, and 14th Amendment of the Constitution.

Because the Court of Appeals has never seen the petitioner, it has not proven the state's burden of the statute 609.344, subd. 1 (c), which required the state to prove that the petitioner penetrated the victim without her consent.

Under the Due Process Clause of the Fifth Amendment, the prosecutor is required to prove beyond a reasonable doubt every element of the crime with which the petitioner is charged. Winship, 397 U.S. 364 (1970); U.S. v. O'brien, 130 S. Ct. 2169, 2174 (2010). Because of the state failure to clearly show that he has proven each element of the crime in which the petitioner was charged with is contrary to the holding of the federal circuits. Winship, 397 U.S. 364 (1970); U.S. v. O' Brien , 130 S. Ct. 2169, 2174 (2010); U.S. v. Broxmeyer, 616 F.3d 120 125,27(2n Cir.2010); U.S. v. Cuevas-Reyes, 572 F.3d 119, 122-23 (3r Cir. 2009). In addition, the Supreme Court has held that "[a]n unjustified reusal to prove each element of the crime charged beyond a reasonable doubt will warrant reversal". U.S v. Perez-Melendez, 599 F.3d 31, 46 (1st Cir.2010); U.S. v. Steen, 634 F.3d 822, 826-28 (5th Cir. 2011).

B. Importance of the Question Presented

This case presents a fundamental question of the interpretation of this Court's decision in

Winship, 397 U.S. 364 (1970); or the statute 609.344, subd. 1 (c). The question presented is of great public importance because it affects the whole State of Minnesota and the 50 States, the district of Minnesota, and hundreds of city . In view of the large amount of litigation over men being accused of rape proceedings, guidance on the question is also great importance to the men in the United States, because it affects their ability to receive fair decisions in proceedings that may result in months or years of added incarceration or harh punitive confinement.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpred Winship, or the statute 609.344, subd. 1. (c). Winship and the statute of 609.344 clearly states that the prosecution must prove beyond a reasonable doubt that the petitioner penetrated the victim without her consent and used coercion to accomplish the penetration. Or use his overwhelming physcal size and strength to cause the victim to submit to penetration against her will fits squarely within the statute's prohibition sexual assault by coercion, which is in err violating the petitioner's 5th and 14th Amendment.

The common sense understanding of the Due Process Clause of the Fifth Amendment, where the prosecution is required to prove beyond a reasonable doubt every element of the crime with which the

petitioner is charged. Winship, 397 U.S. 364 (1970); U.S. v. O'Brien, 130 S. Ct. 2169, 2174 (2010); and the statute 609.344, subd. 1 (c). Both cases and the statute acknowledge that there are security and other concerns that may require limiting petitioners' due process rights particular cases. However, those concerns are accommodation by permitting prosecutor to prove every element of the crime beyond a reasonable doubt.397 U.S. at 364. As one court observed, the reasoning of Winship is simply support the Constitutional right to have the prosecution to prove every element of the crime beyond a reasonable doubt.

Clearly the state's failure to demonstrate that the petitioner commit rape, or did not have the consent of the alleged victim clearly violated the petitioner due process of the law, to where he was being deprived of his Constitutional rights of the law in Winship, 397 U.S. 364 (1970), or for that matter, the statute that clearly states require the state to prove that the petitioner penetrated the victim without her consent and use coercion to accomplish the penetration. The state would not know any of this evidence because there was no evidence of rape, and there is no evidence that the alleged victim did not want the petitioner to have sex with her. If a rape kit was done on the alleged victim clearly the doctor would ween evidence that

there was the use of force to enter NC's vagina, for some unknown reason the alleged victim did not go to the hospital so that a rape kit can be done, in any raped case it is required to have a raped kit done so they can get a collection of any evidence such as biological material, gathered from a patient by a health care professional. The reason that the alleged victim did not have a raped kit done was due to the fact that she knew that the petitioner did not raped her, and the sexual encounter in fact was with consent, what the alleged victim is not telling the courts' is she was already playing around with the petitioner before, misleading the courts' to believe that the petitioner raped her. The charge does not fit this case because alleged victim made up the whole thing, if the prosecutor checked her past, and the way she acts in sexual encounters he would've seen for himself that she is acting the way she does with everyone that she has sex with, she used no words to let a person know that it is consent or approval for a person to have sex with her's.

These actions of her is one of the reasons why she needed to lie about the sexual encounter with her and the petitioner, this case must be proven beyond a reasonable doubt by law. Winship, 397 U. S. 364 (1970); and the statute 609.344 subd. 1. (c).

