No. _____

In The

Supreme Court of the United States

ISSA LAMIZANA JR.
Petitioner

vs.

THE STATE OF LOUISIANA
Respondent

On Petition for Writ of Certiorari to
The Louisiana Supreme Court and Louisiana Court of Appeal, Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a challenge under *Ramos v. Louisiana* 590 U.S. 83, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020), where the record is silent as to the votes on the verdicts, how must the unanimity of the verdict be proved to sustain the conviction? Is the lack of any evidence in the record as to unanimity of the verdict an anomaly or departure that prohibits the presumption of regularity? Does the State have the burden of proving the verdicts were unanimous to sustain the convictions?

2. Where the uncontroverted defense evidence shows that the verdicts were not unanimous and the *per curiam* acknowledges that there was nothing in the record to show the verdicts were unanimous, did the Louisiana Court of Appeal and a majority of the Louisiana Supreme Court err in allowing Issa Lamizana's convictions to stand on less than a unanimous verdict, contrary to *Ramos v. Louisiana* and in violation of due process of the Fifth and Fourteenth Amendments?

3. In a trial based solely on the words of the complainants, were the defendant's Sixth and Fourteenth Amendments rights to confrontation and to a defense violated when the trial court prevented the child protection investigator from testifying, and prevented the defense from using newly discovered agency records, to impeach and rebut the State's witnesses' testimony, contrary to *Davis v. Alaska,* 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974)? Was the defendant denied his right to a defense as held in *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); *Crane v. Kentucky*, 476 U.S. 683, 90 L. Ed. 2d 636, 106 S. Ct. 2142 (1986); and *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987)? Where the State's case was based solely on the veracity of the claimants, was the exclusion of impeachment, bias and motive evidence harmless?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page:

State of Louisiana, through the District Attorney for the Parish of Orleans

Issa Lamizana Jr., an individual incarcerated in the State of Louisiana

No other cases are directly related.

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The opinions of the State of Louisiana Court of Appeal, Fourth Circuit, in this matter, *State v. Lamizana*, 222 So. 3d 58;2016-1017 (La.App. 4 Cir. 05/31/17) (*Lamizana One* **Pet.App. A1**); *State v. Lamizana*, 366 So. 3d 416; 2021 0409 (La.App. 4 Cir. 03/23/22) (*Lamizana Three* **Pet.App. A2**) and *State v. Lamizana,* 2024 La. App. LEXIS 1176; 2021-0409 (La.App.4 Cir. 07/23/24) 2024 WL 3507049, –So.3d.– (*Lamizana Four* **Pet.App. A3**), are attached as **Pet. App. A1-3.**

The Supreme Court of Louisiana's previous remand by per curiam, *State v. Lamizana,* 263 So. 3d 872 , 2017-1490 (La. 01/30/19) (*Lamizana Two* **Pet.App. B1**), and the recent 4 to 3 opinion of the Supreme Court of Louisiana denying the defendant's application for a Writ of Certiorari for discretionary review, *State v. Lamizana*, No. 2024-01057, 2025 La. LEXIS 273; (La. 02/25/25) –So.3d.-- ,(*Lamizana Five* **Pet.App. B2**) are attached as **Pet. App. B1-2.** The *per curiam* of the Louisiana district court is attached as **Pet. App. C**. [1]

JURISDICTION

The four of the seven members of the Louisiana Supreme Court entered judgment against the Petitioner, denying discretionary review, on February 25, 2025. **Pet. App. B2.** This petition is filed within 90 days of that date. Accordingly, this Court has jurisdiction to review the judgment of the Louisiana Supreme Court, declining to review the decision of the Louisiana Court of Appeal, Fourth Circuit. SUP. CT. R. 13(1); 28 U.S.C. § 1257(a).

[1]Hereafter, citations to the appendices will be cited as "Pet. App. A, B or C." Citations to the record below will be cited as "R.__" according to the designations set for the appellate record filed with the Louisiana, Fourth Circuit Court of Appeal.

CONSTITUTIONAL PROVISIONS AND AUTHORITIES INVOLVED

1. *The Fifth Amendment to the United States Constitution* provides in relevant part: "No person.... shall compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ."

2. *The Sixth Amendment to the United States Constitution* provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to a speedy and public trial;. . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

3. *The Fourteenth Amendment to the United States Constitution* provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Issa Lamizana Jr. was charged in a grand jury indictment in December of 2012 with the alleged aggravated rape of his step-children, E.T.1 and E.T.2,[2] in violation of L.S.A.-R.S. 14:42. On the first day of trial in 2016, the trial court denied the defense motion to require a unanimous verdict. (R. 64-65). The trial was stayed for the State to seek review on an unrelated matter.[3]

When trial resumed, the trial court prohibited the defendant from calling Monique Hayes, the investigator from the Louisiana Department of Children and Family Services (DCFS), who was the first person to interview the children and their mother about their allegations, despite the defendant's compliance with La.R.S. 46:56, the statute that limits access to child protection records and witnesses. The defense made a proffer as to her testimony (Tr. 1/20/2016, p. 273, 323-336).

The trial judge instructed the jury that only ten votes were needed for a verdict and brought the jury back in to correct the instruction on the "not guilty" verdict after it was omitted. (Tr. 1/20/2016, p. 332). The jury returned guilty verdicts on both counts (R. 77-8; Tr. 1/20/2016, p. 348), but no information appears in the record as to unanimity. The defendant's motion for new trial based on the denial of the defense was denied. Issa Lamizana Jr. was sentenced to two terms of life imprisonment without parole.

On the first appeal, the Louisiana Fourth Circuit Court of Appeal reversed and remanded based on the exclusion of the DCFS witness. *Lamizana One,* **Pet.App.A1** but the Louisiana Supreme Court, in a *per curiam,* ordered remand to the district court to conduct an evidentiary hearing on the

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[2]The older son is designated E.T.1, the daughter is E.T.2, their mother is E.T.3, and Petitioner's son is I.L.III for confidentiality purposes under LSA-R.S. 46:1844 (W)(3) and USSCt Rule 34.6.

[3](R. 123-126). *State v. Lamizana,* 4th Cir.No. 16-K-0057; No. 16-KD-0057 (Jan. 20, 2016)

excluded evidence, reserving Mr. Lamizana's right to appeal his convictions and sentences. *Lamizana Two*, **Pet. App.B1** The evidentiary hearing was held in district court on February 20, 2020. (R.14). When the district court re-opened after the pandemic closure, trial counsel filed a motion to appeal detailing the ways that Ms Hayes' testimony was material. The district court did not file a per curiam.

The Louisiana Fourth Circuit Court of Appeal in *Lamizana Three*, **Pet. App.A2** remanded again, primarily on the issue of whether unanimous verdicts were entered. While on remand, the defendant filed a Motion for New Trial based on newly revealed DCFS records. The district court held several hearings, then issued a *per curiam* dated December 14, 2023, finding Ms Hayes' testimony in 2020 was not material and, as to the verdicts, "***This court has uncovered no evidence of either a unanimous or nonunanimous jury verdict in the case file or transcripts which it has on record.***" **Pet. App. C.** A motion for appeal was granted.

In *Lamizana Four*, the Louisiana Fourth Circuit Court of Appeal affirmed the convictions. **Pet. App. A3** On February 25, 2025, a divided Supreme Court of Louisiana denied the defendant's application for a Writ of Certiorari for discretionary review in a 4 to 3 decision. *Lamizana Five,* **Pet. App. B2.**

REASONS FOR GRANTING THE WRIT

In the midst of an acrimonious divorce and custody case, the teenage step-children of Issa Lamizana Jr. made spurious, retrospective allegations of sexual misconduct unsupported by any forensic verification. He was convicted solely on the words of his ex-wife and her children. Yet at trial, the district court prevented the defense from confronting his accusers with testimony of the child protection investigator or the newly discovered child protection records, in violation of his

Sixth and Fourteenth Amendment rights to confrontation and a defense. The Louisiana appellate courts failed to correct the trial court's violation of Mr. Lamizana's Sixth Amendment rights.

Additionally, the defendant provided uncontroverted testimony that the verdicts were not unanimous. The Louisiana Courts failed to require the State to prove that unanimous verdicts were rendered or to rebut the defendant's evidence that they were not. Although it was the trial court's duty to properly receive and record the verdicts, the trial court's per curiam acknowledged that there was no record that the verdicts were unanimous. **Pet.App.C** Hence, no presumption of regularity arose. The Louisiana courts erred in finding that Mr. Lamizana was not entitled to a new trial, despite *Ramos v. Louisiana,* 590 U.S.83, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020), in violation of his Fifth and Fourteenth Amendment rights to due process.

As it is more straightforward, the non-unanimous verdict issue is addressed first. For either or both of these reasons, the writ application should be granted, the convictions should be vacated, and the case remanded for a new trial.

ARGUMENT NO. 1: Non-Unanimous Verdicts

Issa Lamizana Jr.'s pre-trial motion to require unanimous verdicts was denied. (R. 64-65) The jury was instructed that only ten votes were required to convict. During jury instruction, the Court forgot to include "not guilty" as a responsive verdict, but called the jury back to give it. (Tr. 1/20/2016, p. 332) The verdicts were not returned on the record and were not read to the jury for verification as required by La.C.Cr.P.Art. 811. The transcript and minute entries reflect only that guilty verdicts were rendered. The record does not say that the verdicts were unanimous. It does not say that they were not. Unrebutted evidence submitted by Petitioner shows they were not unanimous.

