

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

WILBUR SENAT — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WILBUR SENAT #03702-104

(Your Name)

FCI, COLEMAN, PO. BOX. 1032

(Address)

COLEMAN, FLORIDA 33521 - 1032

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)



## QUESTION(S) PRESENTED

1. Whether the Third Circuit Panel's conclusion Petitioner could not establish plain error after the district court .. prohibited the cross-examination of a minor victim regarding prior "false rape - allegations" is in conflict with the ... decisions of another United States Court of Appeals on the same important matter ?

2. Whether the district court erred in not permitting .... defendant to cross-examine "S.C.-(minor victim) regarding two prior false rape allegations where the United States .. principally relied on "S.C's" testimony ?

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 09/08/2017.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **AMENDMENT 5**

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **AMENDMENT 6**

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; 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 defence.

## STATEMENT OF THE CASE

The OP/ORDER is attached hereto at APP A, which provides this court with the procedural history regarding the case as well as the statement of fact and will not be repeated herein.

Defendant properly filed a motion pursuant to Fed. R. Evid. 412 to cross examine S.C. regarding prior false rape allegations. The Court indicated it would generally preclude defendant Senat from asking S.C. if she lied about someone forcing her to have sex. The United States agreed that .... Petitioner be permitted to ask S.C. whether she previously told someone on Facebook a false statement tha a male forced her to have sex. Defense counsel attempted to inquire about two separate incidents in which S.C. claimed someone came to her house, gave her a drink, and forced her to have sex. The United States objected. The District Court concluded it would not allow any questioning that pertained to S.C.'s sexual - history or experience. The District Court also concluded that a R. 412 hearing was unnecessary.

The Third Circuit Panel opinion concluded Petitioner Senat could not establish plain error, and opined evidence of S.C.'s allagations of rape would have had little probative value. Petitioner takes exception to the Third Circuit's .. decision denying his direct appeal of right.

## REASONS FOR GRANTING THE PETITION

The Court erred in not permitting the Petitioner to .. cross-examine S.C. regarding two false rape allegations. In a case where the United States principally relied on S.C.'s testimony, the court should have permitted Petitioner to .. question her regarding prior false allagations that she was provided alcohol and forced to have sex. Although S.C. made those allagations on three separate occasions, defense .... counsel was only permitted to cross-examine S.C. regarding one incident. There was minimal or no evidence that defendant forced S.C. to engage in prostitution; thus, S.C.'s testimony was critical. The United States had no physical evidence of rape, and the jury acquitted Petitioner's co-defendant of the charges lacking corroborating evidence in addition to S.C.'s testimony. The district court should not have prohibited this line of cross-examination.

The Third Circuit has entered a decision in conflict with the decisions of other United States Court of Appeals on the same important matter. Petitioner moves this Honorable Court to issue the writ of certiorari on the questions presented herein and remand this case (GVR) with instructions permitting Petitioner a new trial in this case.

## A R G U M E N T

### I. Whether the Exclusion of Evidence Violated Petitioner Senat's Constitutional Rights.

Petitioner argues that the excluded evidence should nonetheless be admissible under Rule 412(b)(1)(C), which provides for the admission of "evidence whose exclusion .. would violate the defendant's constitutional rights." See Fed. R. Evid. 412(b)(1)(C). Specifically, Petitioner Senat argues that exclusion of the proffered evidence would .... violate his Sixth Amendment Clause Rights.

"The Sixth Amendment to the Constitution guarantees .. the right of an accused in a criminal trial 'to be confronted with the witness against him.'" Davis v. Alaska, 415 U.S. 308, 315, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974). The Sixth ... Amendment protects "the right to cross-examine witness to - attack their general credibility or to show their possible bias or self-intrest in testifying." Hughes v. Raines, 641 F.2d 790, 792 (9th Cir. 1981). Accordingly, the Confrontation Clause requires a defendant to have some opportunity to show bias on the part of a prosecution witness. United States v. Abel, 469 U.S. 45, 50, 105 S. Ct. 465, 83 L. Ed. 2d 450 (1984).

The Circuits are split on the false allagation of rape accusations, and the Third Circuit here has made a decision in conflict with other Court of Appeals on this matter.

For example, the Ninth Circuit has affirmed a district court's exclusion in a rape prosecution of evidence that .. the elleged victim made a prior false allagation of rape. See Huhhes v. Raines, 641 F.2d at 793. The court reasoned that the relevance of the evidence was slight, and "would have added extraneous issues that had litte, is any, probative value."