The alleged victim testified that she was scared of the petitioner because of his so called anger issues and did not say or do anything to stop him because she did want to ruin the wedding. Clearly this story does not sound right, if a person is being force against their will, and there is other people in the same room with them, she could have made any sound to call out for help. The state used this statement to call this a crime without consent; but the state failure to show any evidence that the alleged victim was scared by the petitioner, this girl has been around the petitioner all of her life, and now states that she is scared of her cousin, that is unlikely. The Court of Appeals rule that, "Corroboration is not required in criminal sexual conduct cases". State v. Wright, 679 N.W.2d 186, 190 (Minn. App. 2004). Indeed, a guilty verdict may be based on the testimony of a single witness. State v. Foreman, 680 N.W.2d 536, 539 (Minn. 2004). The Court of Appeals stated that, "victim's demeanor after sexual assault corrorated her testimony".

The Court of Appeals in making this ruling about the alleged victim did not talk to anyone after she had sex with the petitioner, and the fact that she waited to the next day is prove that she was not raped. The alleged victim did not talk to the other two women until the next day, there is no way that her demeanor was not the same as she was having sex with the petitioner; there is

clear evidence that her demeanor did not change because she did what everyone does after having sex and that is to take a shower. The Court of Appeals made its ruling on the basis that the alleged victim stated that she was,"uncomfortable sleeping in the same bed with the petitioner, and she slept close to the edge of the bed, facing away from him, the victim tried to scoot away from the petitioner, she woke up in the middle of the night when she felt the petitioner trying to move her shorts.

The Court of Appeals erred in its ruling because the state failed to show clear evidence that the victim was telling the truth, the other women could not testified to what the allege victim was telling the jury, there is no evidence to her story, the state had no evidence of what NC told the police, or the courts'. If NC did not want to sleep in the same room as the petitioner she could have went anywhere in that room, she could've got into the same bed of the other women. Clearly.

The lower court's reasoning that it feels that the state prove its burden of proof beyond a reasonable doubt is based on the petitioner's use of his overwhelming physical size and strength to cause the victim to submit to penetration against her will does not fit squarely within the statute's prohibition of sexual assault by coerion. State v. Solberg, 882 N.W.2d 618, 627 (Minn. 2016).

Or the law in WINSHIP, 397 U.S. 358.

In order for this statute to fit squarely, the state, or Court of Appeals must clearly show that the petitioner 's use of his overwhelming physical size and strength to cause the victim to submit to penetration against her will.

The alleged victim testified that the petitioner's did not threaten her, physically harm her, hold her down, or in any way prevent her from avoiding sexual contact with him. These cases does not support the petitioner's conviction, State v. Solberg, 882 N.W. 2d 618, 627 (Minn. 2016); State v. Gamez, 494 N.W. 2d 84, 87 (Minn. App. 1992); State v. Meech, 400 N.W.2d 166, 168 (Minn. App. 1987).

The state of Minnesota, and the Court of Appeals Courts' decision is clearly in direct conflict with Winship, 397 U.S. 358, 364 (1970); U.S. v. O'Brien, S. Ct. S. Ct. 2169, 2174 (2010). These cases illustrate the fact that the Court of Appeals and the trial court is out of step this Court and with other circuits in its consideration of the Winship,397 U. S. 358, 364 (1970); U.S. v. O'Brien, S. Ct. 2169, 2174 (2010); Patterson v. New York, 432 U.S. 197 (1977); Massare v. United States, 538 U.S. 500 (2003); Tome v. United States, 513 U.S. 150 (1994); Becch Aircraft Corp v. Rainey, 488 U.S. 153 (1988). Certiorari should be granted to correct this error, where the state failure to prove beyond a reasonable doubt every element of the crime with which a petitioner is charged, under the Due Process Clause of

the Fifth Amendment. See, Winship, 397 U.S. 358, 364 (1070); U.S. v. O'Brien, 130 S. Ct. 2169, 2174 (2010); Petez-Melendez v. U.S., 599 F.3d 31, 46 (1st Cir. (2010)

A. Conflicts with Decisions of Other Courts

2. (A). The holding of the state Court of Appeals set out in its decision saying that, the district court did not abuse its discretion by admitting the witnesses' out-of-court statements into evidence. Our standard of review depends on whether petitioner objected to the district court's evidentiary during trial. If an appellant object to the admission of evidence, we apply the harmless-error standard. State v. Sanders, 775 N.W.2d 883, 887 (Minn. 2009). Under this standard, the appellant bears the burden of showing that the addmission of evidenece was erroneous and that he was prejudiced as a result.

This holding is in conflicts with decision of other courts, the petitioner's objection to the district court admitted NC's, KR's, and Br's recorded interviews with investigator Hohensee as prior consistent statements. This was an abuse of discretion because NC's trial testimony varied greatly from what she told KR, BR, and the investigator. Given the lack of evidence the petitioner coerced NC, the jury obviously relied heavily on the statements to convict the petitioner. Therefore, the error in admitting the statements was prejudicial and requires that the case be remanded for a new trial.