Mr. Lamizana was sentenced in 2016 to two life sentences without parole. Since then his case has been continually on direct appeal. On April 20, 2020, the United States Supreme Court ruled in *Ramos v. Louisiana,* 590 U.S. 83, 140 S. Ct. 1390, 1397, 206 L. Ed. 2d 583 (2020), that "There can be no question that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally." The *Ramos* Court recognized that "nonunanimous felony convictions still on direct appeal" had to be reconsidered.

The *Ramos* decision applies to Mr. Lamizana on direct appeal, not retroactively and not as a post conviction relief matter.[4] In *Ramos v. Louisiana,* supra, the United States Supreme Court reiterated the bedrock constitutional principle of the the Sixth Amendment that the right to trial "by an impartial jury" in criminal prosecution calls for jurors to deliberate to unanimity.[5] The Fifth Amendment further promises that the government may not deprive individuals of their liberty without "due process of law."[6]

The Louisiana Fourth Circuit Court of Appeal was dissatisfied with the district court and clerk of court' response to a written order that they were "unable to locate any juror polling slips or discover any additional information indicating the number of jurors voting to convict Mr. Lamizana." There were no representations that the jury was not polled, only that the slips could not be located and there were no records. In *Lamizana Three*, the Louisiana Court of Appeal remanded

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[4]In *Lamizana Three*, **Pet.App. A2**, the Court said, "The criteria for *Ramos* to apply are present here. Mr. Lamizana's case was pending on direct review when *Ramos* was decided; and he was convicted of two serious, felony offenses. Hence, if the jury verdict on either count was not unanimous, Mr. Lamizana is entitled to a new trial."

[5] *Ramos*, supra; U.S. Const. Am. 5, 6, 14; La. Const. art. I § 17.

[6]*Ehrlinger v. U.S.,* 602 U.S. 821; 144 S. Ct. 1840; 219 L. Ed. 2d 451 (2024)

to "clarify the record on the crucial issue of whether the jury's verdicts were unanimous." One judge suggested that the district court could recall the jurors to be polled on the record,[7] **Pet.App. A2**.

The defendant, for his part on remand, produced an affidavit *and testimony* from Ms Holder, second chair trial defense counsel, to the effect that the jurors were in fact polled and that non-unanimous verdicts were rendered. The State on remand admitted in a memo filed in district court that the first chair defense attorney, Leon Roche, was reached by phone on October 12, and offered his recollection that was "generally consistent with Ms. Holder's testimony." The defense and district court accepted this acknowledgment from the State without need of further proof. Neither the court or the State refuted the defendant's evidence that the verdicts were not unanimous.

The district court's failure to keep a record of the jurors who served, coupled with the failure to record whether the verdict was unanimous or not, establishes the irregularity of these proceedings. The record in this case shows only that an undetermined number of jurors returned guilty verdicts on both counts. The denial of the defendant's pre-trial motion for unanimous verdicts and the jury instruction that only ten votes were needed for a verdict, along with the rule of lenity, weigh heavily in favor of a finding that the verdicts were not unanimous. Ultimately, the best that the district court judge in his *per curiam* could state was: "**This court has uncovered no evidence of either a unanimous or nonunanimous jury verdict in the case file or transcripts which it has on record.**" **Pet.App.C** The record at best shows ambiguity in the verdicts and wholly fails to establish the existence of unanimous, legal verdicts. The *Ramos* decision mandates a new trial.

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[7]La. C.E. Art. 606(b)(2) tracks *Fed. R. Evid. 606(b)* which prohibits evidence about any statement made or incident to the jury's deliberations but allows an inquiry into the validity of a verdict as to "a mistake was made in entering the verdict on the verdict form." *Warger v. Shauers* 574 U.S. 40; 135 S. Ct. 521; 190 L. Ed. 2d 422 (2014); *See Brasfield v. United States*, 272 U.S. 448, 450, 47 S. Ct. 135, 71 L. Ed. 345 (1926); *Lyell v. Renico*, 470 F.3d 1177, 1184 (6th Cir. 2006)

The Louisiana Court of Appeal mistakenly found that the presumption of regularity required that ambiguous verdicts be upheld and denied Mr. Lamizana a new trial. *Lamizana Four,* **Pet.App. A3** Four judges of the Louisiana Supreme Court denied discretionary review while three judges dissented. *Lamizana Five* **Pet.App. B2** As the U.S. Supreme Court's equal-protection jurisprudence compels[8] the Court should grant this writ application, reverse Mr. Lamizana's convictions and remand for new trial with jury verdicts that must be unanimous.

A. Trial Court Failed to Preserve Verdict - No Presumption of Regularity

Louisiana judges are required to receive and record jury verdicts on the record and in open court under La.C.Cr.P.Art. 810-812. Despite the clear language of the statute, the trial judge made multiple errors in receiving and recording the verdicts.[9] The judge did not read the verdict aloud or ask the jurors to verify that it was their verdict. The district court either did not save or lost the polling slips. It is imperative to zealously guard against errors of this magnitude — inadvertent or otherwise. Here, there is no confidence that the record supports unanimous verdicts. By accepting the ambiguous verdicts that were not clarified despite remand, the Louisiana Court of Appeal impermissibly and incorrectly created an irrebuttable, default presumption that the verdicts in all cases are unanimous. No such presumption exists.

Under La. R.S. 15:432, Louisiana enacted the "presumption of regularity" described in *Parke v. Raley* 506 U.S. 20; 113 S. Ct. 517; 121 L. Ed. 2d 391 (1992) as the presumption that "every act of a court of competent jurisdiction shall be presumed to have been rightly done, *till the contrary*

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[8]See *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 716, 93 L.Ed.2d 649 (1987).

[9]The negligent trial court also forgot to include an instruction on the "not guilty" responsive verdict and called the jury back to give it (Tr. 1/20/2016, p. 332).

appears."[10] The critical issue in this case is that "the contrary appears" in regard to recording the verdicts. The face of the record fails to show unanimity and the district court's admissions demonstrate that these proceedings were not "regular."

The Louisiana Court of Appeal, in violation of the fairness and due process guarantees in *Ramos*, supra, impermissibly expanded the statutory presumption of regularity to normalize what occurred here. The presumption does not apply to jury votes which can vary in number, are not an act of the court and are not "proceedings." Issa Lamizana Jr.'s pre-trial motion to require unanimous verdicts was denied. (R. 64-65). As a result, the instructions to the jury that it could deliberate to a 10-2 or 11-1 verdict impacted deliberations, polling, and due process. After the jury was released to deliberate, the transcript documents the denial of defense objections and motions for mistrial, then it abruptly stops, indicating only that "The jury returned with the verdict of guilty as charged on both counts."

According to both defense trial attorneys, the jurors were polled in writing and the lead attorneys for each side went to the bench to review the results. But the district court forgot to record the polling verbally or keep the polling slips. The irregularity of the court's failure to at least state on the record whether the verdicts were unanimous is not cured by the presumption of regularity. Where the record does not show that the verdicts were properly received and contains *no evidence* that the verdicts were unanimous, no presumption of regularity can arise.

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[10]In *Parke*, the Court said presumption of regularity allows a state court *at least initially*, to presume that a final judgment of conviction offered for purposes of sentence enhancement was validly obtained, *but if the defendant proved the existence of an irregularity, the State then had the burden of proving a valid conviction.* Citing *Johnson v. Zerbst*, 304 U.S. 458, 464, 468, 82 L. Ed. 1461, 58 S. Ct. 1019 (1938); *Daniels v. U.S.* 532 U.S. 374; 121 S. Ct. 1578, 149 L. Ed. 2d 590 (2001); *Burgett v. Texas*, 389 U.S. 109, 19 L. Ed. 2d 319, 88 S. Ct. 258 (1967). As cited in *State v. Carlos*, 98-1366, p. 6, n. 3 (La. 7/7/99), 738 So. 2d 556, 559.

The Louisiana Court of Appeal mistakenly presumed that since the record states that verdicts were returned, they must have been legal verdicts because the jury was released. However, the judge did not receive the verdicts in open court as required and, at the time of trial, non-unanimous verdicts could have been accepted.[11] The district court did not fulfill any of the requirements of the Louisiana Criminal Code that prevent ambiguous verdicts from occurring.[12] To presume regularity in the proceedings, trial judges must ensure that properly conducted proceedings are recorded and information is available for the exercise of the defendant's constitutional right to appeal. The trial court judge in this case woefully failed to fulfill his duties. Thus the presumption of regularity, mistakenly relied on by the Louisiana Court of Appeal, never arose in this case.

There is no authority for presuming the verdicts were unanimous in the face of unrebutted evidence that they were not. A criminal defendant has a right to a complete record of the trial proceedings,[13] including a correct record of the verdicts. Legal verdicts are the ultimate fact necessary for appeal.[14] Material omissions from the trial record that bear on the merits of an appeal

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[11]The jury was not instructed to deliberate fully to a unanimous verdict. The deliberations were cut short by the erroneous instruction that only ten votes were needed. Since they were not told the verdicts had to be unanimous, in the polling, the court and the jury were only looking for ten votes.

