No.

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER THORPE,
Petitioner,

v.

RICKY D. DIXON,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether – pursuant to this Court's holding in *Hemphill v. New York*, 595 U.S. 140 (2022) – the Petitioner's constitutional right of confrontation was violated by the trial court's ruling that the "door was opened" to a law enforcement officer's testimony that "at least eight [other] women that came forward with inappropriate conduct."

B. PARTIES INVOLVED

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

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other Authority

The Petitioner, CHRISTOPHER THORPE, prays the Court to issue its writ of certiorari to review the opinion of the Eleventh Circuit Court of Appeals entered in this case on February 23, 2024 (A-3)[1] (rehearing/reconsideration denied on April 26, 2024 (A-5)).

D. CITATION TO ORDER BELOW

The opinion/order of the Eleventh Circuit Court of Appeals was not reported in the Federal Reporter.

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254 to review the final judgment of the Eleventh Circuit Court of Appeals.

F. CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

1. Statement of the Case.

In 2011, the Petitioner was charged with three counts of sexual battery pursuant to section 794.011(5), Florida Statutes. The offenses purportedly occurred on April 2, 2012, while the alleged victim (J.W.)[2] was receiving a massage from the Petitioner.

The case proceeded to a jury trial in July of 2013. At the conclusion of the trial, the jury found the Petitioner guilty as charged for all three counts. The trial court sentenced the Petitioner to ten years' imprisonment for the first two counts (with the sentences to be served consecutively) and ten years' probation for the third count.

The Petitioner subsequently filed a petition pursuant to 28 U.S.C. § 2254. On December 1, 2022, the magistrate judge issued a report and recommendation recommending that the § 2254 petition be denied. (A-10). Thereafter, on February 14, 2023, the district court denied the § 2254 petition. (A-7, A-8).

The Petitioner appealed the denial of his § 2254 motion. On February 23, 2024, a single circuit judge denied a certificate of appealability. (A-3). On April 26, 2024, a two-judge panel denied the Petitioner's motion for reconsideration. (A-5).

2. Statement of the Facts - the Facts Presented During the Trial.[3]

J.W. J.W. stated that she scheduled a massage with the Petitioner on the

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[2] Only the initials of the alleged victim and one of the collateral act alleged victims will be used in this petition.

[3] The summary of the trial contained in this petition includes only the key witnesses from the trial.

morning of April 2, 2012. (A-33-35). J.W. testified that when she arrived for her appointment, she took off her shirt, her bra, her pants, and her shoes (and she kept her thong underwear on). (A-37). J.W. stated that during the massage, the Petitioner "grazed [her] vagina area" and he said "sorry, that was a mistake." (A-39). J.W. testified that the Petitioner then "put his finger in" her. (A-39). J.W. stated that when this occurred, she "didn't say anything" and she "completely just froze." (A-40).[4] J.W. testified that the Petitioner proceeded to move her underwear and he performed oral sex on her. (A-44). J.W. stated that after the Petitioner performed oral sex, she "reached out and pushed against his sweatpants" and she "felt a bulge on the side of his sweatpants." (A-46). J.W. testified that the Petitioner then took off his sweatpants. (A-46) ("I reached out and I cupped my hand to where I knew the bulge was to try to push, again, and all I felt was complete skin."). J.W. stated that the following then occurred:

> Q What were you thinking at this point when you realized the defendant had his pants off and you were alone with him in this room?
>
> A Well, when I looked at him and I realized that his pants was off, I was, like – in my head, that's when, like, it really hit me. I was, like, he's going to do this, like, he – he's going to completely do this. And that's when I shouted out.
>
> Q Would you please tell the members of the jury what you shouted?

[4] J.W. said that she was afraid of the Petitioner because "[h]e's a big guy." (A-44).

A I shouted out, do you have a condom?