If the court erred in admitting evidence, the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. Del v. VanArsdall, 475 U.S. 673 (1986). If there is a reasonable possibility the verdict might have been more favorable to the defendant without the eveience, then the error is prejudicial. Id.

Before trial, the state moved to admit the statements NC, KR, and BR made to investigator Hohensee as prior consistent statements under Minn. R. Evid. 801(d)(1)(B) (5/4/21 Motion # 33). Petitioner objected to the motion (T.329, 429).

The court overruled the objection, finding:

> I think that the statement are generally consistent. I noted that, in particular, [KR] said she was bad with dates and times and thin gs like that, and so to the extent that she wasn't sure it if was 9 o' clock or 9:30 or 10 o'clock or which day of the week it was, I don't think that's terribly inconsistent. Just that these statements are all consistent, and there was-there was some questioning of their credibility, and so I think they are admissible as prior statements.

(T. 429-30). During the trial, then the recordings of the three women's statements were played for the jury, and NR and BR were allowed to testiffy about the statements NC made to them (T.438, 443, 446, 452; Exs. 2A-B, 2A-1-A-2, 3, 3A).

Hearsay-an out-of-court statement offered to prove the truth of the matter asserted-generally is inadmissible. Minn. R. Evid. 801 (c); Minn. R. Evid. 802. If the witness can be crossexamined at trial

about the statement. Ky v. Stincer, 482 U.S. 730, 740, 744 n.17 (1987). The Sixth Amendment provies all criminal prosecutions, the accused shall enjoy the right is held applicable to the states through the Fourteenth Amendment. Washington v. Texas, 388 U.S. 14, 17-18 (1967).

Generally, [e]videntiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion. Arizena v. Washington, 434 U.S. 497 (1977). The this Court reviews a district court's determination that two statements are consistent for an abuse of discretion. GE v. Joiner, 522 U.S. 136 (1997).

It was not any inconsistency in KR's statement, or KR's and BR's credibility that was the problem, the consistency required for admissibility is between NC's trial testimony and the statements she made to others outside the courtroom.

The Court of Appeals error in its ruling over the out-of-statement stating that, "Our standard or review depends whether petitioner objected to the district court's evidentiary ruling during trial. If an appellant objects to the admission of evidence, we apply the harmles-error standard. State v. Sanders, 775 N.W.2d 883, 887 (Minn.2009). Under this standard, the appellant bears the burden of showing that the admission of evidence was erroneous and that he was prejudiced as a result. Id. If the appellant did not

object, we review for plain error. State v. Vasquez, 912 N.W.2d 642, 650 (Minn. 2018). Plain error requires the appellant to show an error, that was plain, and that affected the appellant's substantial rights. State v. Strommen, 648 N.W.2d 681, 686 (Minn. 2002). The third prong of the plain error test is the equivalent of a harmless error analysis.

The Court of Appeals ruled that,""petitioner objected to only some of the witnesses out-of-court statements challenged on appeal. For the reasons below, we conclude that petitioner has not satisfied his burden of proving that any error occurred regardless of which standard of review applies".

Clearly the Court of Appeals is in violation of the petitioner Due Process rights under the 5th, and 14th Amendment of the law, where the Court of Appeals stated that, "petitioner objected to only some of the witnesses out-of-court statements challenged on appeal. For the reasons below, we conclude that petitioner has not satisfied his burden of proving that any error occurred regardless of which standard of review applies".

The Court of Appeals error in its ruling on the issue that the petitioner objected to only some of the witnesses out-of-court statements challenged on appeal, stating that we conclude that petitioner has not satisfied his burden of proving that "any error occurred regardless of which standard of review applies."

The petitioner has clearly established that there is

evidence of an error in which violated the petitioner, and the error is prejudicial. The petitioner has in fact satisfied his burden of proving that from page 15-21 of his petitioner clearly set out the error in which he is arguing about out-of-court statements.

The denial of the Court of Appeals violated the petitioner 5th, and 14th Amendment rights, Winship, 397 U.S. at 363; U.S. v. O'Brien, 130 S. Ct. 2169, 2174 (2010). The Court of Appeals failure to clearly show that the petitioner has not satisfed his burden where there are errors that is being argue before this Court, and the lower courts', since the petitioner appeal, the petitioner's substantial showing of the error that there is no where around it but to make a ruling on the constitutional violation of the petitioner rights under the Due Process laws of the United States, as well as the State of Minnesota.

The Confrontation Clause of the Sixth Amendment prohibit the admission of hearsay evidence against the petitioner. When the petitioner lacks the opportunity to cross-examine the out-of court declarant.See, Crawford v. Washington, 541 U.S. 36, 68 (2004).

