No.: 24-6940

In The
Supreme Court of the United States
_____ Term, _____

ORIGINAL

TAM Q. LE v. TIM HOOPER, Warden

On Petition for a Writ of Certiorari to

U.S. FIFTH CIRCUIT COURT OF APPEAL

Tam Q. Le #605788
MPEY/Mag-2
Louisiana State Penitentiary
Angola, Louisiana 70712-9818

March 18, 2025

QUESTIONS PRESENTED

1. **Reasonable jurists would determined that the trial court committed error in providing an *Allen* charge to the jury when they advised a deadlock and forced them to continue deliberations for another three hours into the evening on Halloween.**
2. **Reasonable jurists would determine that Mr. Le was convicted by a non-unanimous jury in violation of his rights under the Fifth, Sixth and Fourteenth Amendments and equivalent provisions of the Louisiana Constitution.**
3. **Reasonable jurists would debate that Mr. Le was denied a fair and impartial trial with the submission of testimony from "Expert" witnesses which failed to meet the *Daubert* standard, in violation of the Sixth and Fourteenth Amendments to the United States Constitution. *Daubert v. Dow Pharmaceuticals*: *Frye v. United States*.**

INTERESTED PARTIES

District Attorney's Office
22nd Judicial District Court
701 N. Columbia St.
Covington, LA 70433

Tim Hooper, Warden
Louisiana State Penitentiary
General Delivery
Angola, LA 70712

TABLE OF CONTENTS:

Page

APPENDIX:

INDEX OF AUTHORITIES: Page

U.S. CONSTITUTION:

FEDERAL CASES:

STATUTORY PROVISIONS:

STATE CASES:

MISCELLANEOUS:

In The
Supreme Court of the United States
_____ Term, _____

No.: _____

TAM Q. Le v. TIM HOOPER, Warden

Petition for Writ of Certiorari to the Louisiana Supreme Court

Pro Se Petitioner, Tam Q. Le respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the lower courts of the State of Louisiana and the federal courts.

In ***Lawrence v. Florida***, 549 U.S. 327, 127 S.Ct. 1079 (2007), this Honorable Court held that, "The majority regards the practical problems of inconsequential for we rarely grant certiorari in state habeas proceedings. *Ante,* at 1084-85. For this proposition, the Court cites a pre-AEDPA case in which Justice Stevens noted that federal habeas proceedings were generally the more appropriate avenue for our consideration of federal constitutional claims. See > ***Kyles v. Whitley***, 498 U.S. 931, 932, 11 S.Ct. 333, 112 L.Ed.2d 298 (1990)(opinion concurring in denial of stay of execution). Since pressing. Under AEDPA's standard of review, a Petitioner who has suffered a violation of a constitutional right will nevertheless fail on federal habeas unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by [this] Court," > §2254(d)2), or "was based on an unreasonable determination of the facts," > §2254(d)(2). Even if rare, the importance of our review of state habeas proceedings is evident. See, e.g., > ***Deck***, 544 U.S., at 624, 125 S.Ct. 2007 (granting review of state habeas petition and holding that the Constitution forbids the use of visible shackles during guilt and penalty phase unless justified by an essential state interest); > ***Roper v. Simmons***, 543 U.S. 551, 578, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)(granting review of state habeas petition and holding the execution of individuals under age of 18 is prohibited by the Eighth and Fourteenth Amendments)." ***Lawrence***, supra at 1090.

NOTICE OF PRO-SE FILING

Mr. Le requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). Mr. Le is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

OPINIONS BELOW

The opinion(s) of the U.S. Fifth Circuit Court of Appeals was assigned Docket No.: 24-30559, which was denied on November 26, 2024.

JURISDICTION

The judgment of the U.S. Fifth Circuit Court of Appeals was entered on November 26, 2024 in Docket No.: 24-30559. This Court's Certiorari jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth, Fifth and Sixth Amendments to the United States Constitution and *Lawrence v. Florida*, 549 U.S. 327, 127 S.Ct. 1079 (2007)(post-AEDPA).

STATEMENT OF THE CASE

This pleading is based upon a criminal conviction in the 22nd Judicial District Court, in and for the Parish of St. Tammany, State of Louisiana. Although Mr. Le was convicted of Aggravated Rape by a non-unanimous jury, he was ordered to serve a life sentence at hard labor without the benefit of Probation, Parole, or Suspension of Sentence. Post-trial motions were denied by the district court.

Mr. Tam Q. Le was indicted for two counts of Aggravated Rape, in violation of LSA-R.S. 14:42, for alleged conduct concerning his step-children sometime between November 28, 2008 through January 15, 2009 while his wife was in Vietnam. Mr. Le denied wrong doing to the police and the jury, but the detective investigating the matter still arrested him despite a lack of corroborating evidence and advised the jury of his belief in the veracity of the children and disbelief of Mr. Le's assertion of innocence.

The trial concluded on Halloween. Jurors advised the Court they were "hung" around 4:00pm. Previously, the Court advised the trial would last 3 days. The Court did not declare a mistrial and ordered further deliberations. The jurors remained secluded until 7:00pm when enough jurors capitulated and a 10-2 decision was rendered. What remained of the jury's families' Halloween plans were salvaged and Mr. Le was remanded for custody.

Mr. Le was sentenced to life imprisonment without the benefit of Probation, Parole, or Suspension of Sentence. Notably, the two victims in this case requested leniency, which the Court disregarded. Mr. Le's Appeal was denied and an Application for Post-Conviction Relief was filed in his behalf. Mr. Le would then file a Pro-Se Supplemental Brief on PCR. Both the Application and Supplement were denied. A Writ Return date was given until June 20, 2017.

Mr. Le's retained timely filed for Writs to the Louisiana First Circuit Court of Appeal, which was assigned Docket No. 2017-KW-0851. On September 5, 2017, the Court denied Mr. Le's Writ due to failure to include a copy of the trial transcript. The Court of Appeal provided Mr. Le with a Return Date to re-submit its Writ Application by October 5, 2017. The Writ to the Louisiana First Circuit Court of Appeal was denied on December 7, 2017.

Mr. Le then sought Writs with the Louisiana Supreme Court, which was denied with written opinion (Judge Hughes, J. dissenting). Mr. Le then timely filed his Petition for Writ of Habeas Corpus to the U.S. Eastern District Court of Louisiana on April 22, 2019. On October 6, 2022, the Magistrate issued a Report and Recommendation in this matter, which Mr. Le timely Objected to on October 18, 2022.