(A-46-47).[5] J.W. testified that the Petitioner placed a condom on his penis and then he penetrated her vagina with his penis. (A-48-49). J.W. stated that other than asking the Petitioner whether he had a condom, she did not say anything to the Petitioner. (A-49) ("I just completely shut down."). J.W. alleged that she did not consent to having sex with the Petitioner. (A-49). J.W. testified that after the Petitioner "pulled out," he cleaned himself up and then he told J.W. that "you are truly a beautiful black woman" and he left the massage room. (A-50). J.W. stated that as she was leaving the building, the Petitioner walked her outside and he engaged in "small talk" with her. (A-53).

Sonya Bush. Ms. Bush, an investigator with the Tallahassee Police Department, testified that she interviewed the Petitioner on April 5, 2012, concerning J.W.'s sexual battery allegation (and she conceded that the Petitioner voluntarily came to the police department in order to be interviewed). (A-54-56). Investigator Bush stated that during the April 5, 2012, interview, the Petitioner said that he and J.W. engaged in consensual sex. (A-55).

At the conclusion of Investigator Bush's testimony, the recording of Investigator Bush's April 5, 2012, interview of the Petitioner was played for the jury. (A-105-120). During the prosecutor's redirect examination of Investigator Bush, the prosecutor

[5] J.W. said that she hoped that the Petitioner would need to leave the room to get a condom, and she said that if he had left the room, she "would probably just grab [her] stuff and leave." (A-48).

asked the following question:

> Q Were there any other clients of the defendant that complained of inappropriate sexual conduct during his massages?
>
> A Yes, sir.
>
> Q How many?
>
> A *There was one that filed a [sic] actual police report and it had at least eight women that came forward with inappropriate conduct that didn't reach the level of criminal conduct.*
>
> Q Now –
>
> A *I believe it was eight.*
>
> Q Now, what type of inappropriate conduct are we talking about? Are we talking about digital penetration?
>
> A No –
>
> Q And well, in one of the cases, are we talking about digital penetration?
>
> A Yes. In one of them. That was the criminal one.

(A-145-146) (emphasis added).

At the conclusion of Investigator Bush's testimony, the State rested. (A-151).

Belen Kelly. Ms. Kelly stated that J.W. is one of her friends. (A-168). Ms. Kelly testified that she was aware that J.W. had a massage on the morning of April 2, 2012. (A-168). Ms. Kelly stated that she received a phone call from J.W. on the morning of April 2, 2012. (A-169). Ms. Kelly testified that during the phone call, J.W. told her that she had sex with the Petitioner. (A-169).[6] Ms. Kelly stated that J.W. did

[6] Ms. Kelly said that J.W. was crying during their phone conversation. (A-169). Ms. Kelly added that J.W. "is an emotional person." (A-170).

not tell her that the sexual encounter was nonconsensual. (A-180).

Kirshner Saint-Charles. Mr. Saint-Charles, a registered nurse who works with the Tallahassee Fire Department, stated that he gets his hair cut in the same plaza where the Petitioner's massage therapy business is located. (A-182-183). Mr. Saint-Charles testified that he got his hair cut on the morning of April 2, 2012, and he said that as he was walking inside the plaza, he observed the Petitioner and J.W. walking out. (A-183-184). Mr. Saint-Charles stated that J.W. appeared "normal," she did not "hurry off," she stood and talked to Mr. Saint-Charles and the Petitioner, and she laughed at a joke said by Mr. Saint-Charles. (A-184).

At the conclusion of Mr. Saint-Charles' testimony, the defense rested. (A-187). The State did not present any rebuttal witnesses.

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The question presented in this case is as follows:

> Whether – pursuant to this Court's holding in *Hemphill v. New York*, 595 U.S. 140 (2022) – the Petitioner's constitutional right of confrontation was violated by the trial court's ruling that the "door was opened" to a law enforcement officer's testimony that "at least eight [other] women that came forward with inappropriate conduct."