[12]In Louisiana, under La. C.Cr.P. Art. 810, ".... The foreman of the jury *shall deliver the verdict to the judge in open court."* Under La.C.Cr.P.Art. 811, "If the verdict is correct in form and responsive to the indictment, the court *shall order the clerk to receive the verdict, to read it to the jury, and to ask*: "Is that your verdict?" If the jury answer "Yes," the court shall order the clerk to record the verdict...." La. C.Cr.P. Art. 812A provides a written method of polling: "The court shall order the clerk to poll the jury if requested by the state or the defendant. The poll shall be conducted in writing by applying the procedures of this Article, and *shall be done in open court*...."

[13]*Hardy v. United States*, 375 U.S. 277, 84 S. Ct. 424, 11 L. Ed. 2d 331 (1964); *State v. Robinson*, 387 So. 2d 1143 (La. 1980); *State v. Deruise*, 98-0541 (La. 4/3/01), 802 So. 2d 1224, *cert. denied*, 534 U.S. 926, 122 S. Ct. 283, 151 L. Ed. 208 (2001); La. Const. Art. 1, Sec. 19.

[14]See *State v. Ford*, 338 So. 2d 107 (La. 1976).

require reversal. Where the unanimity of the verdicts is *the* issue, Issa Lamizana has a constitutional right to a complete record of the verdicts. Mr. Lamizana is imprisoned for life because of those verdicts. *The court* must either provide evidence that they were unanimous or grant him a new trial.

Ambiguous verdicts cannot support the conviction under the Constitution. The principle or rule of lenity,[15] usually a tool for interpreting statues, should apply to the interpretation of ambiguous verdicts. The principle of lenity, which is based on principles of due process, prohibits ambiguity in criminal proceedings. The principle of lenity requires the Court to interpret the ambiguous verdict in favor of the defendant.[16] When a district court does not have sufficient information to determine whether the jury votes were unanimous, the Courts should apply the rule of lenity and presume that there were not.[17] Under the principle of lenity, the ambiguity in these verdicts cannot stand. Mr. Laminaza should be granted a new trial.

It is not essential to determine whether the trial court's errors in failing to record the verdicts in this case were structural errors[18] or whether the errors were harmless.[19] The State benefitted from

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[15]*State v. Piazza*, 596 So. 2d 817, 820 (La. 1992); *State v. Carouthers*, 618 So. 2d 880, 882 (La. 1993); *State v. Tucker*,49,822 (La.App. 2 Cir. 07/08/15); 170 So. 3d 394, 406. *U.S. v. Davis* 588 U.S. 445; 139 S. Ct. 2319; 204 L. Ed. 2d 757 (2019): "the rule of lenity's teaching (is) that ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor."

[16]*State v. Whittaker*, 192 Wn. App. 395, 414; 367 P.3d 1092, 2016 Wash. App. LEXIS 126 (2015); *State v. DeRyke* 110 Wn. App. 815, 41 P.3d 1225 (2002), aff'd, 149 Wn.2d 906, 73 P.3d 1000 (2003); *United States v. Kaluza*, 780 F.3d 647, 653, 669 (5th Cir. 2015); *United States v. Santos*, 553 U.S. 507, 514, 128 S. Ct. 2020, 170 L. Ed. 2d 912 (2008); *United States v. Pierce*, 785 F.3d 832, 846-47 (2nd Cir. 2015); *United States v. Washington*, 714 F.3d 962, 970-71 (6th Cir. 2013); *United States v. Major*, 676 F.3d 803, 814-15 (9th Cir. 2012); *United States v. Chapman*, 851 F.3d 363, 373-374 (5th Cir. 2017).

[17]*United States v. Major*, 676 F.3d 803, 806, supra.

[18]*Rivera v. Illinois*, 556 U.S. 148, 160-61, 129 S. Ct. 1446, 173 L. Ed. 2d 320 (2009); In *State v. Lewis* 112 So. 3d 796; 2012-1021 (La. 03/19/13), the Court said that an erroneous ruling pertaining

the trial court errors by securing convictions on less than unanimous verdicts.[20] Rather than presuming a presumption of regularity exists when there is no indication that the verdicts were unanimous, the Courts have interpreted the lack of a record that the verdict is unanimous as an error patent.[21] Louisiana law requires that the face of the record show that the verdict is unanimous. Where the face of the record does not show legal, unanimous verdicts and where the defendant presented unrebutted evidence that the verdicts were not unanimous, it was the State's burden to prove that the

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to a constitutional right is a structural error requiring automatic reversal of a defendant's conviction. In *Ramos*, the Court held that Mr. Lamizana's right to unanimous, legal verdicts is a constitutional right. Arguably, the lack of any evidence of conviction by unanimous verdicts is a structural error requiring automatic reversal.

[19]"The inquiry ... is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error." *State v. Johnson*, 1994-1379 (La. 11/27/95), 664 So.2d 94, 100; *Sullivan v. Louisiana*, 508 U.S. 275, 279, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993); *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967).

[20]The Louisiana Court of Appeal erred in relying the U.S. Supreme Court's denial of writs in *State v. Robinson*, 21-0254 (La. App. 4 Cir. 2/18/22), 336 So.3d 567, *writ denied*, 374 So.3d 982, *cert. denied*, No. 23-7226 --U.S.-- (6/3/24) as precedent. The Louisiana Supreme Court did not consider the allocation of the burden of proof of a unanimous verdict. The Court in *Robinson* only said that when it cannot be determined affirmatively if the jury verdict was unanimous, the defendant is not entitled to *Ramos* relief. The dissenting judge in *Robinson* pointed out that "[t]his is a case of first impression in this Court where the unanimity of the jurors cannot be determined upon remand to the district court" and observed this would impact "future *Ramos* appellants when the record is similarly unclear." *Robinson*, 21-0254, p. 12, 382 So.3d at 208.

[21]*Lamizana Three*, 21-0409, p. 7, 366 So.3d at 421 (citing *State v. Monroe*, 20-00335 (La. 6/3/20), 296 So.3d 1062); *State v. Wilson*, 20-00128, p. 1 (La. 6/3/20), 296 So.3d 1045, 1046. The Louisiana Supreme Court has held that the verdict of the jury must be discoverable in the pleadings and proceedings to satisfy an errors patent review. *State v. Cook* 396 So. 2d 1258 (La. 1981); *State v. Sanford*, 248 La. 630, 181 So.2d 50 (1965); *State v. Craddock*, 307 So.2d 342 (La.1975). In *Cook*, supra, the Court said that in the absence of anything in the record showing the required number of votes, there was no legal verdict rendered, either of conviction or of acquittal. The Court ordered that the defendant be retried, citing *Johnson v. Louisiana*, 406 U.S. 356, 92 S. Ct. 1620, 32 L. Ed. 2d 152 (1972); *United States v. Perez*, 22 U.S. 579, 9 Wheat. 579, 6 L. Ed. 165 (1824).

court's errors did not contribute to the convictions, *i.e.* to prove verdicts were unanimous. As the State failed in that burden, the State should "suffer a reversal of his erroneously obtained judgment." A new trial is required.

B. Unrebutted Evidence of Non-Unanimity

The Louisiana Court of Appeal's finding that "Mr. Lamizana failed to present any direct evidence that the jury verdict on either count was not unanimous" is wholly contradicted by the record in this case.[22] Mr. Lamizana's unrebutted evidence consisted of: a) an affidavit of trial counsel;[23] b) testimony of the same trial counsel; c) an acknowledgment in the State's memo that the lead defense attorney provided similar information; d) the State's statement in court that a search of their files revealed no information that the verdicts were unanimous or not unanimous; e) the per curiam that admitted there was nothing in the record to show the verdicts were unanimous or not unanimous. The defense evidence was not rebutted. Unanimous verdicts cannot be presumed.

On September 20, 2022, the Defense introduced Defense Exhibit 1, an affidavit from Mariah Holder, trial counsel for Mr. Lamizana regarding the non-unanimity of the verdict. At the September 27, 2022, evidentiary hearing Ms Holder testified to the reasons why she remembered the non-

[22]When constitutional rights turn on the resolution of a factual dispute the U.S. Supreme Court is duty bound to make an independent examination of the evidence in the record. *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *Blackburn v. Alabama*, 361 U.S. 199, 205, n. 5 (1960); *Brookhart v. Janis*, supra, at 4.

[23]The Affidavit states in pertinent part: I, Mariah Holder, DOB 10/14/1980, being first duly sworn, depose and state the following: I was "second chair" attorney on Mr. Lamizana's case when it went to trial in January 12, 2016. There are many reasons I remember this case, including that it was one of my first cases as second chair where a client faced a life without parole sentence.