On August 8, 2024, the Eastern District denied Mr. Le with prejudice. At that time the Court had also denied Certificate of Appealability. On August 22, 2024, Mr. Le filed his Notice of Appeal to the Court.

On September 23, 2024, Mr. Le timely filed for Certificate of Appealability to the U.S. Fifth Circuit Court of Appeals, which was denied on November 26, 2024 in Docket No.: 24-30559

Mr. Le now timely files for Writ of Certiorari to this Honorable Court, humbly requesting that after a thorough review this Court grant him relief for the following reasons to wit:

STATEMENT OF THE FACTS

Tam Q. Le married Tuyet Le and, in doing so, became the father to her children. Both parties agree that their relationship was rocky. According to Mr. Le, Tuyet was abusive and both sides cannot dispute that Tuyet was arrested by Slidell police for physically abusing Mr. Le during an altercation.[1] Tuyet claimed that Mr. Le was abusive to her kids although there is no corroborating evidence or testimony to support that claim.[2]

Despite Tuyet's feelings about Mr. Le's abusive behavior to her children, she left them in his custody so she could travel to Vietnam for over a month to get additional training for her nail shop. Amazingly, she only "checked" on her kids twice during this time period. It is during this trip that the alleged abuse occurred. Immediately upon Tuyet's return, she advised Mr. Le that she had an affair in Vietnam and sought a divorce.

Years later, the alleged wrongdoing is reported to a school counselor and in investigation begins that culminates with the arrest, prosecution and conviction of Mr. Le. The case focused upon Mr. Le, but there was another plausible suspect completely overlooked by the police and barely mentioned at trial: grandpa. Tuyet testified that she too was a victim of Molestation at the hands of her very own father.[3] Testimony revealed that during her trip, her parents would assist Mr. Le with the kids.[4] He, if anyone, is the true suspect in this case.

---

[1] Rec.p. 390.
[2] Rec.p. 391.
[3] Rec.p. 395.
[4] Rec.p. 398.

At trial, the direct examination of both alleged victims combined for 6 pages of transcript; leaving only a few lines referencing the event. Many questions concerning basic facts on cross-examination were answered with "I don't know."

There was no physical evidence supporting the allegations, nor were there any behavioral abnormalities noted during the relevant time period. Despite the scarceness of evidence, the jury convicted Mr. Le. Mr. Le suspects that the inflammatory nature of the allegations coupled with the detective's credibility call concerning the parties and the guidance counselor's conclusions from the medical records resulted in an innocent man being sent to jail for the rest of his life after the Court's refusal to declare a mistrial after the jury advised they were deadlocked in their deliberations.

REASONS FOR GRANTING THE WRIT

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

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

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

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

Although the Louisiana Supreme Court denied Mr. Le's Application for Writ of Review during the

collateral review, Justice Hughes, J., filed a powerful dissenting opinion that just cannot be overlooked by this Honorable Court. Mr. Le was unable to file for a Re-Hearing with the Louisiana Supreme Court due to the fact that retained counsel had failed to timely notify Mr. Le of the ruling from the Supreme Court. Therefore, Mr. Le's only option is to file these Claims directly to this Honorable Court.

Justice Hughes, in his dissenting opinion stated, "In this case a police officer with twenty-two years experience testified before the jury that the victims were telling "one-hundred percent the truth," and a school counselor was accepted as an expert and testified from her "professional perspective" that she saw nothing "inconsistent" with sexual child abuse. It cannot be said that the jury's verdict was surely attributable to these errors, and they are therefore not harmless."

Thankfully, Justice Hughes recognized the fact that the State had actually presented a police officer (with twenty-two years experience) as a living, breathing, lie detector. And, thankfully, Justice Hughes also recognized that the State had presented the lay testimony of a school counselor who was submitted as an expert witness.

During the course of the trial, the State presented Ms. Denise Matherne (Tr. 10/29/12, p. 95), who was the Guidance Counselor at the Intercultural Charter School, as expert witness as a Licensed Professional Counselor who is qualified to do mental health therapy, **not diagnosis**. It must be noted that Ms. Matherne admitted that she has **never** testified in Court (Tr. 10/29/12, p. 98),[5] much less has she ever been accepted as an expert witness.

The **only** purpose of Ms. Matherne's testimony was to improperly bolster the credibility of the alleged victims in this case.

During the course of Direct Examination, Ms. Matherne testified to the veracity of the allegations through the use of medical examinations **which had not been presented** to the Court, nor had a

[5]Under the provisions of LSA-R.S. 46:1844 (W), Mr. Le was not entitled to retain a copy of a transcript of his trial. This Claim is being argued from Mr. Le's notes.

physician verified the findings of any medical doctors.

Ms. Matherne also testified that she had reviewed the medical records concerning the alleged victim, and her "professional" opinion was that, according to the medical reports, sexual abuse had occurred. Again, Mr. Le would like this Court to note that Ms. Matherne is "qualified" to provide therapy, not diagnose.

The theory of "problems" being "consistent with" sexual abuse has been described as "Junk Science" by many in the science community. The admittance of testimony based upon Junk Science has denied Mr. Le his Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

As stated above, Ms. Matherne has ***never*** been qualified in any case as an expert witness, nor has she been provided with ***any training*** which would support the foundation that she could be qualified as an expert witness concerning child sexual abuse.

Mr. Le suggest that the judgment denying his Application for Post-Conviction Relief calls for further scrutiny. Mr. Le contends that vital issues previously raised in the original Post-Conviction and Supplemental Post-Conviction proceedings are before this Honorable Court for review for the following reasons to wit:

LAW AND ARGUMENT

ISSUE NO. 1

The trial court committed error in providing an *Allen* charge to the jury when they advised a deadlock and forced them to continue deliberations for another three hours into the evening on Halloween.

This Issue was presented to the State Courts during the Appeal process. However, jurisprudence should afford Mr. Le the ability to proceed with this argument during the course of this pleading with this Honorable Court. Furthermore, this Issue had been fully exhausted, as required, through the State Courts, and therefore, is ripe for review during federal proceedings. Mr. Le admits that he was denied ineffective assistance of counsel when appellate counsel failed to include federal law during Appeal.