In Crawford v. Washington, the Supreme Court created a new standard to govern the admmissibility of hearsay statements against criminal defendants under the Confrontation Clause. The Court distinguished between "testimonial" and nontestimonial" hearsay evidence holding that the admission of a testimonial hearsay

statement violates the Confrontation Clause unless the declarant is unavailable. Crawford, 541 U.S. at 68. A witness is considered "unavailable" if the government is unable, despite good-faith efforts, to procure that witness's attendance at trial. See, Barber v. Page, 390 U.S. 719, 724-25 (1968); Mancusi v. Stubbs, 408 U.S. 204, 212 (1972)(state must make good-faith effort to compel presence of witness beyond merely showing witness was outside state).

Hearsay is a statement that the declarant does not make while testifying at the current trial or hearing [and] that a party offers in evidence to prove the truth of the matter asserted in that statement. FED. EVID. 801 (C). A statement introduced for any purpose other than to prove the truth of the matter asserted is not hearsay and thus will not raise Sixth Amendment issues. See, Williams v. Ill.,, 132 S. Ct. 2221, 2239-40 (2012).

The holding of the Court of Appeals is that the district court did not abuse its discretion by admitting the witnesses' out-of-court statements into evidence is directly contrary to the holding of these federal circuits. See, Crawford v. Washington, 541 U.S. 36, 68 (2004); Barber v. Page, 390 U.S. 719, 724-25 (1968); Mancusi v. Stubbs, 408 U.S. 204, 212 (1968). These violation deprive the petitioner of all his Constitutional rights of the Sixth Amendment Clause. In addition, the Supreme Court of Iowa has held that [a]n unjustified refusal to permit live testimony of a defense witness will warrant reversal. In Hrbek.

B. Importance of the Question Presented

This case presents a fundamental question of the interpretation of this Court's decision in Crawford v. Washington,541 U.S. 36, 68 (2004). The question presented is of great public importance because it affects the operations of the district courts' in all 50 states, the District of Minnesota, and hundreds of cities thourhout the United States. In view of the large amount of litigation over out-of-court statements proceedings, guidance on the question is also great importance to the petitioners' because it affects their ability to receive fair decisions in proceedings that may result in months or years of added incarceration or harsh punitive confinement.

This issue's importance is enhanced by the fact that the lower courts in this case have seriously have not follow the case in Crawford v. Washington, 541 U.S. 36, 68 (2004). This Court held in Crawford that the Confrontation Clause of the Sixth Amendment prohibit the admission of hearsay evidence against the petitioner. When the petitioner lacks the opportunity to cross-examine the out-of-court declarant. This Court can clear estabished that the out-of-court statement clearly violated the petitioner Sixth Amendment Clause in which probihit the admission of hearsay evidence against the petitioner.

The common sense understanding "calling" a witness is bringing the witness into the proceeding to give testimony, and nothing in which the district court

did in the petitioner's trial, the state suggests otherwise. Both state and the Court of Appeals ruling acknowledge that there is a clear out-of-court statement that was made, and other concerns that may require due process rights in particular with this case. However, those concerns are accommodated by not permitting the out-of-court statement in as evidence to the jury. As the United States Supreme Court observed the reasoning of the district court actions on out-of-court statement in as evidence clearly violated the petitioner Sixth Amendment rights of the Confrontation Clause is clearly supported in Crawford v. Washington, 541 U.S. 36, 68 (2004).

The appellate courts have interpreted the rule as requiring a challenge to the witness's credibility. Id. at 109 (citation omitted). Thus, the court "must make a threshold determination of whether there has been a challenge to the witness's credibility". Id.

The court then must compare the prior statements to the trial testimony for consistency and decide whether "the prior statement and the trial testimony are consistent with each other". Id . Thisa requirement prevents unfair inclusion of inadmissible inconsistent statements": "Such analysis is necessary under Rule 801 (d)(1)(B), and Federal Rules, for without it a few consistent statements in a multi-statement interview may be used to bootstrap into evidence inconsistent statements that do not qualify under the

rule". Id. at 109. Any inconsistent statements are admissible as substantive evidence only if they were made in court and under oath. Minn. R. Evid. 801 (d)(1)(A).

The two statements need not be identical or verbatim, the inconsistencies should be reviewed to determine if there are major discrepancies. Id. at 109-10. But less than verbatim prior statements that "directly affect the element of the criminal charge" are considered inconsistent and are not admissible as substantive evidence. Id. As 110.