It is my recollection that the jury reached a non-unanimous verdict in this case. I recall that I was disappointed in the verdict and it is my recollection that I found some solace that the verdict was not unanimous.

unanimous verdict in this case: it was her first life sentence without parole case; it was her first case that went to verdict, as there were pleas entered during the trials of others; the trial lasted a week and a half because of writs and a stay order. Other details she remembered include:

> And I remember Ashley Spears was trying the case with Iain Dover for the State. It was myself and Mr. Roche. And Mr. Roche and Mr. Dover approached the bench to look over the jury slips, which was something that I was previously unfamiliar with. Myself, I stayed at the defense table with Mr. Lamizana. My recollection is that Ashley Spears also stayed at the State table, and that it was Mr. Dover and Mr. Roche who approached.
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> When Mr. Roche returned to the defense table, he confirmed that it was -- that they were valid guilty verdicts as to both counts, but that we could take some consolation in the fact that it was nonunanimous.
>
> So after that, I think it was Mr. Roche and I, and we were joined by Sara Chervinsky. We went to get drinks at Finn McCool's. And I was telling Mr. Roche that it was my first guilty verdict ever. For him, I think it was also somewhat momentous in that it was his first guilty as charged verdict. He had never not gotten a not guilty or a responsive verdict previously.
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> We had firmly believed in Mr. Lamizana's innocence, but to gain consolation in the fact that we -- that there was a person who had sided with us and who had believed what we presented.

The details of Ms Holder's testimony and her explanation as to why she can remember the circumstances lend credibility and weight to her uncontradicted testimony.

Ms Holder's testimony answers the concern in *Lamizana Three* that "the record does not reflect that the jurors were polled as to their verdicts" and dispels the State's contention in the Memo in Opposition that the jurors were not polled or that "defense counsel Leon Roche and Mariah Holder failed to poll the jury." The testimony of Mariah Holder establishes that the jury *was* polled, although the evidence of the polling results seems to have disappeared. It was the district court's obligation to retain that information.

While either party or the judge can request polling and no request for polling appears in the record, the lack of a record of a request is not surprising. There is no statement *of any kind* other than that the verdicts were guilty. Nothing from the trial court or the State was put on the record that the verdict was unanimous either: not a minute entry, not the polling slips, not a verbal statement in a transcript, nothing. At the time of the trial, a vote of ten or eleven would not have needed an objection to a non-unanimous verdict, as the pre-trial motion preserved the issue. Defense counsel need not have objected. Ms Holder's testimony establishes that there was polling. On cross examination by the State, Ms Holder further explained about the non-unanimous jury verdict issue:

> A. It was certainly a big issue at my office at that time.
> Q. So then, do you have any explanation for why the jury was not polled given the fact that, as you say, Mr. Roche knew it was an 11 to 1 verdict?
> A. I don't know. I didn't ask him, but I think he was satisfied by reviewing the slips

Besides polling slips,[24] other forms of evidence have been found to suffice[25] and were relied on by Mr. Lamizana in this case. The statement by the first-chair trial attorney given to the district attorney and documented in the State's memo would have been cumulative to Ms Holder's affidavit and testimony. It was not necessary to call the lead defense attorney[26] as the State acknowledged Mr. Roche's statement. The State also chose not to call him to testify. At the same hearing, the Assistant District Attorney offered these facts:

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[24]As recognized in *State v. Jones*, 2018-0973 (La. App. 4th Cir. 2/3/21), 314 So. 3d 20, 22, jury polling slips "are the best evidence of the jury votes." In *Jones*, where the record reflected that the polling slips existed but were not currently in the appellate record, to comply with *Ramos,* the Court remand to supplement the record while the defendant's case was pending on direct review.

[25]*See Fortune*, 19-0868, p. 2, 310 So.3d at 604.

[26]Mr. Roche has since been elected to the district court bench.

> "I don't know if it's appropriate now or during argument, but I would just say that I looked in the District Attorney's file for information on the jurors and there is none. There is (sic) no forms that they used during voir dire and there is no juror -- there's no names of any jurors. In addition, both ADAs who tried the case have no recollection of what the verdict was."

Presumably, if the prosecutors had won unanimous verdicts, they would have recorded the victory in the State's file.

The Louisiana Court of Appeal failed to follow precedent in other Louisiana cases that were applying *Ramos* where the district courts were able to produce evidence about the verdicts. In *State v. Fortune*, 19-0868 (La. App. 4 Cir. 11/18/20), 310 So.3d 604, the record contained representations by trial counsel and confirmation by the presiding district judge that the jury was not unanimous, resulting in a new trial. In *Robinson*, supra, the jury foreperson was located by the court and testified that at least ten jurors were in agreement. In *Norman*, the district court ceased polling the jury after the first ten jurors, so remand was required.[27] Ms Holder's testimony was similar to the evidence of the verdicts found not to meet Due Process standards, properly applying *Ramos.*

In *State v. Seymore* 305 So. 3d 1038; 20-129 (La.App. 5 Cir. 11/04/20), the jury was polled and the results were discussed in a sidebar conference that was not transcribed. The trial judge in *Seymore* announced on the record that "[t]he verdict is responsive. The Court adopts the verdict of the jury as the verdict of the Court." Later, the court provided evidence of a conference call between the trial judge and prosecutor confirming a ten to two verdict and produced eleven of the twelve

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[27]Relying on *Norman*, supra, the Court in *State v. Hicks* 378 So. 3d 743; 2023-00969 (La. 02/06/24) granted the State's writ and ordered the case remanded for an inquiry into the unanimity of the verdict under *Ramos.* In *Hicks,* the trial was conducted *after* Ramos was decided yet the district court instructed jurors that they could reach a verdict by 10-2 vote. The *Hicks* Court remanded to the district court to ascertain whether the verdict was unanimous, preserving Hicks' right to appeal any ruling. In *Norman* and *Hicks* evidence of the votes on the verdicts was produced on remand.

polling slips, showing only nine reflecting a verdict of guilty and two reflecting a verdict of not guilty. The *Seymore* Court said that because one slip was missing making the final vote unknown, Due Process required that the conviction be vacated and the case remanded for new trial.

Unlike *Fortune*, here the district court had no recollection of the verdicts in Mr. Lamizana's case and found nothing about it in the records or with the clerk of court, court reporters or staff. As in *Seymore*, the final votes of the jury in Mr. Lamizana's case are unknown and there is no record of the verdicts being received in open court. The Louisiana Fourth Circuit erred in affirming the convictions in violation of the Sixth and Fifth Amendments, as set forth in *Ramos*.

In Mr. Lamizana's case, the district court could not identify or locate the foreperson or jurors as neither the district court nor the district attorney had any record of the jurors' names or other contact information for them.[28] The State represented that the only name of a juror in its file was for a juror who was excused. Neither the State or the court produced a shred of evidence to support unanimous verdicts during the hearings conducted on September 20 and 27, 2022.

Over a year after the hearings, in the *per curiam*, written in December of 2023, the district court erroneously found "given that this is a post-conviction matter, the burden of producing such evidence lies with the defendant." This is an error in fact and in law. This was not a post-conviction matter. The case was still on direct appeal and had been remanded. The State and the Court were seeking to uphold the verdicts. It was their burden to prove the verdicts were unanimous.[29] The

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[28]Justice Johnson advised against finding and questioning jurors in her dissent in *Norman* due to the publicity surrounding the *Ramos* decision: "Against this backdrop, a process that asks any of the jurors to recall their vote (or the votes of others) will be relying on memories necessarily tainted by subsequent events and we can have no confidence that it will produce an accurate result."

[29]The Louisiana Court of Appeal mistakenly relied on the general evidentiary rule in a *trial* setting found in La. R.S. 15:439 that "[t]he burden of proof is upon him alleging the existence of a fact." But

district court mistakenly took no responsibility itself for the errors in losing the polling slips and not reading the polling results into the record. The law puts that burden squarely on the court.

Even if the defendant had the burden of proving non-unanimous verdicts, Mr. Laminaza met the burden. On remand, Ms Holder's testimony was uncontradicted evidence that the verdicts were not unanimous. The verdicts are no longer unknown. There is a "reasonable probability" that the verdicts were not unanimous. The record in this case "undermines confidence" that Mr. Lamizana's convictions are supported by valid, unanimous verdicts[30] as required by the United States Constitution and *Ramos v. Louisiana*, 590 U.S. 83, 140 S.Ct. 1390, 206 Led.2d 583 (2020). This writ application should be granted. A new trial is required.

ARGUMENT NO. 2: Denial of Right to Defense

The central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence.[31] The Sixth and Fourteenth Amendments provide protections for state criminal defendants[32] at trial: the right physically to face those who testify against him, the right to conduct cross-examination[33] and a "meaningful opportunity to present a complete defense." Violations of the Confrontation Clause have been found when there was a specific statutory or *court-imposed*

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this case is on appeal rather than at trial. A State may not shift the burden of ultimate persuasion of an essential element of the crime charged to the defendant in a criminal case. *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975). The existence of a legal verdict is an essential element for the *State* to prove the conviction that allows for imprisonment of the defendant.

[30] *Bagley v. United States*, 473 U.S. 667 (1985); *United States v. Armstrong*. 517 U.S. 456 (1996).

[31] *U.S. v. Nobles* 422 U.S. 225 (1975); *Delaware v. Van Arsdall* 475 U.S. 673, 681 (1986).

[32] *Douglas v. Alabama*, 380 U.S. 415, 418 (1965); *Pointer v. Texas*, 380 U.S. 400 (1965).