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

1. Factual background.

Prior to the trial, the State filed a "Notice of State's Intent to Introduce Similar Fact Evidence" relating to an alleged collateral act purportedly committed by the Petitioner (i.e., an alleged victim – J.C. – who was *not* named in the charging document in this case[7]). In the notice, the State indicated that it intended to introduce at trial evidence that in April of 2011, the Petitioner allegedly penetrated J.C.'s vagina with his finger when the Petitioner was giving J.C. a massage. The Petitioner subsequently filed a "Motion in Limine to Exclude Similar Fact Evidence." Following a hearing on the matter, the trial court ruled that the State would *not* be permitted to introduce any collateral act evidence at trial:

> THE COURT: Well, while we're waiting for the jury to be brought

[7] In a separate case number (2012-CF-1189), the State charged the Petitioner with the alleged sexual battery relating to J.C. A review of the state court's progress docket in case number 2012-CF-1189 reveals that the case was "nolle prossed" by the State.

> up, I am prepared to rule on the *Williams* rule evidence. Standard is that it needs to be clear and convincing of a similar nature go to a material issue. And the court is required to weigh the prejudicial effect versus the probative value.
>
> So my findings are as follows: *I don't find, No. 1, that it's clear and convincing that it's similar enough*. I don't find that it goes to a material issue, given that consent is the issue in this case. And I think, letting it in, it won't necessarily become a feature of the trial. *And its prejudicial effect outweighs the probative value of that evidence.* So I'm not going to allow the similar fact evidence in.

(A-32) (emphasis added) (footnote added).

During the trial, the State presented the testimony of Investigator Sonya Bush during its case in chief. When the prosecutor questioned Investigator Bush, the prosecutor asked Investigator Bush about her April 5, 2012, interview of the Petitioner and the following occurred:

> Q All right. Now, at some point did the defendant in the case agree to come in and speak with you?
>
> A Yes.
>
> Q Okay. And did you make him aware of his *Miranda* rights?
>
> A Yes, I did.
>
> Q And was Mr. Norris actually with him when he came in to speak with you?
>
> A Yes.
>
> Q Did he provide you a statement?
>
> A Yes, he did.
>
> Q Did he say that, basically, that they had sex?
>
> A Yes.

(A-54-55) (footnote added). During defense counsel's cross-examination of Investigator

Bush, defense counsel sought to question Investigator Bush about the Petitioner's specific statements regarding his sexual encounter with J.W. and/or to play that portion of the recorded interviewed that contained the Petitioner's specific statements about his sexual encounter with J.W. (A-58-87). Although the State objected to defense counsel's request, the trial court ruled – pursuant to the rule of completeness – that the State would be required to play that portion of the recorded interview that contained the Petitioner's specific statements about his sexual encounter with J.W. (i.e., because the State questioned Investigator Bush about the Petitioner's statements, the Petitioner had a right to inform the jury exactly what he said). (A-94). Notably, both the trial court and the defense wanted to limit the portion of the recording that was played for the jury to just the Petitioner's specific statements about his sexual encounter with J.W., but *the prosecutor* explicitly requested that the *entire* interview recording be played for the jury:

> THE COURT: So we left off yesterday with this issue of Investigator Bush's testimony. I reviewed the videotaped statement of the defendant last night. I have a couple findings. First, based on the State's questions, I find that the State has opened the door. And based on review of the tape – CD, if the defense wishes to play 10:22:34 through 10:29:32, Mr. Norris, you may play that with any portions where the defendant says what the victim said deleted.
>
> MR. NORRIS [defense counsel]: Yeah, that's almost precisely the numbers we had.
>
> MR. HUTCHINS [the prosecutor]: Judge, well, if you're going to allow them to play the tape, *then I'm going to ask the entire thing be played*. I mean, obviously, I'm objecting to this –
>
> THE COURT: Right.
>
> MR. HUTCHINS: – but if – and I want the record to be clear that

> they're the ones that are introducing this, that they're the ones that are publishing this.
>
> THE COURT: Okay. So that's fine. We can – *I was limiting it strictly to his testimony about the sexual encounter that he describes during that portion. But if the State wants the whole DVD played*, I don't have a problem with that. They can play it.