Comparing the prior statement with the trial testimony also is necessary to identify statements that are neither consistent nor inconsistent but are additionl accusations, which are also inadmissible. Id. at 109 (Minn. R. Evid. 801(d)(1)(B) 1989 comm. cmt., which states, "[W]hen a witness's prior statement contains assertions about events that have not been described by the witness in trial testimony, those assertions are not helpful in supporting the credibility of the witness and are not admissible under this rule.").

The defense challenged NC's credibity, so her prior consistent out-of-court statements to NR,BR, and the investigator arguably were admissible at trial if they would be helpful in evaluation her testimony. But the statements contained important inconsistencies from her testimony, including the following additional assertions, accusations, and details that NC did not describe in her trial testimony-all of which rendered

the statements inadmissible:

(1) NC told the investigator that the incident started when Rodriguez came closer to her and tried to move her hands around "to put it on him," and that she put her hands in fists and crossed arms so she could not move. (Ex. 3A at 14). And she told KR that Rodriguez kept scooting closer to her and she kept scooting away from him (Ex. 2B1 at 6). But NC did not testift that Rodriguez tried to get closer to her, or that he tried to make her touch him, or that she tried to get away from him, or she resisted any attempt to touch him, in fact, she testify that he did not try to use her hands to touch his body at all. (T. 336-37).

(2) NC told the investigator that Rodriguez rubbed and caressed her "pretty much everywhere," including her breasts (Ex. 3A at 14-15). And she told BR that Rodriguez ran his hands up her legs (Ex. 2A1 at 5). But she testified that he did not touch her anywhere other than her vagina and her waist; she specifically did not testify he rubbed or caressed her at all, including her breasts or legs (T. 337-38).

(3) NC told BR and the investigator that Rodriguez tried to remove her shorts and underwear, but she would not let him (Ex. 3A at 15; Ex. 2A1 at 5). But she testified only that he moved her shorts and underwear to the side, not that he ever tried to remove or that she prevented him from doing so (T. 333-34).

These additional statements were not inconsequential. The explict details NC told the investigator, her cousin, and her sister about the alleged incident directly affected crucial, disputed elements of the charged offenses-consent and coercion.

NC testified at the trial that she did not do or say anything to resist Rodriguez's advances or communicate in any way that she did not consent. Her statements, however, indicated overt actions on her part

intended to rebuff him. And they offered evidence that he coerced her into having sex.

These additional details provided the proof of essential elements of the charged offenses that NC's sworn trial testimony lacked, making the statements inadmissible under Rule 801(d(1)(B). The differences or omissions between statements regarding who was presented, what the witnesses might have seen, and the location where abuse occurred were not substantial, inconsistencies were not a "mere discrepancy" because, if the jury believed the inconsistent statements, the conduct would legally escalate to a more serious crime, thereby directly affecting the elements of the criminal charge.

The purpose of the prior consistent statements rule is to admit consistent statements because the consistency indicates trustworthiness. See Minn. R. Evid. 801 (d)(1)(B) 1989 comm. cmt, and FED. EVID. 801 (c), when a witness' prior statement contains assertions about events that have not been described by the witness in trial testimony, those assertions are not helpful in supporting the credibilty of the witness and are not admissible under this rule. Id.

The allegations NC made in her out-of-court statements, but did not make under oath at trial, comprised the essential proof of the disputed issues-consent and coercion. NC testified that although she did not consent, she also testified did not object or resist or do anything to thwart Rodriguez's

sexual advances. In addition, she testified that Rodriguez did not do anything to coerce her into having sex. She did, however, make such claims in unsworn out-of-court statements to others. Under these circumstances, the district court abused its discretion by admitting the evidence as prior consistent statements.

This error substantially affected the verdicts because, without the erroneously admitted statements, there simply was no proof of coercion and no proof that NC communicated lack of consent. Moreover, the prosecutor emphasized the statements during closing argument as the evidence of those two disputed elements (T. 608). Clearly, then, the statements were an important factor in the jury's decision to convict the petitioner's. Without the statements, then, the verdicts likely would have been different. The petitioner was violated by these actions of the district court by allowing the out-of-court statements in as evidence to the jury where it deprived the petitioner Constitutional rights under the Sixth Amendment Clause of Due Process, prohibit the admission of hearsay evidence against the petitioner. Crawford v. Washington, 541 U.S. 36, 68 (2004).

The Court of Appeals error in ruling that the out-of-court statements, stating, "we determine that cousin's and sister testimony, and their statements to the investigator, are reasonably consistent with the victim's trial testimony. The victim's statements

to the investigator were also reasonably consistent with her trial testimony. Given the record, we determine that Rodriguez has not satisfied his burden of showing that an error occurred. Thus the district court did not abuse its discretion by admitting the witnesses' statements.