The trial court erred in providing an *Allen* charge to the jury when it advised that it was deadlocked and forced them to deliberate for another three hours on a holiday weekend until a verdict was reached. At the time of the reported deadlock, the jury was 9-3 after three hours of deliberations. To place that time-line in context, keep in mind that the "three" day trial was really a day and a half of testimony. In fact, the direct examinations of both complainants combined for nearly a half dozen transcribed pages.

Many of their answers on cross-examination were "I don't know" and, of course, there were standard introductory introductory questions beginning each direct examination. Under these circumstances, the jury had adequate time to discuss the evidence and reach a decision true to each individual's conscience by the time they reported a deadlock.

As noted above, the jury was split 9-3 at the time of the reported deadlock. It took another three hours for the coercive *Allen* charge and the pressure of nine other jurors eager to go home for the holiday to coerce the last juror into switching his/her vote and reach a 10-2 verdict. At which point, the lawyers, Judge and jurors could go home to salvage the remainder of their families' Halloween plans whereas Mr. Le went to jail and his family left the courthouse with justice thwarted.

The jury began deliberations at 1:00pm and the jury advised the Court they were deadlocked at 4:00pm. The Court did not question them as to their belief concerning whether a verdict could be reached and instead sent them back for further deliberations. The Court responded to the jury as follows:

> "All I can ask you is it has been a few day trial. It is a serious matter. You went in around 1:00, you have had lunch, you have been at it a few hours. I would ask you to please go back and consult with one another again, consider each others views, discuss the evidence with the objective of reaching a verdict. Again, of course, you have to decide the case for yourself, but you have to be open to a discussion with your fellow jurors wit the objective of reaching a just verdict." (Rec.p. 538, lines 7-19).[6]

[6] Due to the strict constraints of LSA-R.S. 46:1844(W)(as applied by the Louisiana State Penitentiary), Mr. Le is unable to provide any transcript pages with these pleadings.

In *State v. Nicholson*, 315 So.2d 639 (La. 1975), the Louisiana Supreme Court rejected the use of *Allen* charges and overturned that defendant's conviction. In that case, a jury reported a deadlock after deliberating 5 hours on a death penalty case. The trial court did not inquire as to whether additional instructions would be beneficial or if the deadlock could be broken.

The ruling in the case of *State v. Nicholson*, supra., holds firm the Federal Courts disapproval of the use of an *Allen* charge during deliberations. The "*Allen* charge" received the approval of the United States Supreme Court in 1896. *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed.2d 528 (1896). Since that time most state courts and many Federal Court of Appeals have at some time accepted the use of "*Allen* charge" or some modification thereof. See, Annot., 100 A.L.R.2d 177.

However, in recent years, a growing number of Federal Court of Appeals and state courts have expressly disapproved the use of an "*Allen* charge" and numerous Law Review Commentaries have severely criticized this so-called "dynamite" charge.

See, e.g.: *United States v. Thomas*, 146 U.S.Ap.D.C. 101, 449 F.2d 1177 (1971); *United States v. Fioravanti*, 412 F.2d 407 (3rd Cir. 1969); *Panaccione v. United States*, 396 U.S. 837, 90 S.Ct. 97, 24 L.Ed.2d 88 (1969); *United States v. Brown*, 411 F.2d 930 (7th Cir. 1969); *Fields v. State*, 487 P.2d 831 (Alaska 1971); *State v. Thomas*, 86 Ariz. 161, 342 P.2d 197 (1959); *State v. Randall*, 137 Mont. 534, 353 P.2d 1054 (1960); *State v. Garza*, 185 Neb. 445, 176 N.W.2d (1970); *State v. Marsh*, 260 Or. 416, 40 P.2d 491 (1971); *Commonwealth v. Spencer*, 442 Pa. 328, 275 A.2d 299 (1971); *State v. Ferguson*, 84 S.D. 605, 175 N.W.2d 57 (1979); **Note, The Allen Charge, Recurring Problems and Recent Developments**, 47 N.Y.U.L.Rev. 296 (1972); **Comment, The Allen Charge: Dead Law a Long Time Dying**, 6 U. San Francisco L.Rev. 326 (19672).

Impermissible *Allen* charges have routinely resulted in mistrials, by deeming the instructions coercive, when two elements are present. *State v. Nicholson*, supra. First, the charge emphasizes the

jury had a duty to decide the matter at hand. And, second, when the duty to reach the verdict is coupled with an admonition for those in the minority to reconsider their position.

In this case, the trial court's instruction ran afoul of the first element by advising the jury, twice, of its objective to reach a verdict. Nowhere does the Court question them as to whether additional instructions would prove beneficial, nor does the Court inquire as to whether a verdict could be reached.

The very same failure by the trial court resulted in the seminal ***Nicholson*** case that established Louisiana's prohibition against "***Allen***" charges. Mr. Le's trial court also failed to advise a mistrial is possible and, in failing to do so, instead implied that deliberations would continue ad infinitum until a decision was reached. This reference to a "duty to reach a verdict" is made twice by the trial court in its instruction by referencing an "objective" to reach a decision. The reference is prohibited especially when coupled with language aimed at the minority to re-examine their views.

The Court's instruction also ran afoul of the second element needed to establish an ***Allen*** charge even though the Court does not use the word "minority." Instead, the Court advises those jurors to "consult with one another again," "consider each others views," and be "open to discussion with your fellow jurors." This position is twice coupled to language advising the "objective" of reaching a verdict. At the time of this instruction, the Court knew there was a 9-3 split. The above referenced comments were truly directed towards the three minority holdouts. This is not permissible.

There are two additional cases Mr. Le would like the Court to consider in determining whether the trial court's instruction was a ***modified Allen*** charge, warranting reversal: ***State v. Campbell***, 606 So.2d 38 (La. 1992); and ***State v. Dabney***, 908 So.2d 60 (La. 2005). Mr. Le believes the contents of Mr. Le's jury instruction is similar to those rendered by the trial courts in the above referenced cases that a similar outcome should occur: ***reversal.***

The ***Dabney*** case involved a 5 Count Armed Robbery prosecution. After two hours, the jury acquitted on 2 Counts and convicted on the other 3 Counts. After jury polling, it was determined that the jury lacked the necessary votes for a conviction and they were all sent back for further deliberations. Thirty minutes later, the jury inquired from the Court about what would occur if a decision could not be reached. In the end, the Court advised that the case would start anew but noted they had a duty to reach a verdict. The Court added they should re-examine the others views, but advised them that they were not required to change their opinion. The jury convicted within an hour.