(A-94-95) (emphasis added). Pursuant to the prosecutor's request, the entire recording of the April 5, 2012, interview was played for the jury. (A-105-120). During his interview with Investigator Bush, the Petitioner stated that he has never had sex with any of his other clients and he said "I've never had this issue with a client." (A-116-117).

Immediately after the recording concluded, the prosecutor asked Investigator Bush the following question:

> Q Investigator Bush, isn't it true the defendant's been charged with sexual battery on another client in the course of a massage?

(A-121). Following defense counsel's objection, the prosecutor argued that the question was permissible to impeach statements that were made by the Petitioner during his interview with Investigator Bush[8] – statements that were played for the jury pursuant to the *prosecutor's request*. (A-121-145). Over objection, the trial court allowed Investigator Bush to state the following to the jury:

> Q [by the prosecutor] Were there any other clients of the defendant

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[8] Even though the alleged act involving J.C. occurred in April of 2011 (one year before the incident in the instant case), the record establishes that the purported offense involving J.C. was not reported until *after* the incident involving J.W. (after a news story about the instant case was presented to the public), and the Petitioner was not charged with the alleged offense involving J.C. until May 4, 2012 – almost one month *after* Investigator Bush's April 5, 2012, interview.

that complained of inappropriate sexual conduct during his massages?

A Yes, sir.

Q How many?

A There was one that filed a [sic] actual police report and it had at least eight women that came forward with inappropriate conduct that didn't reach the level of criminal conduct.

Q Now –

A I believe it was eight.

Q Now, what type of inappropriate conduct are we talking about? Are we talking about digital penetration?

A No –

Q And well, in one of the cases, are we talking about digital penetration?

A Yes. In one of them. That was the criminal one.

(A-145-146).

2. The trial court's ruling permitting Investigator Bush to inform the jury that other clients had alleged that the Petitioner had engaged in inappropriate sexual conduct during his massages violated this Court's holding in *Hemphill v. New York*, 595 U.S. 140 (2022), and the Petitioner's constitutional right of confrontation.

Investigator Bush's testimony that "at least eight women that came forward with inappropriate conduct" was rank hearsay. The testimony violated the Petitioner's constitutional right to confront these alleged accusers. The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. The trial court erred by allowing the State to present Investigator Bush's unsubstantiated hearsay

testimony.

In the Report and Recommendation, the Magistrate Judge recommended that this claim should be denied for the following reasons:

> Under the "opening-the-door" doctrine, when a party offers inadmissible evidence before a jury, the court may in its discretion allow the opposing party to offer otherwise inadmissible evidence on the same matter to rebut any unfair prejudice created. *Crawford v. United States*, 198 F.2d 976, 978-979 (D.C. Cir. 1952) (the doctrine rests "upon the necessity of removing prejudice in the interest of fairness"); *see also Rodriguez v. State*, 753 So. 2d 29, 42 (Fla. 2000) ("As an evidentiary principle, the concept of 'opening the door' allows the admission of otherwise inadmissible testimony to 'qualify, explain, or limit' testimony or evidence previously admitted.") (quoting *Tompkins v. State*, 502 So. 2d 415, 419 (Fla. 1986) and citing *Huff v. State*, 495 So. 2d 145, 150 (Fla. 1986)). Although Petitioner argues it was the State, rather than Petitioner who opened the door, the state court's determination to the contrary did not result in a fundamental error. Petitioner's case came down to consent, and, regardless of whether the jury heard about other complaints against Petitioner, the victim testified she did not consent to any of the sexual conduct that occurred, and the jury heard her testimony about her being upset and crying immediately after the event, and of her immediately reporting the incident to the authorities.
>
> Petitioner is therefore not entitled to relief on this Ground.