The Court of Appeals clearly took side with the district court ruling knowing that a Constitutional violation has occurred, where the petitioner is being deprived of the 5th, and 14th Amendment of the Constitution. The petitioner has clearly demonstrated that the out-of-court statements was said out-of-court and that the Confrontation Clause of the Sixth Amendment under Crawford v. Washington, 541 U.S. 36, 68 (2004), held that it is prohibits the admission of hearsay evidence against the petitioner.

In order for the out-of-court statements to fit squarely, the state, or Court of Appeals must clearly show that the out-of-court statements was consistent with the statements at the victim trial while giving testimony to the jury, the state and the Court of Appeals has failed to do so.

The State of Minnesota, and the Court of Appeals Courts' decision is clearly in direct conflict with Crawford v. Washington, 541 U.S. 36, 68 (2004); Mancusi v. Stubbs, 408 U.S. 204, 212 (1972); Williams v. Ill., 132 S. Ct. 2221, 2239-40 (2012).

These case illustrate the fact that the Court of Appeals and the district court is out step this Court

and with other circuits in its consideration of the Crawford v. Washington, 541 U.S. 36, 68 (2004); Barber v. Page, 390 U.S. 719, 724-25 (1968); Mancusi v. Stubbs, 408 U.S. 204, 212 (1968); Winship, 397 U.S. at 363; U.S. v. O'Brien, 130 S. Ct. 2169, 2174 (2010).

Certiorari should be granted to correct this error, where the state failure to show that the out-of-court statements should not been apart of evidence for the jury to hear, and the Court of Appeals in its ruling of constitutional violations where it stated that the out-of-court statement is reasonably consistent with the trial statements, knowing that there is a difference between the statements in trial and the statements used out-of-court, in violation of the Confrontation Clause of the Sixth Amendment. See, Crawford v. Washington, 541 U.S. 36, 68 (2004).

Under these circumstances, the court's error in admitting the statements require this Court to reverse the petitioner's convictions and remand the case for a new trial.

3. A. Conflicts with Descisions of Other Courts

The holding of the courts below that the district court did not improperly admit character evidence of bad acts of the petitioner, the Court of Appeals stated that, "we review the district court's evidentiary ruling for an abuse of discretion. State v. Amos, 658 N.W.2d 210, 203 (Minn. 2003). Where as here, the defendant objects to the testimony,

we review for harmless error. Sanders, 775 N.W.2d at 887.

The district court prejudicial erred by admitting evidence or the petitioner's bad character relating to his so-called anger issues. During the trial, the petitioner's objection, the district court allowed testimony that the petitioner had really bad anger issues. Because this was inadmissible character evidence, and because the error was prejudicial, the petitioner is entitled to a new trial by law.

Evidentiary ruling rest within the sound discretion of the trial court and will not be reversed absent a clear of discretion. Arizena v. Washington, 434 U.S. 487 (1977). If the court erred in admitting evidence, the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. GE v. Joiner, 522 U.S. 136 (1997). If there is a reasonable possibility the verdict might have been more favorable to the petitioner without the evidence, then the error is prejudicial. Id.

During the state's redirect exmination of NC, the following occurred:

"[Prosecutor]: At the point that you were being assaulted, at the point that the defendant had his penis in your vagina, [NC], did you feel that you could leave?
[NC]: No. Why not? Because he had previous-like, he has really bad anger issues that I've seen before. Like, we went to school together, and honestly-

Defense counsel: Objection. Approach?

The court stated that you may, the Court objection is overruled. [NC], you can finish answering.

Yeah, he has previous stuff of being, having anger issues and stuff, so I was kind of scared. Well, you shouldn't be scared of your cousin, but I was at that moment because I don't know what could have happened if I screamed out loud and everybody was in the hotel, and it could have caused a really big scene, and so I just didn't say anything.

[NC], you said that you were, scared of the defendant? Correct. What were you scared he would do to you? He could have, he could have done anything. I'm not, like specific on what he could have done, but-I was just scared. (T.370-72).

The obvious purpose for introducing this evidence was to demonstrate the petitioner's character as an angry person to prove he acted in conformity with that character.

Minn. R. Evid. 404(a) governs the admissibility of character evidence in a criminal trial, providing in relevant part:

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in therewith on a particular occasion, except:

(1) Character of accsued. Evidence of a pertinent trait of character offered by an accused, or by the prosecutor to rebut the same.

Thus, in a criminal prosecution, the prosecutor may not attack the defendant's character unless and until the defendant puts character in issue. Id; Clark v. Arizona, 548 U.S. 735 (1993). No rule of criminal law is more thoroughly established than the rule that the character of the petitioner cannot be attacked until the petitioner puts it in issue by

offering evidence of good character. Johnson v. Texas, 509 U.S.; City of St. Paul v. Harris, 184 N. W.2d 840 (1921).