On Appeal, the Louisiana Fifth Circuit Court of Appeal found the instruction to be an ***Allen*** charge and reversed the conviction. In reaching the decision, that appellate court noted two references by the trial court concerning a duty to reach a verdict. Interestingly, Mr. Le's trial court also made two references to the same duty to reach a verdict. The appellate court noted that the language used by the ***Dabney*** Court appeared coercive to those having a minority viewpoint. Similar language about "re-examining" views are contained within Mr. Le's instructions. If these prohibitions afforded ***Dabney*** a new trial, shouldn't the same apply to Mr. Le?

The ***Campbell*** case concerned a narcotics prosecution. That trial court, upon learning of an apparent deadlock, advised the jury that they hadn't spent enough time deliberating. The Court further advised the minority to reconsider their views before returning them for further deliberations. Mr. Le's request similarly begins with an admonishment comment regarding the length of deliberations.

Admittedly, the ***Campbell*** Court's comments regarding minority views were more pointed than ours, nevertheless, Courts should proceed with caution when advising a 9-3 jury to re-examine its views, especially when it does not inquire to the strength of the deadlock, the need for additional instructions, or the validity of a mistrial.

The above referenced cases are so similar to Mr. Le's case that a different result would be an

injustice. Mr. Le's case is further compounded by the context of a holiday evening deliberation that places greater emphasis on the coercive nature of the pressures placed upon the minority jurors. On this alone, a new trial is in order.

ISSUE NO. 2

Reasonable jurists would determine that Mr. Le was convicted by a non-unanimous jury in violation of his rights under the Fifth, Sixth and Fourteenth Amendments and equivalent provisions of the Louisiana Constitution.

Although the United States Supreme Court and the Louisiana Supreme Court have denied the retroactive application of ***Ramos*** to Offenders on collateral review, this Court should note that, as there is a conflict in State Courts of last resort concerning the retroactive application of ***Ramos***, this Issue is now ripe for review under Rule X(b) of the United States Supreme Court Writ Grant Consideration, the conflict between the Louisiana Supreme Court in ***State v. Reddick***, 2021-KP-01893, p. 7 (La. 10/21/22), which denied the retroactive application of ***Ramos***, and the Oregon Supreme Court, in ***Watkins v. Ackley***, 370 Or. 604 (12/30/22), which granted the retroactive application of ***Ramos***, must be resolved through the Courts as Louisiana and Oregon were the only two states which allowed a conviction by a non-unanimous jury verdict.

The trial of Tam Q. Le ended with the jury finding him guilty as charged on two Counts of Aggravated Rape by the margin of 10-2.

Mr. Le would like this Court to note that the United States Supreme Court recently held in in ***Ramos v. Louisiana***, 140 S.Ct. 1390 (2020), that the Sixth and Fourteenth Amendments prohibit criminal convictions by non-unanimous jury verdicts. The ***Ramos*** Court reversed Mr. Ramos' conviction and held that Louisiana's scheme of non-unanimous jury verdicts violated the Sixth and Fourteenth Amendments of the United States Constitution. But the Court left open the question whether ***Ramos*** applies retroactively to cases on collateral review. Shortly, thereafter, the Court granted

Certiorari in ***Edwards v. Vannoy***, No.: 19-5807, to decide whether ***Ramos*** applies to cases on *federal* collateral review, which was denied in ***Edwards v. Louisiana***, 141 S.Ct. 1547 (2021).

Although this was a life sentence case, the United States Supreme Court refers to life without the benefit of Probation, Parole, or Suspension of Sentence a "virtual" death penalty. Simply put, Mr. Le was still sentenced to a "death" penalty with a non-unanimous verdict. In ***Graham v. Florida***, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) and ***Miller v. Alabama***, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) the United States Supreme Court addressed the issue of "likening" a life sentence to the "death" penalty for juveniles. However, it must be stated that if this sentence is a "death" penalty for a juvenile, then it must also be a "death" penalty for an adult who is sentenced to life imprisonment without the benefit of Probation, Parole, or Suspension of Sentence.

This Court should note that a life sentence in the State of Louisiana is similar to that of a death penalty, as an offender is meticulously guaranteed that he will **NEVER** see the light of day as a free man, and is virtually sentenced to die in incarceration. Although the State may submit the fact that Mr. Le may apply for a Pardon in twenty years; it should be noted that offenders sentenced to death are also able to apply for a Pardon. Hence, showing that this life sentence is really a "**Virtual Death Penalty**," or "**Death by Incarceration**."

Louisiana Constitution of 1974, Art. I § 17 (A) allowing non-unanimous jury verdicts and the enabling statute, La.C.Cr.P. Art. 782, violate Equal Protection under the Fourteenth Amendment and Article I, Section Three (3) of the Louisiana Constitution of 1974, because the constitutional provision's enactment was motivated by an express and overt desire to discriminate against blacks on account of race and because the provision has had a racially discriminatory impact since its adoption.

Unlike the familiar Sixth Amendment challenge to this State's non-unanimous jury regime, a challenge to the Louisiana Supreme Court has rejected, the Equal Protection challenge presented in this

case has not bee addressed on merits by any court. See: *State v. Bertrand*, 6 So.3d 38 (La. 3/17/09). Despite its apparent novelty, this claim follows from a straightforward application of settled United States Supreme Court jurisprudence that holds that any law that has a racially discriminatory impact and that was enacted with a racially discriminatory motive violates Equal Protection notwithstanding that the law may be facially neutral. *Hunter v. Underwood*, 471 U.S. 222, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985); *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977); *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).

For example, in *Hunter v. Underwood*, the Supreme Court affirmed that lower court's invalidation of an Alabama law that disenfranchised persons convicted of certain misdemeanors. The Court concluded that although the law was facially neutral with respect to race, the law violate Equal Protection because it had the effect of disenfranchising a disproportionate percentage of blacks and because the law was passed in the Alabama Constitutional Convention of 1801, a which the "zeal for white supremacy ran rampant." *Hunter*, 471 U.S. at 229. The Court further noted that Alabama's constitutional convention "was part of a movement that swept the Post-Reconstruction South to disenfranchise blacks." Id.