[33] *Delaware v. Fensterer*, 474 U.S. 15, 18-19 (1985)(per curiam).

restriction at trial.[34] Mr. Lamizana does not allege a violation of the right to physical confrontation. Instead, by denying him access to the Department of Children and Family Services (DCFS) witness and records, the trial court interfered with his right of cross-examination and his right to present his defense. Here, the trial court restricted the defendant from using the DCFS witness and records, not because the defendant did not comply with La. R.S. 46:56, but because the DCFS agency itself, did not comply with its own statute.

The right to a defense consists of evidence and cross examination that tests the State's evidence, impeaches State witnesses, and challenges the State's theory of the case so the jury may decide where the truth lies.[35] It also includes compelling the attendance of witnesses to present the defendant's versions of the facts and evidence that might influence the determination of guilt.[36] Otherwise, the foundational right for an "opportunity to be heard" becomes "an empty one."

Issa Lamizana Jr.'s defense was that he was innocent[37] and that his ex-wife, E.T.3, beat, forced and coerced, her teenagers, E.T.1 and E.T.2, into making sexual assault allegations so that E.T.3 would get sole custody of their step-brother, I.L.III. Issa Lamizana Jr. met E.T.3 in 2007, and

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[34]*Delaware v. Van Arsdall, supra* (denial of right to cross-examine to show bias); *Davis v. Alaska,* 415 U.S. 308, 94 S.Ct. 1105(1974); *Chambers v. Mississippi,* 410 U.S. 284 (1973) (denial of right to impeach own witness); *Smith v. Illinois,* 390 U.S. 129 (1968) (denial of right to ask witness' real name and address); *Douglas v. Alabama*, supra, (denial of right to cross-examine codefendant).

[35] *Davis v. Alaska, supra*; *Washington v. Texas*, 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967); *Crane v. Kentucky*, 476 U.S. 683, 690, 90 L. Ed. 2d 636, 106 S. Ct. 2142 (1986); *California v. Trombetta*, 467 U.S. 479, 485, 81 L. Ed. 2d 413, 104 S. Ct. 2528 (1984).

[36]*Chambers v. Mississippi*, supra; *Cool v. United States*, 409 U.S. 100 (1972)(per curiam); *Washington v. Texas*, supra. Cf. *Webb v. Texas,* 409 U.S. 95 (1972) (based on Due Process Clause).

[37]Mr. Lamizana raised the insufficiency of the State's evidence in each appeal, even though the evidence he needed for his defense was excluded from the record.

although their relationship was always rocky, he married E.T.3 in 2010 after they had I.L.III.[38] For years, the children had been subjected to E.T.3's aggressive behavior, including whippings and tirades, resulting in E.T.2 being a chronic bed wetter.

After a physical altercation with E.T.3 in April 2012, Issa Jr. moved out. Issa Jr. went back home temporarily for I.L.III's third birthday in early May 2012. He was sleeping in the living room. In the early morning of May 9, 2012, Issa Jr. was awakened by E.T.3 screaming. E.T.3 had found 12 year old E.T.2 asleep in her bedroom without any clothing on below the waist. E.T.3 repeatedly screamed at E.T.2, "Did he touch you?" while slapping her. E.T.2 responded "No" several times until E.T.2 finally relented and described an incident in 2011 when they lived at a different house. E.T.3 confronted Issa who denied ever touching E.T.2. As soon as he left for work, E.T.3 called police and police called DCFS.

Monique Hayes, the investigator for DCFS, was the first person to interview E.T.2, E.T.1 and E.T.3 at their home on May 9, 2012.[39] E.T.1 denied any touching by Issa. E.T.2 was taken for a physical exam that was negative for any sign of sexual abuse. She also had a forensic interview at the Children's Advocacy Center (CAC). While E.T.2 had given a verbal statement to Monique Hayes, she refused to talk at the CAC and only wrote a note. (Tr. 1/12/16 p. 104-8). Detective Pruitt sat in on the DCFS interviews and attended the CAC interviews with Ms Hayes, but did not participate or make a report. (Vol. 3, 1/12/16 Tr. R. 44-45).

As part of the CAC protocol, thirteen year old E.T.1 also had a taped CAC interview in August of 2012, in which he *again* denied that Issa had ever touched him sexually. However, in

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[38]After successfully causing Issa to be arrested, E.T.3 won sole custody of I.L.III.

[39]As authorized and required by La. Ch.C. Art. 610, 612, 615; La.R.S. § 14:403(c).

October of 2012, after E.T.1 got in a physical altercation with E.T.3 at a barbershop and was publically lambasted by E.T.3, E.T.1 changed his statement and told E.T.3 that Issa had "raped" him. E.T.1's newly fabricated allegation was investigated by DCFS and police. Again, there was no physical evidence. In his second CAC interview, E.T.1 said only that he was "raped" and gave no details or circumstances. He did not say what that word meant to him.

Petitioner Issa Jr. gave statements to DCFS and the police denying the allegations and informing them of E.T.3's abusive influence over the children. Issa told them that E.T.3 had a mental health diagnosis that caused temper outbursts. Issa Jr. told Ms Hayes that he received settlement money from a car accident that E.T.3 helped to blow through shortly before the allegations were made. Then E.T.3 had no further use for him. Issa told Ms Hayes they had separated in April of 2012. E.T.3 disclosed none of this to DCFS and denied it at trial.

After the CAC interview and physical exam, Ms Hayes concluded her investigation, wrote a DCFS "Form 10" preliminary summary, and made some conclusions about neglect, abuse, custody and services. The Form 10 had to be provided to the prosecutor, who in turn provided it to the defense in discovery (R. 244, 268), prompting the defense attorney to subpoena Ms Hayes, pursuant to and in compliance with La. R.S. 46:56 H (2). Besides his own testimony, Mr. Lamizana sought to prove his defense by cross-examination of E.T.3, E.T.2 and E.T.1. He wanted to impeach them with prior inconsistent statements made to Monique Hayes, DCFS child protection investigator and contained in DCFS records.[40] He also wanted Ms Hayes to confirm that he told her the same

[40]Louisiana R.S. 46:56 is the general statute that prohibits the disclosure of confidential case records of DCFS. Under La. R.S. 46:56H, in response to the subpoena for a DCFS witness, DCFS must provide that court with a copy of the entire case record for the court's *in camera* review. The trial court must determine the relevancy and/or discoverability of the testimony. In the court's discretion, the testimony and the case records can be made available to the litigants after the review.

information in 2012 that he was giving in his trial testimony, to lend credibility and support through consistency of his testimony.

On the third day of Mr. Lamizana's 2016 trial, DCFS investigator Monique Hayes appeared with a DCFS attorney and a Motion to Quash the subpoena and demanding that the trial court make an *in camera* review prior to Ms Hayes' testimony. Shockingly, however, DCFS showed up with the wrong records, producing the records for another family in a wholly unrelated case! The DCFS attorney told the court that correcting their mistake could take five days. The trial court would not grant a recess or allow Ms Hayes to testify without the *in camera* review. Instead, the trial court summarily granted DCFS' motion to quash Ms Hayes' subpoena, without regard to Mr. Lamizana's constitutional rights to a defense and to confrontation. The trial court's evidentiary rulings in this case against Mr. Lamizana constituted an arbitrary restriction upon defendant's right to present a defense.[41] The defendant made a proffer based on the limited information available from the DCFS Form 10. (Tr. 1/20/2016, p. 273, 323-336, 337).[42]

By the time of trial in 2016, E.T.2 was sixteen and E.T.1 was seventeen years old and had been solely under E.T.3's influence for four years. For the first time, at the 2016 trial, E.T.2 gave

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In *State v. Ortiz*, 567 So.2d 81(La. 1990), the Court applied *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), and found that the Louisiana statute, R.S. 46:56, allows for the disclosure of DCFS case records and does not outweigh the defendant's constitutional right to call DCFS witnesses.

[41] *Holmes v. South Carolina,* 547 U.S. 319, 324, 126 S.Ct. 1727, 1731, 164 L.Ed. 2d 503 (2006).

[42] The Court of Appeal specifically noted that contemporaneous objections were made.(Tr. 1/20/16 p. 346-7). Also, as noted in *Laminaza One,* "The record does show that defense counsel moved for a mistrial at the close of oral arguments based on the exclusion of the testimony of Ms. Hayes and the DCFS report prepared by Ms. Hayes. The trial court denied the motion, noting defense counsel's objection. Defense counsel again raised the issue after the verdict in the defendant's motion for a new trial (which is in the appellate record), noting the trial court's failure to perform the statutorily required *in camera* inspection of Ms. Hayes report before granting the DCFS motion to quash."

details for her claim. She testified that she had not wet the bed the night of the alleged incident and that she was not awakened by a nightmare. She said that she was sleeping on top of the covers when she felt Mr. Lamizana get in bed behind her. He pulled down her shorts, pulled off his bottoms, and "went into her butt."He jumped up when he heard E.T.3 coming. At trial, also for the first time, E.T.1 came up with details for his claim. E.T.1 testified that in June of 2011, while E.T.3 was at work, Mr. Lamizana physically attacked him in his bedroom. E.T.1 said that Issa hit him in his head, giving him a bloody nose and chipping his tooth. E.T.1 claimed he blacked out and woke up in his bed with Issa on top of him. E.T.1 said he felt "pain in his ass" from something was penetrating him, and it "damn sure wasn't his finger."