There are three reasons for excluding character evidence to prove a criminal defendant acted in conformity with such character. Abdul-Kabir v. Quarterman, 550 U.S. 223; Sate v. Loebach, 310 N.W.2d 58, 63 (Minn. 1981). First, there is the possibility the jury will convict a defendant as a penalty for past misdeeds or for being undesirable. Id. Second, there is the danger the jury will overvalue the character evidence in assessing guilt for the crime charged. Id. Third, it is unfair to require an accused to be prepared not only to defend against immediate charges, but also to disprove their personality or prior actions. Id.

> The inquiry is not rejected because character is irrelevant, on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such, despite its admited probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice.

Michelson v. United States, 335 U.S. 469, 475-76 (1948).

The petitioner did not put his character at issue in this case, so the exception to the general rule prohibiting the admission of character evidence did not apply. Elanis v. United States, 575 U.S. (2014); United States v. Elanis, 841 F3d 589, 2016 U.S. (3d Cir. 2016).

> By voluntarily testifying in his own behalf, the accused opens up only the issue of his credibility, not his general character. A general denied by the defendant that [the defendant] did a particular kind of act is insufficient to put character into issue. Furthermore, unless the defense offers evidence of good character, the state may not attack the defendant's character in respect to the trial involved in the crime alleged at bar.

United States v. Elanis, 841 F.3d 589, 2016 U.S. (3d Cir. 2016).

The petitioner testified in his own defense, maintatining that he and NC had an entirely consensual sexual encounter. He did not, testify that he was calm, non-violent, or not prone to anger, nor did he offer any evidence establsihing his good character, the alleged victim could not tell the jury any kind of anger that she said that she was kind of scared of the petitioner, she failed to give any actions that she may have seen the petitioner in, or act out, she could not make these statements because she never saw the petitioner do anything that looked like any anger to harm anyone. Thus, the district court abused its discretion by admitting NC's testimony about the petitioner's supposed "anger issues", and by allowing the prosecutor to use the evidence for the improper purpose of showing the petitioner acted in conformity with his character as an angery person. The prosecutor is in violation of the Due Process Clause prohibits a prosecutor from using criminal charges in an attempt to penalize a petitioner's valid exercise of constitutional or statutory rights. Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978)("To punish a person

because he has done what the law plainly allows him to do is due process violation of the most basic sort.").

The Court of Appeals error when it made a ruling stating that:

> Rodriguez argues the victim's testimony that he had "anger issues" allowed the prosecutor to use the evidence for the improper purpose of showing that he acted in conformity with his character as an angry person. We disagree. This line of questioning was intended to show the victim's state of mind, establish the nature of their relationship, and explain why the victim was scared to get out of bed or cry out for help. Rodriguez admitted his own testimony that he sexually penetrate the victim but claimed that the act was consensual. The victim testified during her direct examination that she "froze" and was fearful of Rodriguez. During cross-examination, the defense asked the victim if she yelled or tried to get out of the bed. The victim stated she did not yell or try to leave. On redirect, the state asked the victim to explain why she did not yell or try to leave. The victim explained Rodriguez had anger issues and she was afraid. The brief testimony related to Rodriguez's anger issues was not presented to prove his bad character, but to help "illuminate" his relationship with the victim."

State v. Diamond, 241 N.W.2d 95, 99 (Minn. 1976). Thus, the statement does not constitute improper character evidence under rule 404(a), and the district court did not err by admitting it. Because the district court's decision to admit the evidence was not error, we need not consider whether the evidence affected the verdict.

The Court of Appeals ruling on the petitioner petition violated the petitioner Due Process rights of the 5th, 14th Amendment, denying him the right to fairness on him petition to the Court of Appeals. Where it stated, "Rodriguez argues the victim's testimony that he had "anger issues" allowed the

prosecutor to use the evidence for the improper purpose of showing that he acted in confornity with his character as an angry person".

The Court of Appeals stated, "We disgree. This line of questioning was intended to show the victim's state of mind, establish the nature of their relationship, and explain why the victim was scared to get out of bed or cry out for help".

First of all the Court of Appeals cannot know as to what the prosecutor was stating, the way he was using the evidence, clearly it was used to attack the petitioner's character because he called out the Minn. R. Evid. 404; also the Court of Appeals cannot make such a statement that, "this line of questioning was intended to show the victim's state of mind, establish the nature of their relationship, and explain why the victim was scared to get out of bed or cry out for help. The Court of Appeals is not an expert in knowing the state of mind of an other person, nor can the Court of Appeals know what the prosecutor intended to show the victim's state of mind, because there was no evidence that would clearly establish such evidence of the petitioner character. There was no evidence that she was "froze", there was no evidence that she was fearful, there was no evidence that the petitioner had anger issues, with no evidence to prove any of the statements the alleged victim told the jury, so how can the Court of Appeals make such a ruling.

