

No.

IN THE

SUPREME COURT OF THE UNITED STATES

SEMAAN MAKDISSI,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida Second District Court of Appeal**

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether the Petitioner's Sixth and Fourteenth Amendment rights were violated when the trial court prohibited the defense from placing before the jury the alleged victim's first revelation of the Petitioner's purported criminal conduct to his mother, stepfather, and law enforcement officers (evidence that defense counsel argued established a motive for the alleged victim to falsely accuse the Petitioner).

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

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c. Other Authority

U.S. Const. amend. VI	<i>passim</i>
U.S. Const. amend. XIV	<i>passim</i>

The Petitioner, SEMAAN MAKDISSI, requests the Court to issue a writ of certiorari to review the opinion/judgment of the Florida Second District Court of Appeal entered in this case on May 24, 2023 (A-3)¹ (rehearing denied on June 30, 2023 (A-5)).

D. CITATION TO ORDER BELOW

Makdissi v. State, 364 So. 3d 1032 (Fla. 2d DCA 2023).²

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida Second District Court of Appeal.

F. CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides, in relevant part, that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him [and to] have compulsory process for obtaining witnesses in his favor.” U.S. Const. amend. VI. “Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the

¹ References to the appendix to this petition will be made by the designation “A” followed by the appropriate page number.

² Because the state appellate court did not issue a written opinion, the Petitioner was not entitled to seek review in the Florida Supreme Court. *See Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980).

Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citations and quotation marks omitted).

The Fourteenth Amendment’s Due Process Clause provides that no State shall “deprive any person of life, liberty, or property, without due process of law.”

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

The Petitioner was charged in Florida state court with one count of lewd or lascivious battery. The alleged victim in the case was L.G.³ Following a jury trial, the Petitioner was convicted and sentenced to fifteen years’ imprisonment.

During the trial, the following evidence was presented. L.G. was born in Cuba in 1999 and moved to the United States when he was a year old with his mother and stepfather. Subsequently, L.G.’s uncle (Karel Basulto) moved to the United States and Mr. Basulto began living with L.G. and his family. When Mr. Basulto moved in with L.G. and his family, Mr. Basulto was eighteen years old, and L.G. was ten years old. Mr. Basulto eventually moved out of L.G.’s house and moved in with the Petitioner (where the Petitioner was living with his daughter). L.G. would visit Mr. Basulto at the Petitioner’s house, and occasionally he would spend the night and sleep in the guest room.

When L.G. was twelve years old, he came out as gay to his family and made his

³ Only the initials of the alleged victim will be used in this petition.

sexuality known. At about that same time, Mr. Basulto explained to L.G. that he too was gay and that he and the Petitioner were in a relationship.

At trial, L.G. testified that when he was thirteen years old, there was an occasion when he was spending the night at the Petitioner's house, and he claimed that the Petitioner came into the guest room and sexually battered him. L.G. stated that after this initial incident, he kept going to the Petitioner's house (when he was between the ages of thirteen and fifteen), and he alleged that the Petitioner continued to sexually molest him. L.G. testified that his uncle (Mr. Basulto) was never in the house when the Petitioner abused him, and he said that although the Petitioner's daughter would be in the house, she would either be asleep or on the other side of the house.

L.G. testified that when he was approximately fourteen years old, he confided in one of his friends (Genesis Herrera) that he was being sexually abused. Ms. Herrera testified at trial as a child hearsay witness. During the trial, the prosecution also presented the testimony of a collateral act witness (N.Z.), who claimed that the Petitioner sexually molested him when he was between the ages of thirteen and fifteen.

The Petitioner testified at trial and he told the jury that he *never* engaged in sexual activity with L.G. or N.Z. The Petitioner's former wife also testified at trial and she said she never observed any inappropriate behavior involving the Petitioner and N.Z.

Notably, during the trial, the defense sought to introduce evidence regarding L.G.'s first revelation of the Petitioner's purported criminal conduct to his mother, stepfather, and law enforcement officers – arguing that L.G. had a motivation to falsely

accuse the Petitioner. The trial court, however, excluded this evidence.

On direct appeal, the Petitioner argued that the trial court erred by prohibiting the defense from introducing evidence regarding L.G.'s first revelation of the Petitioner's purported criminal conduct to his mother, stepfather, and law enforcement officers. The Florida Second District Court of Appeal rejected this claim and affirmed the Petitioner's conviction and sentence without explanation. (A-3).

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The question presented in this case is as follows:

Whether the Petitioner's Sixth and Fourteenth Amendment rights were violated when the trial court prohibited the defense from placing before the jury the alleged victim's first revelation of the Petitioner's purported criminal conduct to his mother, stepfather, and law enforcement officers (evidence that defense counsel argued established a motive for the alleged victim to falsely accuse the Petitioner).

As explained below, the Petitioner requests the Court to grant his certiorari petition and thereafter consider this important question.

It is well established that a criminal defendant has the right to confront witnesses against him as guaranteed by the Sixth Amendment to the Constitution. *See Davis v. Alaska*, 415 U.S. 308, 318 (1974). "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citations and quotation marks omitted).