Mr. Lamizana also testified about the 2011 incident in their former house on Washington Avenue in New Orleans. Mr. Lamizana said that he was up checking the windows[43] when he found E.T.2 sitting at the kitchen table at 3 a.m. because she had a bad dream. He took her back to her bed and tucked her under the covers. At E.T.2's request, he laid down with her on top of the covers, but quickly realized the bed was wet and got up. E.T.3 came into the bedroom, aggressively questioning them. E.T.2 and he both denied anything happened. E.T.3 felt his penis. It was not erect. There was no urine, blood or other fluid on his shorts. Everyone went back to bed. Nothing was reported in 2011.

The children alleged the incidents happened within 3 months of each other in 2011 and had not recurred. E.T.1 and E.T.2 claimed that they did not tell anyone because Mr. Lamizana had a gun and they were afraid of him. No gun was used in either alleged incident. E.T.2 could not describe any gun or describe where it was kept. There were multiple times that Mr. Lamizana was out of the

[43]E.T.1 confirmed that Issa often checked the house during the night.

house and that the children were alone with their mother or other trusted adults and but they did not disclose anything. When each of the teenagers made their allegations in 2012, they were in the midst of an altercation with E.T.3. Mr. Lamizana's theory of the defense was that the allegations were induced by the trauma and pattern of E.T.3's intense screaming, emotional and physical abuse. Mr. Lamizana's ability to present his defense and challenge the testimony of E.T.3 and her children, using DCFS statements and records, was critical.

In *Davis v. Alaska,* 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), the Court reversed burglary and grand larceny convictions where Davis was prevented from cross-examination of a key witness to determine bias and prejudice due to state law protections afforded juvenile witnesses. The Court said that the Sixth Amendment guaranteed Davis the opportunity to expose possible bias and to impeach State witnesses to allow the jury to make an informed judgment as to the weight to be given to the testimony of the prosecution witness. The constitutional error in *Davis* was that the defendant was denied the right "to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness." 415 U.S., at 318.

The same constitutional error that occurred in *Davis* occurred herein when Petitioner Lamizana was prevented from calling Ms Hayes to testify and using DCFS records for confrontation. As observed by the Louisiana Court of Appeal in *Lamizana One*, "there is no physical evidence to support the convictions, the defendant and his wife clearly had an adversarial relationship, and the State's case rested solely on the jury's credibility determination in accepting the victims' testimony that the defendant raped them."[44]

[44]E.T.3 provided dental records in a failed attempt to corroborate E.T.1's story about his chipped tooth. The record were not for 2011. The physical exams did not show any scarring or trauma to the anus of E.T.2 or E.T.1. Neither of the teens described anything that was indicative of the anal

In *Lamizana One*, the Louisiana Court of Appeal reversed and granted new trial based on the wrongful exclusion of the DCFS witness. **Pet.App. A1** However, the Louisiana Supreme Court reversed the order for new trial and instead ordered "remand to the district court to conduct an evidentiary hearing" as to whether the exclusion was harmless, preserving the defendant's right to appeal his convictions and sentences. **Pet.App. B1**

It took over a year for an evidentiary hearing to be held in district court. (R.14) On February 20, 2020, evidentiary hearing, Monique Hayes testified that she had no independent recollection of her investigation eight years earlier of E.T.3, E.T.1, and E.T.2's claims against the defendant. (2/20/20 Tr.30). Monique Hayes testified that her records showed that *E.T.3* claimed that E.T.2 said Mr. Lamizana anally raped her. (2/20/20 Tr.30). Ms Hayes said she spoke to E.T.2 without her mother. She did not remember if the detective was present. Ms Hayes said that E.T.2 had been questioned by her mother, the detective[45] and herself before going to the CAC, although it was CAC protocol that no one question the child before CAC. (2/20/20 Tr.26,28) She did not know what E.T.3 told E.T.2 before talking to DCFS, police or going to the CAC.

Pertinently, Ms Hayes said she spoke to E.T.3 about her mental health treatment and E.T.3's discipline of the children. Ms Hayes' 2019 report documents E.T.3's history of depression but the report provided for trial does not. (2/20/20 Tr.37-39) She was not given information that E.T.3's marriage was ending or that there was a custody battle over I.L.III. She believed that the defendant

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penetration they alleged. Neither teen described discomfort, blood or injury to their anus. Neither described any blood, body fluid or feces on their sheets or underclothes. E.T.3, who was in E.T.2's bedroom at the alleged time of the rape, admitted there was no urine, blood or other fluid on Issa's shorts or anywhere else.

[45]The detective said she chose to wait for the CAC interview instead of talking to the children. (Tr. 1/13/16, p.15-17).

was living with the family. She did not investigate Mr. Lamizana's statement about the children's motivations for the statements. (2/20/20 Tr.18-19,27, 29) After the evidentiary hearing that had been ordered by the Louisiana Supreme Court, the case was sent back to the Louisiana Court of Appeal, without a ruling or per curiam from district court at that time.

In *Pennsylvania v. Ritchie,* 480 U.S. 39, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987), the Court addressed access to DCFS records *to prepare* a defense. In this case, Mr. Lamizana fulfilled the requirements for access to the DCFS records and witness under La.R.S. 46:56H, but was defeated in his efforts when the investigator was not allowed to testify because an *in camera* review of DCFS records could not be conducted prior to the testimony because *the State* first produced the wrong records in the middle of trial, then trickled out incomplete records *after* the trial and *after* the evidentiary hearing.

In *Lamizana Three* **Pet. App. A2**, the Louisiana Court of Appeal remanded again, primarily on the *Ramos* non-unanimous verdict issue. Defense counsel took the opportunity to file a second Motion for New Trial based on the late disclosure of the 2019 DCFS records that Ms Hayes relied on during the 2020 hearing.[46] The 2019 DCFS report was nearly twice as long as the Form 10 that DCFS produced in 2016 for trial. It was not made available for use on cross examination or for review for exculpatory information before the 2020 hearing concluded. The 2019 DCFS report was submitted into evidence at the end of the hearing. (2/20/20 Tr.25-26) The extended DCFS report would have been exculpatory to Mr. Lamizana in his 2016 trial. On July 20, 2023, in the district

[46]On March 16, 2020, the court closed for the pandemic without documenting the outcome of the hearing. The district court noted in a per curiam that the hearing had been held **Pet.App. C1,** but did not rule on Ms Hayes' testimony until 2023, **Pet.App. C2** without any indication that he had compared it with, or reviewed, the trial evidence.

court's *per curiam*, the judge said "this court found nothing in the report which was either material or exculpatory to the defendant" and denied the motion for new trial.

The defense attorney submitted a Motion for Appeal that listed all of the ways counsel would have used Ms Hayes' testimony, if it had been allowed at the jury trial, showing Ms Hayes' testimony was relevant,[47] material and probative. In *Lamizana Three,* **Pet.App. A3,** the Louisiana Court of Appeal cited the list in a footnote but mistakenly found no materiality as the list included challenges to E.T.3, and were not all centered solely on E.T.1 and E.T.2. The Louisiana Court of Appeal erred in finding that Mr. Laminaza was only entitled to challenge the testimony of E.T.1 and E.T.2, and since some of the excluded evidence was directed at E.T.3, the Court of Appeal mistakenly concluded the error was harmless. **Pet.App. A3** In a four to three decision, the Louisiana Supreme Court denied discretionary review. **Pet.App. B2**

The Sixth Amendment's constitutional right to a defense and right to confrontation is not limited to selected portions of the State's case, as erroneously held by the Louisiana courts. The Sixth Amendment right to a defense and confrontation goes to the *State's entire case,* not merely the complainants' testimony. A defendant is constitutionally allowed to present evidence on any relevant matter where the evidence is reliable and has some probative value.[48] Critical to Mr. Lamizana's

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[47]*Giglio v. U.S.*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). "Relevant evidence" is evidence that make the existence of any fact more probable or less probable. La.C.E. art. 401. The Court in *Ortiz* said: "There are two components to relevant evidence: materiality and probative value. Materiality looks to the relation between the propositions for which the evidence is offered and the issues in the case.. ...In addition, the parties may dispute the credibility of the witnesses and, within limits, produce evidence assailing and supporting their credibility." Evidence that impeaches the testimony of a witness whose credibility or reliability may determine guilt or innocence is material.

[48]*Rock v. Arkansas*, 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987); *State v. Casey*, 99-0023, (La. 1/26/00), 775 So.2d 1022, 1037; *State v. Mosby*, 595 So.2d 1135 (La. 1992); La. C.E. art. 403.

defense was evidence of influences on the children and inconsistencies in all of their statements. DCFS investigator Ms Hayes was the first person to interview the whole family. The family dynamics and influence of E.T.3 that Ms Hayes observed and questioned in May of 2012 was central to the jury's understanding of the allegations. Mr. Lamizana had a constitutional right to explore with Ms Hayes what her investigation revealed, or failed to reveal, about the family as well as the content of their statements to her.

The Louisiana Court of Appeal erred in upholding the district court order that precluded Mr. Lamizana from calling DCFS investigator, Monique Hayes, to testify at trial. Throughout the cross examination of E.T.3, E.T.2, and E.T.3, they denied having testified in a manner inconsistent with what they had told Ms Hayes. Ms Hayes' testimony was essential to prove the inconsistencies, biases, and influences. (Tr. 1/20/2016, p. 273, 323-336, 337). The exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.[49] On the basis of the limited cross-examination that could be done with only partial DCFS records, the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of apparently blameless witnesses.