As shown below, pursuant to *Hunter* and the cases upon which it relies, that a non-unanimous guilty verdict pursuant to La.C.Cr.P. Art. 782 and Louisiana Constitution, Art. I, 17 (A) is invalid because racial discrimination was a "substantial" or "motivating" factor behind the enactment of the Louisiana non-unanimity provision and the provision continues to have a racially discriminatory effect. See Id, at 227-28.

This Honorable Court must consider the fact that on November 6, 2018, the voters of Louisiana voted to change the Law concerning non-unanimous verdicts. Although the new law only applies to

persons whose trial commences on or after January 1, 2019, the State *admitted* that the Law was premised on racial discrimination during the arguments concerning such during the Legislative Session. A Law based on discrimination cannot stand.

As argued in the Court of Appeal, Mr. Le has informed the Court that in ***State v. Melvin Maxie***, Docket No.: 13-CR-725 (10/11/18), of the 11th Judicial District Court, Parish of Sabine, the Honorable Stephen B. Beasley declared that the use of non-unanimous verdicts unconstitutional. Although this case may only be used as "Persuasive Law," this was the first time that "Expert" testimony was submitted to a Court which proves beyond a reasonable doubt that the Law was based on racial premises. It is well settled that a Law based on any discriminatory basis is unconstitutional, and cannot stand.

Mr. Le was convicted by a non-unanimous jury, in violation of his Fifth, Sixth and Fourteenth Amendment rights. As such, his conviction should be vacated. The Sixth Amendment grants defendants the right to jury unanimity for a verdict in a criminal proceeding. La.C.Cr.P. Art. 782, however, provides that cases where "punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict. Based on the foregoing statute, the Court accepted the non-unanimous guilty verdict pronounced by the jury in Mr. Le's case, and sentenced him to life imprisonment without the benefit of Parole based on this non-unanimous finding of guilt.

Only one other state allows for non-unanimous jury verdicts, Oregon. In ***Apodaca v. Oregon***, 406 U.S. 404 (1972), the Supreme Court upheld Oregon's provision for non-unanimous jury verdicts in criminal cases. A plurality of the Supreme Court found that, while the Sixth Amendment of the United States Constitution requires jury unanimity for a verdict, this mandate did not apply to states because the right was not incorporated via the Fourteenth Amendment Due Process Clause.

Therefore, the plurality concluded that it was within the state of Oregon's discretion to allow for non-unanimous jury verdicts. In *Johnson v. Louisiana*, 406 U.S. 356 (1972), the Supreme Court again echoed its opinion on *Apodaca*. Thus far, the constitutionality of Louisiana's statute has relied on this plurality opinion in *Apodaca* and reiterated in *Johnson*.

This reliance in *Apodaca* and *Johnson* is insufficient to justify the use of non-unanimous jury verdicts and unconvincing in its proposition that non-unanimous jury verdicts are constitutional. First, in both *Apodaca* and *Johnson*, eight out of nine Supreme Court Justices that the Federal and State constitutional rights were identically incorporated. A majority of Supreme Court Justices also believed that the Federal constitutional right to jury trial included a right to jury unanimity in the verdict. Justice Powell, however, produced the result with his opinion that the Federal constitutional right to jury trial *did* include a right to jury unanimity, but that he, and he alone, believed that the Federal constitutional right to jury and the State right to jury trial were not identical.

Second, Louisiana's use of non-unanimous jury verdicts is clearly unconstitutional following the recent case in *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3035 (2010), wherein the Supreme Court found that "incorporated Bill of Rights protections 'are to be enforced against the State under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment.'"

The Supreme Court held, further, that it had "abandoned the notion that the Fourteenth Amendment applies to States only a watered-down, subjective version of the individual guarantees of the Bill of Rights." *McDonald*, 130 S.Ct., at 3035. On the heels of *McDonald*, a Petition for Certiorari in *Herrera v. Oregon* revisits the particular question of whether the federal constitutional requirement for jury unanimity is applicable against states, is currently pending in its Petition for Writ of Certiorari. But, even witho9ut an explicit decision in *Herrera v. Oregon*, it is clear from *McDonald* that the premise

for upholding non-unanimous jury statutes in *Apodaca* and *Johnson*. Justice Powell's lone view that the incorporated of the Bill of Rights against States was watered-down, is no longer valid.

The Supreme Court has long held that the Sixth Amendment requires a unanimous verdict by the jury for a conviction. See: *Andres v. U.S.*, 333 U.S. 730, 748-49 (1948)(finding that "unanimity in jury verdicts is required wherever the Sixth and Seventh Amendments apply. In criminal cases, this requirement of unanimity extends to all issues – character of degree of the crime, guilt or punishment"); *Patton v. U.S.*, 281 U.S. 276, 288 (1930)(finding that "a trial by jury ... includes all the essential elements as they were recognized in this country and England when the Constitution was adopted, is not open to question. Those elements were ... 'that the verdict be unanimous'").

Therefore, the decision in *McDonald* necessarily requires that the federal right to a unanimous jury verdict be applied, with equal force, against the State of Louisiana. The agreement of less than twelve jurors is not constitutionally sufficient to convict a defendant, and Mr. Le's conviction is a violation of his Fourteenth Amendment rights and his Sixth Amendment right to jury unanimity.

Apodaca and *Johnson* cannot cure Louisiana's statute of its unconstitutionality. In fact, both cases, when read in conjunction with *McDonald*, support a finding that Louisiana's statute is unconstitutional because both *Apodaca* and *Johnson*, a majority of Justices found that jury unanimity was federally required. Moreover, the Court's opinion in *McDonald* was not without an eye to *Apodaca*. The Court in *Apodaca* noted in a footnote that *Apodaca*'s decision, "that although the Sixth Amendment right to trial by jury requires a unanimous jury verdict in federal criminal trials, it does not require a unanimous jury verdict in state criminal trials," was an exception. *McDonald*, 130 S.Ct., at 3035 n. 14.

The *McDonald* opinion tackled this apparent inconsistency by noting that the *Apodaca* decision was "the result of an unusual division among the Justices and ***not*** an endorsement of the two-track approach to incorporation." *McDonald*, 130 S.Ct., at 3035 (***emphasis added***). The Court concluded that

Apodaca did not undermine the "well-established rule that incorporated Bill of Rights protections apply identically to States and the Federal Government." *Id.* It is clear after *McDonald* that *Apodaca* was an anomalous product of a split between the Justices and that it does not uphold the constitutionality of non-unanimous jury verdicts. Mr. Le's conviction then, by less than twelve jurors, must be vacated as a violation of his Sixth and Fourteenth Amendment rights.