The Petitioner submits that the trial court in this case erred by prohibiting the defense from placing before the jury L.G.'s first revelation of the Petitioner's purported criminal conduct to his mother, stepfather, and law enforcement officers. Specifically,

the defense wanted to present the jury with the complete picture regarding how L.G. initially disclosed the Petitioner's purported criminal conduct – as proffered at trial during L.G.'s testimony:

- L.G. stated that on May 29, 2017, he got into an argument with his step-father about his laziness, and he told his mother that he wanted to be committed to a mental health facility. (A-14-15). L.G.'s mother responded that she had to have a reason to commit him, and L.G. typed into Google Translate from English to Spanish "I was raped." (A-15). The mother then began crying and disclosed the allegation to L.G.'s step-father. (A-15). The step-father then stormed off, and L.G. and his mother proceeded to search to determine whether or not the step-father had retrieved his gun. (A-16).
- L.G. then contacted the Petitioner (via text) and said "Hurry. Call the police. You need to leave your house. Like, he has a gun . . ." (A-16).⁴ L.G. stated that he reached out to the Petitioner because "I didn't know if my stepdad had a weapon with him or not and, you know, and I didn't know what my stepdad was capable of. So, I – just to avoid my stepdad being incarcerated it just wasn't worth it." (A-16).
- L.G. then got in a car with his mother and went to the Petitioner's house. (A-17). When L.G. arrived at the Petitioner's house, he saw several law enforcement officers, and L.G. approached the officers and said "I'd like to speak to an officer. I can explain why you guys are here. The man in that house raped me for such and such years." (A-17). *At that point, the officers released L.G.'s step-father.* (A-18). As explained above, during the proffer of his testimony, L.G. was asked whether he warned the Petitioner on the date in question and L.G. responded:

[S]o I reached out and said, hurry. Call the police. You need to leave your house. Like, he has a gun, because I didn't know if my stepdad had a weapon with him or not, and I didn't

⁴ The defense also sought to introduce the text messages between L.G. and the Petitioner, but the trial court excluded the text messages.

know what my stepdad was capable of. So I – just to avoid my stepdad being incarcerated, it just wasn't worth it.

(A-16).

Based on this proffer, it is clear that L.G. had an important motivation to provide a false police report against the Petitioner. When L.G. told his mother that he wanted to be committed, he needed a reason to justify such a step – which provided L.G. the motivation to lie to his mother about the Petitioner molesting him. When the incident went further than L.G. expected – i.e., by his step-father going to the Petitioner's house, apparently with a weapon, and then law enforcement officers responding to the Petitioner's house – L.G. needed to avoid his step-father being arrested and put in jail. L.G.'s revelation of the alleged molestation to the law enforcement officers and the text messages sent to the Petitioner are evidence of L.G.'s motivation – the motivation of L.G. to provide a false statement to law enforcement officers in order to provide legal shelter for his step-father.

During the trial, when the trial court ruled that the defense would not be permitted to introduce the testimony and evidence set forth above, the trial court made a number of *factual* conclusions. *See, e.g.*, (A-30) (“And you know what I think after all these years? I would think he did it and anybody looking at a case like this case who's been involved with these cases for decades would know he did it because obviously he didn't want his stepdad to get in trouble. Obviously, he felt bad about telling his mother, and Mr. Makdissi hadn't been all bad to him. He was not out to get Mr. Makdissi. He was doing it to protect Mr. Makdissi because he didn't want Mr.

Makdissi to end up dead from his stepfather. . . .") & (A-32) ("[T]he trial would then be about this alleged lying kid telling his mother because he was supposedly depressed, heaven knows a kid doesn't have a right to be depressed, and of course the kid would be making it up, so then the mother would tell the Latin father, who in a culture in which it's not accepted – which any of us that work in this system also know that – then that person acts inappropriately out of anger – boy, do we see that every day – and goes to get Mr. Makdissi, allegedly. The kid then says, holy cow, I don't want anybody ending up dead. I don't want Mr. Makdissi ending up dead, so the kid actually does a brave thing, knowing he's going to be the one that looks like an idiot.").

However, these factual questions were for the jury to resolve – *not* the trial court.

The standard for the admission of evidence that a criminal defendant seeks to admit to show bias or prejudice, or to attack the credibility of a testifying witness, is broader than that of a civil defendant because of the criminal defendant's Sixth Amendment rights. The criminal defendant has the absolute right to conduct a full and fair cross-examination. This right is especially necessary when the witness being cross-examined is the key witness on whose credibility the prosecution's case relies. As a result of the trial court's ruling in the instant case preventing the defense from informing the jury about L.G.'s first revelation of the Petitioner's purported criminal conduct to his mother, stepfather, and law enforcement officers, the Petitioner was denied his rights under the Sixth and Fourteenth Amendments.

The question presented in this case has the potential to impact other criminal prosecutions nationwide. By granting this petition, the Court will have the

opportunity to address this important question. Accordingly, for the reasons set forth above, the Petitioner prays the Court to grant his certiorari petition.

I. CONCLUSION

The Petitioner requests the Court to grant the petition for writ of certiorari.

Respectfully Submitted,

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