These actions demonstrated by Court of Appeals substantial prejudiced the petitioners due process rights and undermined the integrity of the judicial process. This clearly constitutes "plain error" as defined by Blacks Law Dictionary Eighth Edition". Also "presense of a biased judge is structual defect, that defies harmless error analysis" Hughs v. U.S., 258 F.3d 453, 463 (6th Cir. 2001). Violation of right to impartial judge is right so basic to a fair trial "that its violation can never be subject to harmless error analysis". U.S. v. Guzman, 167 F.3d 1350, 1352 N.5 (11th Cir. 1999).

The Court of Appeals must be impartial in order and not take the side of any party, such as the state prosecution, the Court of Appeals must make decisions that is not bias or prejudice to the petitioner, or deny the petitoner's Constitutional rights of the 5th, and 14th Amendment, these actions clearly violated the petitioner constitutional rights to fairness. Because this is a "structural errors, which requires automatic reversal", and is not amendable to harmless error review. See, Vasquez v. Hillery, 474 U.S. 254, 263-64 (1986); U.S. v. Gonzalez-Lopez, 548 U.S. 140, 147-48 (2006).

The petitioner was denied entitlement interests protection based in all the "Minn. R. Crim. Proc." cited herein and these entitlement interest and protections are both enforce and protected by Federal law of the 5th, 14th amendments, Due Process and

Fundamental Fairness Clause, because these Minn. R. Crim. Proc, are "Mandatory". See, Hewitt v. Helms, 459 U.S. 473, 103 S. Ct. at 872; Broad of Pardon v. Allen, 482 U.S. 369, 99 S. Ct. 2100 (1979); Willson v. Austin, 545 U.S. 209, 221, 125 S. Ct. 2384, 162 L. Ed. 174 (2005). This Court should apply these entitlements to this case because the petitioner were denied them.

B. Importance of the Question Presented

This case presents a fundamental question of the interpretation of the Court of Appeals decision in admitting character evidence under Minn. R. Evid. 404. The question presented is of great public importance it affects the operations of the courts' system in all 50 states, the District of Minnesota, and hundreds of cities and people in the State of Minnesota. In view of the large amount of litigation over courts disciplinary proceedings, guidance on the question is also of great importance to the petitioner's, because it affects his ability to receive fair decisions in proceedings that may result in months or years of added incarceration or harsh punitive confinement.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted admitting characted evidence of bad acts of the petitioner. The Court of Appeals rule that , "Thus, the statement does not constitute importper character evidence under rule 404(a),

and the district court did not err by admitting it. Because the district court decision to admit the evdience was not error, we need not consider whether the evidence affected the verdict".

The Court of Appeals made such a ruling clearly not having any evidence to support its rule, because the jury heard this improper admitting such evidence without first checking to see if in fact it may cause the jury to convict the petitioner of a character evidence of bad acts. The Court of Appeals knowing knew that character evidence is generally prohibited to ensure that the jury does not retrn a conviction to penalize the petitioner for "past misdeeds or simply because [the petitioner] is an undesirble person. See, Michelson v. United States, 335 U.S. 475-76 (1948); Abdul-Kabir v. Quarterman, 550 U.S. 223.; State v. Loebach, 310 N.W.2d 63 (Minn. 1981). As one court observed, the reasoning of admitting character evidence of bad acts simply does not support the lower courts decisions.

There is more than a reasonable possibility that the wrongfully admitted evidence significantly affected the verdicts against the petitioner. The issue here was whether the petitioner used coercion to have sex with NC without her consent, clearly she wanted to have sex with petitioner, see her actions of her testimony, where she do not know any about the reasons why she did not call out for help.

The state had no evidence that the petitioner threatened NC either overtly or implicitly. Nor any evidence that he used physical force or a weapon to overcome her will. Amitting the inadmissible character evidence allowed the state to make its case for coercion by arguing that it was NC's fear of the petitioner's anger issue that caused her to submit. And it allowed the state to make this case abourt the petitioner's character as a person with an anger problem who like acted in conformity with that chatacter trait during the incident in question. See the closing argument that the prosecutor relied on in Appendix C. See the end of this page.

CONCLUSION

This Court should reverse the petitioner's conviction because the state's evidence was insufficient to prove the charged offenses beyond a reasonable doubt. In alternative, this court should grant the petitioner a new trial because the district court prejudicially erred by alowing the state to present inadmissible hearsay testimony and inadmissible character evience.

For the foregoing reason, certiorari should be granted in this case, it is in the interest of justice to grant relief.

DATED: 2/29/2022

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.