However, one fact of Oregon's non-unanimous jury verdict which is different from that Law in Louisiana, is the fact that, in the event of a non-unanimous verdict, the defendant can not be subjected to life imprisonment without the benefit of Probation, Parole, or Suspension of Sentence.

ISSUE NO. 3

The district court abused its discretion in allowing lay witnesses to testify as an "Expert" witness for the State to bolster the credibility of the alleged victim; and Mr. Le was denied effective assistance of counsel for failure to object.

Ineffective Assistance of Counsel:

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to the effective assistance of competent counsel. *Padilla v. Kentucky*, 599 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). A claim of ineffective assistance of counsel is analyzed under the two-prong test developed by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

To establish that his attorney was ineffective, the defendant must first show that counsel's performance was deficient. This requires a showing that counsel made errors so serious that he was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. The relevant inquiry is whether counsel's representation fell below the standard of reasonableness and competency as required by prevailing professional standards demanded for attorneys in criminal cases. *Strickland*, Supra.

Second, the defendant must show that counsel's deficient performance prejudiced his defense. This element requires a showing the errors were so serious as to deprive the defendant of a fair trial. The

defendant must show that, but for counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. ***Strickland***, supra.

Ineffective assistance of counsel is such compelling grounds for relief that, in the interest of justice, it should be fully considered on Application for Post-Conviction Relief even if it has already been raised and briefly considered on Appeal. In this case, the errors complained of, except Mr. Le's Pro-Se Claim, were raised on Appeal, but the appellate court failed to address them because the errors were not preserved at trial and, as such, more appropriately raised on Post-Conviction.

Law Enforcement Opinion:

Trial counsel was ineffective for failing to object when the State's lead detective opined regarding the credibility of the accusers, the credibility of the accused and aspects of Vietnamese culture tending to support the concept of "delayed reporting." Besides lacking any expertise to make such claims, this officer was able to opine regarding the ultimate fact: whether the accusations were true, and conversely, whether Mr. Le could be believed when he maintained his innocence.

As stated in Mr. Le's Application for Post-Conviction Relief w/ Memorandum in Support, the State began its case by eliciting testimony from Brian Nicaud who is the lead detective for the St. Tammany Parish Sheriff's Office. He opined the following: the mother's demeanor was consistent with a person receiving "devastating news"(Rec.p. 336); Vietnamese culture frowns upon reporting these kinds of cases; believed the victims provided consistent testimony and gave "100% truth;" and acknowledged denying culpability, the defendant's statement confirmed his (Nicaud) belief that an arrest was justified.

Although the Code of Evidence allows for lay witnesses opinions for facts within their personal knowledge, counsel is hard pressed to see the veracity of these two witnesses could fall within this category (LSA-C.E. Art. 701).

In this case, Nicaud more or less provided an "expert opinion" concerning the children's veracity

based upon his years of experience even though he was not formally tendered as an "Expert." Regardless, his position as a law enforcement officer is an esteemed position and often given a high level of credibility by trial juries. It is established that expert testimony on the victim's credibility is prejudicial when it places the expert's "stamp" of truthfulness on the witness' testimony and artificially bolsters it before the jury. ***State v. Myles***, 887 So.2d 118 (La. App. 5th Cir. 2004). This is precisely what happened in this case.

Perhaps the most significant issue in this case for the jury to resolve is whether the victims were credible, especially since Mr. Le denied culpability to the police and at trial. Their testimony did not provide much in the way of information and an abnormal amount of cross-examination responses were non-responsive. In this situation, the jury was able to rely upon the lead detective's assurances that should never have been allowed:

Q: If you had believed that the children were lying to you and that the mother had put them up to it, would you have obtained that arrest warrant?

A: No. (Rec.p. 339. lines 17-21)

And in response to a line of questioning why the grandparents weren't interviewed, Nicaud stated:

A: ... It was to my understanding from my experience and my years of investigation on the Slidell Police Department I felt those girls were telling me the one-hundred percent truth (Rec.p. 353, lines 11-15).

Nicaud also used his testimony as a chance to comment on Mr. Le's veracity and basically told the jury that his claims of innocence should not be believed. In this regard, Nicaud testified as follows:

Q: After your interview with the defendant, did that change your mind in any way about the status of the case?

A: Confirmed it. (Rec.p. 340, lines 3-6).

Q: Have you learned anything since writing that report that would tend to show he did not commit the crime you had him arrested for?

A: No new knowledge. (Rec.p. 340, lines 14-17).

Q: Were you convinced of his denial of the allegations that he had not done it?

A: No. (Rec.p. 364, lines 23-25).

It appears as though Detective Nicaud testified as a living, breathing *lie detector test*. Another critical aspect of this case was the significant delay in reporting the alleged crime. Nicaud had an opinion for this as well that commented on these types of cases in general and also opined about Vietnamese culture despite professing, and being qualified in either area. Regardless, the jury should not have heard comments such as:

A: There is really no normal. It is consistent there is time from the actual event to reporting on most cases ... [y]ou can seek weeks, months, years. (Rec.p. 331, lines 9-13).

A: ... as far as her culture, this not something that is reported. It is a disgrace ... (Rec.p. 336, lines 27-29).

These series of quotations demonstrate that Detective Nicaud was placing is expert stamp of approval upon the testimony of two victims and his stamp of disapproval on the profession of innocence by Mr. Le.

In a case such as this where there isn't a shred of corroborating physical evidence or independent witness testimony offered in support of the allegations, the "backing" of an experienced law enforcement officer is extremely prejudicial and warrants a reversal of conviction. Mr. Le is unaware of any valid trial strategy by defense counsel that would desire such adverse testimony to be brought before the jury.

The state court's rulings take a contrary position and found this failure to object, noting that counsel attacked the detective's credibility. But, the detective's credibility really isn't at issue. No one claims he lied or planted evidence. The issue is whether he should have been permitted to give opinion testimony on the credibility of another witness. This case should have consisted of one-on-one testimony; accuser versus accused; adding the endorsement of the Sheriff's office heavily tips the scale against Mr. Le.