The Ninth Circuit also found it significant that the .. "object of the intended cross-examination ... was not to - establish bias," but "merely ... to attack the general .... credibility of the witness on the basis of an unrelated prior incident." (citing Davis, 415 U.S. at 321 (Stewart J., .... concurring); see also Davis, 415 U.S. at 316 (majority opinion) (distinguishing between "a general attack on the credibility of a witness" and a "more particular attack on the witness'.. credibility ... by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate d r ctly to issues or ..... personalities in the case at hand ); United States v. Payne, 944 F.2d 1458, 1469 (9th Cir. 1991)("We have found .. that a trial court's limitation of cross-examination on a unrelated prior incident, where its purpose is to attack the general - credibility of the witness, does not rise to the level of a constitutional violation of the defendant's confrontation - rights"); Quinn v. Haynes, 234 F.3d 837, 844-48 (4th Cir. 2000)(upholding on habeas review exclusion of impeachment

evidence regarding alleged victims prior accusations of sexual assault, where that evidence went to "general credibility" rather than motive to fabricate); United States v. Bartlett, 856 F.2d 1071, 1087-89 (8th Cir. 1988)(affirming exclusion of prior false rape allegations offered as a general credibility attack ).

Where cross-examination goes to bias, however, it carries greater constitutional weight. In Davis, for example. Green, a key prosecution witness in a robbery case was, at the time of trial, on probation bu order of a juvinile court after .. having been adjudicated a delinquent for burglarizing two - cabins. 415 U.S. at 311. The defense sought to introduce the juvenile adjudication not "as a general impeachment of Green's character as a truthful person but, rather, to show specifically that at the time Greeen was assisting the Police in identifying petitioner he was on probation for burglary" and therefore he may have made a faulty identification "to shift suspicion away from himself" or "under fear of possible probation revocation."

The trial court granted the motion for a protective .. order barring evidence of the juvenile adjudication, relying on state statutes that broadly prohibited the introduction of such evidence. Id. The Supreme Court reversed, holding that the "claim of bias which the defense sought to develop was admissible to afford a basis for an inference of undue .... pressure because of Green's vulnerable status as a probationer,

as well as Green's possible concern that he might be a suspect in the investigation." Id at 317-18. The Court then determined that the defendant's right to expose potential bias outweighed the state's admittedly important interest in ... protecting the anonymity of juvenile offenders. See Id. at 319-20. See also Olden v. Kentucky, 488 U.S. 227, 230-31, 109 S. Ct. 480, 102 L. Ed 2d 513 (1988)(finding a Sixth Amendment violation where potential motive to falsely allege that sex with the defendant was nonconsensual); Redmond v. Kingston, 240 F.3d 590, 591-93 (7th Cir. 2001)(holding erroneous trial court's exclusion of evidence that alleged statutory rape victim had previously reported and recanted a rape to get attention, suggesting a motive to accuse the defendant .... falsely); United States v. Stamper, 766 F. Supp. 1396, 1401-06 (W.D.N.C. 1991)(admitting evidence of alleged victim's past allegations of sexual assault, offered to show a "motive or scheme of fabrication by the complainant"); Commonwealth v. Joyce, 382 Mass. 222 415 N.E.2d 181, 186-88 (Mass. 1981) .. (reversing conviction where defendant was precluded from .. presenting evidence that alleged rape victim had previously been charged with prostitutio, which suggested a motive to allege rape falsely to avoid being charged again.

Petitioner Senat argues herein that the District Court comitted plain error by admitting evidence of his and other

pimps prior crimes. It was plain error to permit S.C. to testify about an incident in which she thought - she heard Senat shoot another person. S.C. specifically testified that she was in a van with Petitioner and his friends when the van parked and Petitioner got out of the van ... S.C. then heard two gunshots, and Petitioner ran back to the van. S.C. also testified that Petitioner told her later that she had "seen and heard something" she " wasn't suppose to hear or see" and that if S.C. didn't leave for Philedelphia with him he would hurt her and her family. This evidence was uncorroborated, and uncharged conduct which does not support **proof** of the charged offense. The District Court committed plain error in allowing the admission of this evidence under Rule 404(b).