(A-20-21). Contrary to the Magistrate Judge's conclusion, in *Hemphill v. New York*, 595 U.S. 140 (2022), the Court rejected a similar "opening the door" assertion made by the prosecution. In *Hemphill*, the Court considered whether a defendant's Confrontation Clause rights were violated by a state court rule that a defendant can "open the door" to evidence that would otherwise be inadmissible if the evidence is reasonably necessary to correct a misleading impression made by the defense's evidence or argument. *Hemphill* involved a 2006 murder of a child by a stray 9-millimeter bullet. Following the murder, officers searched the apartment of Nicholas

Morris and found a 9-millimeter cartridge and three .357 caliber bullets. Morris was charged with murder and with the possession of a 9-millimeter handgun. After opening statements at Morris' trial, however, a plea deal was worked out pursuant to which the murder charge was dismissed and Morris pleaded guilty to criminal possession of a weapon – but not the 9-millimeter gun with which the child was shot. Rather, Morris pleaded to possession of a .357 gun and he was given time served. Years later, New York indicted Hemphill for the child's murder, and Hemphill's defense at trial was that Morris had committed the murder, and Hemphill elicited undisputed testimony from a prosecution witness that the police had recovered 9-millimeter ammunition from Morris' apartment. Morris was not available to testify at Hemphill's trial because he was outside the United States. Relying on state court precedent, the trial court allowed the prosecution to introduce parts of the transcript of Morris' plea allocution to the .357 gun possession charge as evidence to rebut Hemphill's theory that Morris committed the murder. The trial court reasoned that although Morris' out-of-court statements had not been subjected to cross-examination, Hemphill's arguments and evidence had "opened the door" and that the admission of the statements was reasonably necessary to correct the misleading impression Hemphill had created. The prosecution, in its closing argument, cited Morris' plea allocution and emphasized that possession of a .357 revolver, not murder, was the crime Morris committed. The jury ultimately found Hemphill guilty, and Hemphill argued on appeal that the state court's "opening the door" rule violated his constitutional right of confrontation.

The Court in *Hemphill* held that "[i]t is true that the Sixth Amendment leaves States with flexibility to adopt reasonable procedural rules governing the exercise of a defendant's right to confrontation." *Hemphill*, 595 U.S. at 151. The Court gave the following two examples of such reasonable procedural rules:

> States are free to adopt procedural rules governing objections, including contemporaneous objection requirements and, in the context of forensic evidence, "notice-and-demand statutes." *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 327 (2009). In addition, the Confrontation Clause will not bar a defendant's removal from a courtroom if, despite repeated warnings, he "insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." *Illinois v. Allen*, 397 U.S. 337, 343 (1970).

Id. at 591-592. However, the Court concluded that New York's "opening the door" rule that was applied in Hemphill's trial was "not a member of this class of procedural rules" but instead was "a substantive principle of evidence that dictates what material is relevant and admissible in a case." *Id.* at 152. The Court explained that if *Crawford v. Washington,* 541 U.S. 36 (2004), "stands for anything, it is that the history, text, and purpose of the Confrontation Clause bar judges from substituting their own determinations of reliability for the method the Constitution guarantees." *Id.* The Court ultimately held that the procedure utilized by the trial court in Hemphill's trial violated the Confrontation Clause:

> [T]he role of the trial judge is not, for Confrontation Clause purposes, to weigh the reliability or credibility of testimonial hearsay evidence; it is to ensure that the Constitution's procedures for testing the reliability of that evidence are followed.
>
> The trial court here violated this principle by admitting unconfronted, testimonial hearsay against Hemphill simply because the judge deemed his presentation to have created a misleading impression that the testimonial hearsay was reasonably necessary to correct. For

> Confrontation Clause purposes, it was not for the judge to determine whether Hemphill's theory that Morris was the shooter was unreliable, incredible, or otherwise misleading in light of the State's proffered, unconfronted plea evidence. Nor, under the Clause, was it the judge's role to decide that this evidence was reasonably necessary to correct that misleading impression. Such inquiries are antithetical to the Confrontation Clause.