Furthermore, the Courts' reliance upon jurisprudence for lay witnesses to give opinions is misplaced. A police officer is not a pure lay witness. In essence, they are state actors and normally

considered part of the prosecutorial team. Additionally, Detective Nicaud's opinions are not rationally based on first had perceptions. His conclusions are not objectively falsifiable. They are his ***biased*** assertions. They should never have been admitted at trial.

The Guidance Counselor:

In Mr. Le's Pro-Se Supplement to his Application for Post-Conviction Relief, he challenges his trial counsel's effectiveness for failing to conduct a ***Daubert*** (509 U.S. 579 (1993)) hearing when the guidance counselor of his accusers was allowed to opine about the credibility of their accusations.

During the course of the trial, the State presented Ms. Denise Matherne (Tr. 10/29/12, p. 95), who was the Guidance Counselor at the Intercultural Charter School, as expert witness as a Licensed Professional Counselor who is qualified to do mental health therapy, **not diagnosis**. It must be noted that Ms. Matherne admitted that she has **never** testified in Court (Tr. 10/29/12, p. 98),[7] much less has she ever been accepted as an expert witness.

Mr. Le contends that the **only** purpose of Ms. Matherne's testimony was to improperly bolster the credibility of the alleged victims in this case.

During the course of Direct Examination, Ms. Matherne testified to the veracity of the allegations through the use of medical examinations **which had not been presented** to the Court, nor had a physician verified the findings of any medical doctors.

Ms. Matherne also testified that she had reviewed the medical records concerning the alleged victim, and her "professional" opinion was that, according to the medical reports, sexual abuse had occurred. Again, Mr. Le would like this Court to note that Ms. Matherne is "qualified" to provide therapy, not diagnose.

A child's recollection of the event is another factor for the jury to determine when weighing

[7]Under the provisions of LSA-R.S. 46:1844 (W), Mr. Le was not entitled to retain a copy of a transcript of his trial. This Claim is being argued from Mr. Le's notes.

credibility and we believe it would impermissibly infringe upon their determination to permit expert testimony on this point. As such, we find that it was error to admit an expert's testimony on the subject of delay of reporting, omission of details, and the inability to recall dates and times.

This sentiment was echoed by the Court in ***State v. Gibson***, 391 So.2d 421, 428 (La. 1980): Our state constitution and statutory harmless error rule admonish a reviewing court generally to shun factual questions and to reverse only when substantial rights of the accused have been affected.

When considering the erroneous admission of evidence, this Court has set out the test to be "whether there is a reasonable probability that the evidence might have contributed to the verdict, and whether the reviewing court is prepared to state beyond a reasonable doubt that it did not" ***State v. Walters***, 523 So.2d 811 (La. 1988).

In this instance, the State's case is based largely upon the testimony of the victim. The inadmissible expert testimony served to unduly bolster this testimony and, in all probability, made it much more believable to the jury. Consequently, the jury would probably gave the testimony of the victim more weight than it, standing alone, would have otherwise received. Given this effect of the expert's testimony, this Court is not prepared to state that, beyond a reasonable doubt, the testimony of the psychologist had no effect on the guilty. Thus, the prejudice created an error is not harmless, and warrants reversal.

In ***Lawrence***, the OCCA found that impermissible vouching occurred where a social worker testified, with reference to a minor child, that ten-year-olds generally do not lie. 796 P.2d at 1176-77. On direct examination, the prosecutor asked the social worker whether she had formed "any kind of opinion as to what was being told to you by [the child victim]?" *Id.* at 1176. The social worker replied, in part, "Yes, ... we usually with all the experience, et cetera, find that by ten or up to and past ten they do not lie about these things . . . ." *Id.* Citing the rule that experts may not be used to assess a

witness's credibility, the OCCA held that the social worker had impermissibly vouched for the truthfulness or credibility of the child victim. *Id.* at 1177; *see also* ***Davenport v. Oklahoma***, 806 P.2d 655, 659 (Okla.Crim.App.1991)(citing *Lawrence* for this proposition that "expert testimony may not be admitted to tell the jury who is correct or incorrect, who is lying and who is telling the truth").

Parker v. Scott, 394 F.3d 1302, 1310 (10th Cir. 2005): Federal Rule of Evidence 702 permits expert testimony "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." However, "'[a]n expert may not go so far as to usurp the exclusive function of the jury to weigh the evidence and determine credibility.'" ***Azure***, 801 F.2d at 340 (quoting ***United States v. Samara***, 643 F.2d 701, 705 (10th Cir.), *cert. denied*, 454 U.S. 829, 102 S.Ct. 122, 70 L.Ed.2d 104 (1981)). Nor may an expert pass judgment on a witness' truthfulness in the guise of a professional opinion. ***United States v. Whitted***, 11 F.3d 782, 785-86 (8th Cir.1993).

Westcott v. Crinklaw, 68 F.3d 1073, 1076 (8th Cir. 1995): The most significant question raised by appellant is whether the trial court erred in allowing the government's expert to testify as to the credibility of the victims' statements about the conduct of the defendant. *See:* ***United States v. Azure***, 801 F.2d 336 (8th Cir.1986). It is the exclusive province of the jury to determine the believability of the witness. ***United States v. St. Pierre***, 812 F.2d 417, 419 (8th Cir.1987). An expert is not permitted to offer an opinion as to the believability or truthfulness of a victim's story. ***United States v. Spotted War Bonnet***, 882 F.2d 1360, 1362 (8th Cir. 1989). If such testimony is admitted, we must decide whether the wrong is of a constitutional dimension; that is, whether it is so prejudicial as to be fundamentally unfair, thus denying the defendant a fair trial. ***Adesiji v. State***, 854 F.2d 299, 300 (8th Cir.1988).

Bachman v. Leapley, 953 F.2d 440, 441 (8th Cir. 1992). [A]n expert witness may not give an opinion as to the believability or truthfulness of an alleged victim's story. ***United States v. Azure***, supra; ***U.S. v. Spotted War Bonnet***, supra.

In this instance, the State's case is based largely upon the testimony of the victim. The inadmissible expert testimony served to unduly bolster this testimony and, in all probability, made it much more believable to the jury. Consequently, the jury would probably give the testimony of the victim more weight than it, standing alone, would have otherwise received. Given this effect of the expert's testimony, this Court is not prepared to state that, beyond a reasonable doubt, the testimony of the psychologist had no effect on the guilty.