Where the testimony of E.T.1 and E.T.2 was the *only* evidence of the rape allegations, defense counsel should have been permitted to expose the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.

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[49]The Court in *Davis, supra,* said of cross-examination that it, "may relate directly to issues or personalities in the case at hand." The partiality of a witness is subject to exploration at trial, and is "always relevant as discrediting the witness and affecting the weight of his testimony." In *Greene v. McElroy*, 360 U.S. 474, 496 (1959), cited in *Davis*, the Court said cross examination "is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy."

Mr. Lamizana was denied the right of effective cross-examination which "(is) constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it."[50] The Louisiana courts wrongly discounted the significance of Ms Hayes' testimony and the DCFS records that contained inconsistent statements from the children and E.T.3 that disputed their trial testimony. The Louisiana courts failed to acknowledge the importance of DCFS evidence about discipline, mental health, E.T.3's influence on E.T.1 and E.T.2. The Louisiana courts mistakenly found harmless error in the trial court's exclusion of the defense.

In addition to the wrongful exclusion of Ms Hayes's testimony, a new trial should have been granted by the Louisiana Court of Appeal to allow Mr. Lamizana to exercise his full due process right to confront witnesses with the newly discovered, complete DCFS records. The testimony of Ms Hayes and the additional pages of the DCFS records were new and material evidence that was discovered after the trial. The record had never been disclosed by the State to the defense in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny. Specifically, the 13 page report from DCFS was not provided in the 2016 trial and only was revealed after the 2020 hearing on remand. It was key to the defense as it provided material facts for the jury and impeachment of the main state witnesses.

Defense counsel for Mr. Lamizana had suspected that he was not provided complete DCFS records prior to trial.[51] DCFS showed up on the third day of trial with records for the wrong family.

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[50] *Davis*, citing *Brookhart v. Janis*, 384 U.S. 1, 3; *Smith v. Illinois*, 390 U.S. 129, 131 (1968).

[51] In a pre-trial motions for the disclosure of *Bradv/Giglio* evidence, defense counsel specifically stated that "in the course of discovery and investigation, defense counsel has determined that there is good reason to believe that there is undisclosed *Brady* evidence in this case - evidence of which the prosecution may not be aware, but which is in the possession or control of the 'prosecution team'..." This, in fact, turned out to be true.

The previously undisclosed *Bradv/Giglio* 13 page DCFS report introduced into evidence at a post-trial February 20, 2020 evidentiary hearing was a report from the *state's* agency that investigates child abuse allegations. Therefore it was the prosecutor's responsibility to disclose this report. The previously undisclosed 13 page DCFS report provided *Brady/Giglio* information that the defense was not allowed to review until 2020, *after* the evidentiary hearing.

The DCFS records would have been admissible as business records or could have been used to refresh Ms Hayes' memory or to impeach E.T.3, E.T.1 and E.T.2. Evidentiary rules are sometimes required to yield to the fundamental right to present a defense to achieve a fair trial.[52] In the motion for new trial and the motion for appeal, trial counsel outlined how the information in the newly revealed records would have been used to demonstrate critical facts about both the first reporter, E.T.3 , as well as E.T.2 and E.T.1's credibility. There is a "reasonable probability" that this new evidence would have further impacted the jury deliberations at trial and the verdict.[53]

Specifically, as to the defense theory about influence of E.T.3's physical and psychological abuse of E.T.2 and E.T.1, in the undisclosed 13 page report, E.T.3 states that she uses "withholding of privileges as her method of discipline" for her children. However, in trial, E.T.3 testified that she would physically discipline the complainants. If the records had been disclosed and the defense had been able to show that E.T.3 lied to DCFS regarding her discipline of her children, trying to make herself sound better, it would have both challenged the credibility of her critical testimony, but also added evidence of influence that was critical to Mr. Lamizana's defense.

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[52] *Chambers, supra*, at 302*; State v. Klein*, 252 So. 3d 973, 986-987; 18-0022 (La.4 Cir. 08/22/18).

[53] *Bagley v. United States*, 473 U.S. 667 (1985).

At trial, E.T.3 denied mental health and financial problems. In the undisclosed *Brady/Giglio* 2019 DCFS report, E.T.3 admitted some treatment for depression and non-specific issues, which she denied at trial. It was impeachment evidence under *Giglio* that the defense should have had at trial. Further, the defense would also have been able to use the undisclosed 2019 DCFS report to demonstrate that E.T.3 was not being truthful about her financial situation. Mr. Lamizana had reported to DCFS and testified at trial, that a motive for E.T.3 wanting to be rid of him was that she spent all of a large financial settlement that the family received. E.T.3's misrepresentations to DCFS as to the family's income and even the pending divorce and custody issues were another critical piece of evidence to the defense in this case. E.T.3 hid from DCFS the fact that she needed an edge to get custody of I.L.III and had compelled E.T.2 and E.T.1 to make the allegations to keep their brother.

Lastly, and perhaps more critically, the undisclosed 2019 DCFS report demonstrates prior inconsistent statements from E.T.1 and E.T.2 themselves. In 2011, when the children claimed the incidents happened, both children had denied abuse. Ms Hayes' observations of E.T.2, who was so intimidated that she could only write a note at the CAC, would have been pertinent for the jury. In the May 2012, E.T.1 definitively denied abuse, only to create allegations five months later when being publicly chastised by E.T.3. The children learned a pattern of escaping the wrath of E.T.3 and gaining her favor by making claims against Mr. Lamizana. These are just some of the several factual, material items in the undisclosed *Brady/Giglio* 2019 DCFS report that could have changed the outcome of the trial.

A. Exclusion of the Defense was Not Harmless

Sixth Amendment violations of confrontation and the right to a defense are subject to harmless-error analysis.[54] Due to the district court's erroneous application of La. R.S. 46:56 that excluded Ms Hayes' testimony and due to the State's piecemeal and belated disclosure of DCFS records, Mr. Lamizana was prevented from having Ms Hayes testify, with complete records, to both support Mr. Lamizana's testimony and to impeach other witnesses. The exclusion of this evidence benefitted the State as its otherwise weak case, based solely on E.T.1 and E.T.2's statements, was spared rigorous cross examination and went unchallenged. The standard of review to reverse a conviction has two parts: 1) the error must affect substantial rights of the accused, and 2) the error must not be "harmless beyond a reasonable doubt."[55] The measure of the harm of the error , as stated in *Chapman v. California*, supra, is that the State must show there is not a reasonable possibility that the exclusion of certain evidence "might have contributed to the conviction."[56]

The Louisiana Court of Appeal found error in the district court's exclusion of Ms Hayes' testimony and in the lack of discovery of the DCFS records, acknowledging that the first question, *i.e.* that the exclusion of Ms Hayes testimony and the DCFS records was constitutional error, was fulfilled. But the Court of Appeal mis-assigned responsibility for the second question to the defendant in his direct appeal. The Court of Appeal mistakenly put the burden on the defendant to

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[54]*Delaware v. Van Arsdall,* supra, at 684. In *State v. Mullins* 2014-2260 (La. 01/27/16); 188 So. 3d 164, the Court found a Confrontation Clause violation and reversed a rape conviction where a psychologist's report, using hearsay information, had been used to prove the IQ of the victim, an element of the crime, and the psychologist had not testified.

[55]*Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); La.C.Cr.P. art. 921.

[56]*State v. West,* 568 So. 2d 1019 (La. 1990); *State v. Gibson,* 391 So.2d 421 (La. 1980)

prove that the error contributed to the verdicts under the harmless error rule. The burden of proving harmless error rests squarely on the shoulders of the party benefitting from the error, which in this case was the State of Louisiana. The use of the DCFS records and Ms Hayes testimony would certainly have contributed to different verdicts. Neither E.T.2 or E.T.1 had given descriptive or detailed statements to police or at the CAC prior to trial. E.T.3 had sole access to E.T.2 and E.T.1 for months to prepare them to testify. Their depictions of events in their trial testimony was new and embellished evidence.[57] Ms Hayes testimony would have established how meager their original statements were.

The State created the illusion that their case did not rest on E.T.1 and E.T.2 alone.[58] The State paraded E.T.3, detectives, doctors, and professional interviewers all in front of the jury although none of them had any direct, independent or corroborative evidence of rape. Each of them were allowed to comment on E.T.1 and E.T.2's credibility, while the trial court excluded Mr. Lamizana's impeachment evidence. Issa Lamizana Jr. was denied the opportunity to present his defense which consisted of challenging the reliability or credibility of the State's witnesses, E.T.3, E.T.2 and E.T.1,

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[57]As noted in *Davis*, supra, a reviewing court cannot speculate as to whether the jury, as sole judge of the credibility of a witness, would have accepted the defense's cross examination or theory if the defense had been permitted to fully present it. Where the accuracy and truthfulness of the State's witness' testimony were key elements in the State's case, the claim of bias which the defense sought to develop was admissible to afford a basis for an inference of undue pressure because of the witness' vulnerable status, distinguishing *Alford v. United States*, 282 U.S. 687 (1931).