Id. at 152-153.

Pursuant to *Hemphill*, the trial court in the instant case erred by concluding that the "door was opened" to Investigator Bush's testimony that "at least eight women that came forward with inappropriate conduct." The introduction of this testimony violated the Petitioner's Confrontation Clause rights.

In light of the Court's holding in *Hemphill*, the Magistrate Judge's reasoning – which was adopted by the district court without *any analysis* (A-8-9) – is erroneous. Notably, the Eleventh Circuit's order denying the Petitioner's request for a certificate of appealability (A-3) and order denying reconsideration (A-5) both *completely failed* to mention or address this Court's holding in *Hemphill*.

In *Michelson v. United States*, 335 U.S. 469, 475-476 (1948), the Court stated:

> Courts that follow the common-law tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. Not that the law invests the defendant with a presumption of good character, but it simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The State may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. 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 evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice.

(Footnotes omitted) (citation omitted). Additionally, in *Brinegar v. United States*, 338 U.S. 160, 173-174 (1949), the Court said:

> Thus, in this case, the trial court properly excluded from the record at the trial, *cf. Michelson v. United States*, 335 U.S. 469, 69 S. Ct. 213, Malsed's testimony that he had arrested Brinegar several months earlier for illegal transportation of liquor and that the resulting indictment was pending in another court at the time of the trial of this case. This certainly was not done on the basis that the testimony concerning arrest, or perhaps even the indictment, was surmise or hearsay or that it was without probative value. Yet the same court admitted the testimony at the hearing on the motion to suppress the evidence seized in the search, where the issue was not guilt but probable cause and was determined by the court without a jury.
>
> The court's rulings, one admitting, the other excluding the identical testimony, were neither inconsistent nor improper. They illustrate the difference in standards and latitude allowed in passing upon the distinct issues of probable cause and guilt. Guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, *to some extent embodied in the Constitution*, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.

(Emphasis added) (footnote omitted). The Court has also established a general principle that evidence that "is so extremely unfair that its admission violates fundamental conceptions of justice" may violate due process. *Dowling v. United States*, 493 U.S. 342, 352 (1990). In the instant case, Investigator Bush's testimony that *eight other women* had alleged that the Petitioner previously engaged in improper conduct – testimony that clearly amounts to improper propensity evidence – denied the

Petitioner a fundamentally fair trial.[9] Once the jury heard that *eight other women* had made allegations against the Petitioner, there was *no way* that the Petitioner could receive a fair trial.

3. In light of the Court's holding in *Hemphill*, the Eleventh Circuit should have granted the Petitioner's request for a certificate of appealability.

To be entitled to a certificate of appealability, the Petitioner needed to show only "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Petitioner has satisfied this requirement because he has shown that reasonable jurists could disagree with the district court's denial of the Petitioner's § 2254 claim (in light of *Hemphill*). The Petitioner therefore asks this Court to address this important issue by either accepting this case for plenary review or remanding it to the Eleventh Circuit for the consideration it deserves.

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[9] *See also Dobbs v. Kemp*, 790 F.2d 1499, 1503 (11th Cir. 1986) (stating that evidentiary errors are grounds for granting a writ of habeas corpus when the trial is rendered fundamentally unfair); *Lucas v. Johnson*, 132 F.3d 1069, 1079 (5th Cir. 1998) ("Habeas relief is warranted [for erroneous admission of evidence] when the erroneous admission played a crucial, critical and highly significant role in the trial") (internal citations and alterations omitted); *Duvall v. Reynolds*, 139 F.3d 768, 787 (10th Cir. 1998) (stating that the erroneous admission of evidence that renders a trial fundamentally unfair violates due process).

I. CONCLUSION

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

Respectfully Submitted,

/s/ Michael Ufferman

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