## II. THE EXCLUSION OF EVIDENCE UNDER RULE 412 WAS IMPROPER IN VIOLATION OF PETITIONER'S FIFTH AND SIXTH AMENDMENT

S.C.'s testimony reveals that she participated in sex or prostitution, willingly. That does not excuse Petitioner if her story was not completely fabricated, and it was. In fact, S.C. informed Petitioner that she was 19, and lied about her age. S.C.'s Facebook name was Samanth Maria Lopez, not her actual name. And maintained and used three separate Facebook accounts. In fact, the Panel opinion correctly ... points out that "Police found S.C. when she was arrested in

Bordentown, New Jersey, with .... another pimp." This was not S.C.'s first adventure as a promiscuous sex addict. The record is replete with her "willingness" to partake in sex:

"An unidentified male got on top of her and had sex with her. Additional men had sex with her that night. **She did not tell them to stop.**"

The record reflects that no other witnesses corroborated S.C.'s testimony. On another occasion "S.C. "had sex with .. other men in a vehicle." Petitioner Senat contends that the District Court's exclusion of evidence concerning S.C.'s - other sexual behavior deprived him of the right to present a defense under the Fifth and Sixth Amendments to the United States Constitution. Rule 412 prohibits the admission of .. "evidence offered to prove that a victim engaged in other sexual behavior" and evidence offered to prove a victim's - sexual predisposition." Petitioner Senat claims that this .. evidence was admissible under an exception to the general rule of inadmissibility in Rule 412 for "evidence whose exclusion would violate the defendant's constitutional rights." Rule 412 (b)(a)(C). Senat proposes two different theories why evidence of S.C.'s sexual predisposition: (1) the evidence was relevant to show that that force was unnecessary to cause her to engage in commercial sex acts; (2) it provides a logical chain of .. inference that S.C. chose willingly to work with Senat.

The Third Circuit applies an abuse of discretion ..... standard on this exclusion of evidence issue but to the extent that the District Court interpreted the Federal Rules of .. Evidence our review is plenary. United States v. Duka, 671 F.3d 329, 348 (3d Cir. 2011). Rule 412 applies in cases involving "alleged sexual misconduct," conduct that is within the terms of sex trafficking are at issue here. The Supreme Court has admitted evidence that the defendant and victim engaged in a consensual sexual relationship and the victim fabricated rape charges to maintain her relationship with her live-in boyfriend. Olden v. Kentucky, 488 U.S. 227, 230-33 (1988).. (reversing the trial court's decision to exclude evidence of the victim's relationship with her live-in boyfriend. The .. confrontation Clause was violated where the trial court ... prohibited all inquiry into the possibility that the United States witness would be biased if the State dismissed the - public drunkenness charge. Deleware v. Van Arsdall, 475 U.S. 673 679 (1986). The Confrontation Clause was violated where the defendant was prohibited from questioning a witness regarding the defendant's alleged confession, because the witness asserted his privilege against self-incrimination. Douglas v. Alabama, 380 U.S. 415, 419-20 (1965).

Other Circuits have permitted defense counsel to .... cross-examine a victim regarding false rape allegations.

The Eighth Circuit has concluded that Fed. R. Evid. 412 is not implicated in a false rape allegation. While the rule protects a witness from being questioned about sexual conduct; false allegations are not considered sexual conduct. United States v. Bartlett, 856 F.2d 1071, 1088 (8th Cir. 1988). The Sixth Circuit has similarly concluded a false allegation is not considered sexual conduct protected under 412. United States v. Willoughby, 742 F.3d 229, 234 (6th Cir. 2014). The Seventh Circuit has held that a victim's prior reports and recantations of rape allegations, in order to obtain attention, suggested motive to falsely accuse the defendant of rape and were admissible. Redmond v. Kingston, 240 F.3d 590, 591-93 (7th Cir. 2001). Evidence of the victim's past sexual ..... behavior shall be admitted when proffered to demonstrate a victim's state of mind. United States v. Stamper, 766 F. Supp. 1396, 1400 (W.D.N.C. 1991)(holding defendant should be permitted to cross-examine the victim regarding prior false rape .... allegations to demonstrate the victim had ulterior motive.

As in Stamper, the evidence was especially important since the Government lacked physical evidence of a rape and the veracity of the witness' testimony was essential to the U.S. Government's case. Id at 1400-01. Petitioner Senat properly filed a motion pursuant to Fed. R. Evid. 412 to cross-examine S.C. regarding prior false rape allegations.

The court indicated that it would preclude defendant .. from asking S.C. is she lied about someone forcing her to have sex. The District Court restricted the Petitioner from fully probing the depth of S.C.'s multiple false allegations. The hird Circuit should have adopted the principles set forth by the Sixth, Seventh, and Eighth Circuit that a false rape allegation is not protected under Fed. R. Evid. Rule 412, where the Government lacked physical evidence and the ..... accuracy of S.C.'s testimony was essential to Petitioner's conviction. Evidence of the additional false rape allegations should have been admitted to demonstrate S.C. had an ..... ulterior motive, to protect Dre. Because a reasonably jury might have received a significantly different impression of S.C.'s testimony [if] Petitioner was permitted additional - cross-examination of S.C.'s false allegations, this Court should grant the writ of certiorari and remand this case - for a new trial.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "A. L. J.", written over a horizontal line.

Date: 12/06/17