WHEREFORE, for these reasons, after careful consideration, this Honorable Court must reverse the conviction and sentence due to the lack of sufficient evidence "without" the testimony of this "expert" witness to corroborate the alleged victim's testimony in this matter. In the alternative, this Court must reverse the conviction and sentence and remand for further proceedings.

Ms. Matherne is simply not qualified to render any opinion as to whether commentary contained within medical records are consistent with abuse. When the State attempted to elicit such testimony, trial counsel should have objected and asked to conduct a ***Daubert*** hearing outside the presence of the jury.

Mr. Le suspects that, if done, Ms. Matherne would not have provided a valid scientific basis for her opinion of this magnitude. At a bare minimum, remand is needed to develop a record regarding Ms. Matherne's credentials, the methodology used to support her opinion, and the validity of the field itself.

Law on Opinions:

In both above reference instances, Mr. Le was denied Due Process by having witnesses render opinions concerning the credibility of his accusers. Mr. Le suggests that neither witness was properly qualified as an "Expert" in the nuance of fields for which they gave opinions and, as such, their testimony should be governed by the rules concerning lay witnesses.

Under our law, a lay witness is permitted to draw reasonable inferences from his or her personal

observations. If this testimony is a natural inference from what was observed by the witness, the testimony may be permitted. Neither Detective Nicaud nor Ms. Matherne meet this standard.

As for Detective Nicaud, there was nothing in the Record to draw the natural inference that delayed reporting is associated with Vietnamese culture outside of his self-serving statement. It's simply his opinion unsupported by any shred of data. Regrettably, this opinion bolsters the credibility of the accusers.

As for Ms. Matherne, it is not believed that she observed the statements made on the medical diagnosis. So, by definition, she would not be qualified to render an opinion regarding how statements made to medical professionals would be consistent with sexual abuse. Of course, the elephant in the room is whether she is even qualified to opine regarding the recognition of sexual abuse and whether Nicaud is familiar enough with Vietnamese culture to be our guide.

It must also be noted that Ms. Matherne has ***never*** been presented, or accepted, as an "Expert" concerning sexual abuse allegations prior to this trial. This was done without the benefit of a ***Daubert*** hearing to actually determine her qualifications. There was also no evidence presented that Ms. Matherne has ever been trained, or received any education concerning diagnosis of sexual abuse.

In the event either witness is deemed an expert, their testimony still should not have been admitted since experts can not opine on the credibility of the witness. It is well settled that when an expert places his "stamp" upon the truthfulness of a witness' testimony, it is prejudicial. Here, both witnesses' testimony, in essence, vouched for the accusers' credibility. We must keep in mind the scarcity of testimony from each accuser elicited during their direct examinations. These opinions were critical for the jury to side against Mr. Le who adamantly denied any wrongdoing at trial.

The admission of such testimony can not survive harmless error analysis. As stated above, there is really no way a jury could have convicted Mr. Le based solely upon the testimony of the accusers.

They provided no real details of abusive behavior and there wasn't a shred of physical evidence supporting their claims. Much weight must have been given to the detective and the guidance counselor in order for Mr. Le to be convicted. Under these circumstances, it should seem reasonable that their testimonies concerning witness credibility contributed to the verdict. As such, Mr. Le requests a remand to the trial court for a new trial.

SUMMARY

All trials should be fair. Trial counsel be up to the challenge. Mr. Le seeks to have his conviction reversed. His conviction is based solely upon the limited testimony of his two accusers. In reaching their verdict, the jury had to make a credibility call between the two accusers and with Mr. Le, who denied his guilt.

Tipping the scale in favor of the State was evidence from the lead detective pertaining to his opinion concerning the veracity of Mr. Le and his accusers; and a guidance counselor also supported their veracity through an unqualified expert opinion.

These errors could have been prevented. Surely, the Court would have sustained trial counsel's objection to the lead detective's testimony regarding the veracity of the case witnesses and would have prevented him from commenting upon the nuances of Vietnamese culture and it effect on the victim's desire to report this crime if he was duly qualified as an expert in this field.

Surely, the combination of these errors swayed at least one juror and, in doing so, does not render the errors harmless.

Trial counsel was ineffective for failing to object to multiple lay witnesses rendering expert opinions that, in essence, vouched for the credibility of the accusers – condemning Mr. Le to life in prison without sufficient evidence.

In one instance, the case detective provided an opinion of delayed reporting within the context of

Vietnamese culture and deemed the accusers more credible than Mr. Le. In fact it appears as though the detective testified as a living, breathing lie detector test. Although the detective has twenty-two years of experience as an officer of the law, he cannot testify with certainty that one person is being more truthful than the other.

In another instance, a guidance counselor was able to review statements within medical reports to opine that the statements contained therein were "consisted with" sexual abuse. It doesn't appear that counsel was notified in advance the expert nature of each witness, nor does it appear a hearing was ever conducted.

Furthermore, it appears that Ms. Matherne has received ***no training*** concerning child sexual assault other than the fact that she is required to report such if a student reports such to her. There is no testimony of any such training of whether Ms. Matherne is able to discern the validity of any such complaint.

Tam Q. Le #605788
MPEY/Mag-2
Louisiana State Penitentiary
Angola, Louisiana 70712-9818

CONCLUSION

After a review of the Record in this case, Mr. Le this Honorable Court must determine that Mr. Le was denied his constitutional rights to a fair and impartial trial in this matter.

Furthermore, jurists of reason would have properly considered Mr. Le's Issues and Granted Mr. Le relief from his convictions.

The record sufficiently supports Mr. Le's allegation of substantial error. Therefore, this Honorable Court should find that, in the Interest of Justice, Mr. Le should receive a new trial, or in the alternative, an evidentiary hearing to review the merits of the constitutional violations. Mr. Le seeks relief and has

stated grounds under 28 U.S.C. § 2253, specifying, with reasonable particularity, the factual basis for such relief. Additionally, his pleading clearly alleges Claims which if proven, entitle him to constitutional relief.

WHEREFORE, after a careful review of the merits of these Claims, Mr. Le contends that this Honorable Court will find that reasonable jurists would not allow these convictions to stand.

Respectfully submitted this 18th day of March, 2025.

Tam Q. Le #605788

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served by First Class United States Mail this 11th day of December, 2024 upon counsel of record for Respondent, pursuant to Rule 29 at the following address: District Attorney's Office, 701 N. Columbia St., Covington, LA 70433

Tam Q. Le #605788