[58]In *State v. Bairnsfather* 591 So. 2d 686 (La.1991), the Court applied the *Chapman* standard to reverse a sex abuse conviction and order new trial after the trial court erred in refusing to allow Bairnsfather to impeach the credibility of the nine-year-old victim by showing her bad reputation for truth and veracity and by proving her prior inconsistent statements. In *Bairnsfather*, the State's case depended entirely upon the victim's credibility and there were no physical findings to confirm any sexual abuse. The excluded evidence was relevant and material. Under circumstances identical to the case at bar, the errors were not harmless beyond a reasonable doubt and the errors deprived the defendant of a fair trial.

who provided the only evidence of rape allegations. The violation of Issa Lamizana's constitutional rights to a defense and to confrontation requires new trial under these circumstances. Excluding the testimony of Monique Hayes and the DCFS records further violated the defendant's constitutional right to present a defense and his right to confrontation by denying him evidence he could have used to impeach *all* of the State's witnesses who offered opinions that the children were credible.

The State reaped the benefit of the excluded evidence by securing Mr. Laminzana's convictions on untrustworthy, unchallenged testimony from heavily influenced teenagers. The *State* failed to meet its burden of proving the guilty verdicts against Mr. Lamizana were "surely unattributable" to the exclusion of his defense and the DCFS evidence. The Court of Appeal noted in a footnote that, "the State's case rested solely on the jury's credibility determination in accepting the victims' testimony that the defendant raped them." Where any testimony or evidence relative to bias, influence or corruption on the victims was excluded, the error cannot be harmless. Where the State cannot prove the defense was not harmed, the State must suffer reversals of the erroneously obtained verdicts.

Contrary to the Louisiana Court of Appeal's finding that only evidence impeaching the children's testimony was pertinent and the exclusion of DCFS evidence was harmless, Mr. Lamizana's defense was based on his own testimony and the cross examination of *all* of the State witnesses, including E.T.3, the CAC interviewer, doctors, and detective.[59] Ms Hayes, as the first

[59] Ms Hayes' hearing testimony differed from the detective's trial testimony. They also gave differing accounts as to who participated in the interviews. Ms Hayes said the detective was already at the home when she arrived. She did not know if the detective had spoke with the children. (2/20/20 Tr.6-8).Detective Pruitt went to the house on May 9, 2012, but said that Monique Hayes was already at the house and they interviewed E.T.3 together. The detective did not know if Ms Hayes had interviewed the children at the house, (Tr. 1/13/16, p.44-45).

interviewer, was essential. E.T.3 and E.T.2 were asked about contradictory statements that were made to Ms Hayes (Tr. 1/14/16 p.32-3; Tr. 1/19/16 p. 32-4, 40,42). Their denials of prior statements or their "I don't remembers" went unchallenged when the defense was prevented from calling Ms Hayes to confirm the statements proffered in cross, adding fuel to the State's improper argument that the defense counsel lacked integrity or was picking on the children.

The exclusion of Ms Hayes' testimony at trial prevented the defense from questioning her about the interviewing techniques she used where E.T.2 talked to her and no one else. While other witnesses testified about E.T.2 and E.T.1's statements *for the State*, only DCFS had made inquiry into the family environment, a key factor for the defense, to explain the motive and timing of the children's allegations. The police did not care about, or document, family dynamics but DCFS did.

E.T.3's influence and control of the children was one of the main points that the defense intended to prove with Ms Hayes' testimony if it had not been excluded.[60] It was E.T.3 who was the prosecuting witness here. She was the force that pushed and beat her children into making the allegations. Mr. Lamizana's trial was a pure credibility contest between the defendant and E.T.3 and her children. E.T.3 was in a position to exercise substantial influence over the children's recollection of real and of imagined experiences in preparation for a trial to be decided entirely on the children's

[60]See *State v. Fernandez* 513 So. 2d 1185 (La.1987) where the Court reversed the conviction and ordered new trial due to the exclusion of evidence of Fernandez' acrimonious relationship with his girlfriend, the mother of the alleged victim, including a heated argument that occurred shortly before the girl made allegations. The *Fernandez* Court noted that "The trial was a pure credibility contest between defendant and the child"and the mother of the child was in a position to exercise substantial influence over the child's recollection of real and of imagined experiences in preparation for a trial to be decided entirely on the child's credibility. The Court in *Fernandez* held that the denial of the opportunity to show the girlfriend's bias and to undermine her credibility constituted reversible error.

credibility. The denial of the opportunity to show E.T.3's bias and to undermine her credibility constituted reversible error.

The Louisiana Court of Appeal's finding that some of what Ms Hayes' testimony would be cumulative misses the issue of the violation of Constitutional right of Mr. Lamizana to present his defense.[61] The Court in *Wearry* rejected this argument finding that even though a witness's credibility was already impugned with some evidence, Wearry was entitled to use the newly discovered material as the jury may have found that the witness' testimony would have been further diminished had the jury learned about the newly revealed evidence.

The Court of Appeal mistakenly held that because the jury was "made aware" of the acrimonious relationship between E.T.3 and Issa Lamizana, the error in restricting Mr. Lamizana's defense was harmless. It was for the jury to determine whether E.T.3 exerted undue influence which may have caused E.T.2 or E.T.1 to imagine or to exaggerate the incident.[62] The purpose of the confrontation clause includes developing a defense as well as using impeachment evidence to cross examine *all* witnesses. As Ms Hayes was the first professional to talk to the family, her testimony was central to the issues of credibility, influence, demeanor, and reliability. The jury should have had the opportunity to assess it against the State's witnesses' testimony. It is impossible to predict which

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[61]In *Wearry v. Cain,* 577 U.S. 385; 136 S. Ct. 1002; 194 L. Ed. 2d 78 (2016) the conviction for capital murder was reversed where the prosecution's failure to disclose material evidence violated Wearry's due process rights. The newly revealed evidence undermined confidence in Wearry's conviction based only on the dubious testimony of two witnesses.

[62]Cross-examination that shows a witness is biased, or that the testimony is exaggerated or unbelievable. *United States v. Abel*, 469 U.S. 45, 50 (1984); *Davis v. Alaska,* supra, can make the difference between conviction and acquittal, *Napue v. Illinois,* 360 U.S. 264, 269 (1959). The exclusion of a witness and the withholding of records in these circumstances undermines the Confrontation Clause's purpose of increasing the accuracy of the truth-finding process at trial. See *United States v. Inadi,* 475 U.S. 387,396; 106 S. Ct. 1121; 89 L. Ed. 2d 390 (1986).

witnesses will have an effect on the jury or gain the jury's attention. It is not sufficient that some of the issues to be covered by Ms Hayes' testimony were brought up in the cross examination of other witnesses. Ms Hayes had a perspective that no other witness held and Mr. Lamizana had the right to present it.

Mr. Lamizana was constitutionally entitled to present more than a watered down "awareness" of E.T.3's influence. Louisiana Code of Evidence Article 607(D) provides for the admissibility of Ms Hayes' testimony and records.[63] Mr. Laminaza should have been permitted to introduce evidence to impeach E.T.3, show her bias and undermine the credibility of her denial of coaching or intimidating the children. Cross-examination and extrinsic defense evidence may be used to show bias, interest, hope of reward, or corruption as a part of the Sixth Amendment constitutional right of confrontation.[64] Corruption includes an interest in the outcome or external influence on the witness. It was reversible error to prevent Mr. Lamizana from showing the tyranny and influence of their mother, E.T.3, over the children and their statements.

Mr. Lamizana is serving two "life without parole" sentences from verdicts rendered in a one-sided trial. The denial of a fair trial is a grave concern. Mr. Lamizana is innocent of these horrific charges. A jury should be allowed to hear the defense and fully deliberate, with complete information

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[63]La.C.E. Art. 607 D: (1) Extrinsic evidence to show a witness' bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness. (2) Other extrinsic evidence, including prior inconsistent statements and evidence contradicting the witness' testimony, is admissible when offered solely to attack the credibility of a witness unless the court determines that the probative value of the evidence on the issue of credibility is substantially outweighed by the risks of undue consumption of time, confusion of the issues, or unfair prejudice.

[64]*State v. Brady*, 381 So. 2d at 822; see also *State v. Senegal*, 316 So. 2d 124, 125-126 (La. 1975); *State v. Lewis*, 236 La. 473, 108 So. 2d 93, 96 (1959); *State v. Davis* 818 So. 2d 76; 2000 2685 (La.App. 1 Cir. 11/09/01); *State v. Harrison*, 484 So. 2d at 884; *State v. Berry* 645 So. 2d 757; 94-249 (La.App. 5 Cir. 10/25/94)

and evidence, to decide the truth of allegations against Mr. Lamizana. This writ application should be granted and a new trial should be ordered.

CONCLUSION

In view of the facts and law set forth herein and the entire record of the case, the Petitioner-defendant, Issa Lamizana Jr., prays that this Honorable Court grant this Application for Writ of Certiorari, and find that a new trial is required because the record does not reflect that the verdicts were unanimous as required by *Ramos v. Louisiana*.

The Petitioner-defendant, Issa Lamizana Jr., further prays that this Honorable Court vacate the convictions and order a new trial for the violation of his Sixth Amendment rights to a defense and to confrontation.

Respectfully submitted,

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